
From:
Sent: Friday, 2 December 2011 9:08 AM
To:
Subject: FW: Advice on the constitutionality of the Minerals Resource Rent Tax (MRRT)

Security Classification:

From:
Sent: Friday, 23 September 2011 2:50 PM
To:
Cc:
Subject: RE: Advice on the constitutionality of the Minerals Resource Rent Tax (MRRT)

called and advised the process going forward.

1. Prepare our tasking statement for AGS – send to
The tasking statement is to included the questions we want answered as well as the materials we want the Solicitor-General to look at. We can also request that AGS provided us with a draft or a copy of the brief to be sent to the Solicitor-General.
2. with then provide us with a quote
Apparently the quote will not be big (probably because the Solicitor-General is free and we'll only be paying for AGS to brief the Solicitor-General).
3. We accept the quote (which I understand requires sign-off)
4. (of AGS) will put together the brief for the Solicitor-General. AGS instruct the Solicitor-General
5. We'll receive the advice by 21 October 2011.

From:
Sent: Friday, 23 September 2011 12:15 PM
To:
Cc:
Subject: FW: Advice on the constitutionality of the Minerals Resource Rent Tax (MRRT)

Do you know what the process is from here? Do we lodge our tasking statement as normal with AGS? At that stage will we be advised who will have conduct of the matter?

Kind regards

From:
Sent: Friday, 23 September 2011 12:12 PM
To:

Cc:

Subject: RE: Advice on the constitutionality of the Minerals Resource Rent Tax (MRRT)

Good afternoon.

The Solicitor-General would be pleased to accept the brief to advise in this matter.

We look forward to accepting the brief prepared by AGS. When convenient, could you please advise which lawyer in AGS will have conduct of this matter?

Kind regards,

Counsel Assisting the Solicitor-General

T: (02) 6141 | F: (02) 6141

3-5 National Circuit, Barton ACT 2600

From:

Sent: Friday, 23 September 2011 10:51 am

To:

Cc:

Subject: Advice on the constitutionality of the Minerals Resource Rent Tax (MRRT)

As we discussed, The Treasury is interested in seeking the opinion of the Solicitor-General regarding various constitutional elements of the Minerals Resource Rent Tax (MRRT).

Over the past 2 years, we have sought and received advice from AGS on the constitutionality of various resource taxation proposals, most notably the Resource Super Profits Tax (RSPT) and more recently the MRRT.

On 29 July 2011, we received our most recent advice from Deputy General Counsel AGS. This advice was in regards to the first exposure draft of the MRRT Bill (released on 10 June 2011). The advice considered whether that version of the Bill would:

- contravene section 114 of the Constitution by imposing a tax on the property of a State;
- infringe sections 51(ii) or 99 of the Constitution by incorporating royalty crediting provisions that discriminate between States and Territories, or prefer one State or Territory over another State or Territory;
- constitute a duty of custom or excise for the purpose of section 55 of the Constitution such as would require more than one imposition Act;
- suffer from any other constitutional impediments.

Various commentators, including mining companies and the State of Western Australia, have indicated that, if enacted, they intend to challenge the constitutionality of the MRRT. With the prospect of constitutional challenge, we would like to obtain the opinion of the Solicitor-General.

A second exposure draft MRRT Bill was released for public consultation on 18 September 2011 and it is on this version of the Bill that we would seek the Solicitor-General's opinion. (The draft Bill can be found at this link <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2157>)

We would be seeking the Solicitor-General's opinion on the constitutional matters outlined above. In addition, we would be seeking advice on the constitutionality of a refundable tax offset which is part of the current MRRT draft Bill. The refundable tax offset was not included in the first exposure draft, although we have also received AGS advice on point on a number of previous occasions.

The MRRT Bill is scheduled for introduction into the Parliament on 3 November 2011. Given this time frame, we would require the advice by no later than 21 October.

We appreciate if you can respond and indicate whether the Solicitor-General has availability to consider these matters within the time frame. If he is unavailable, I understand it may be possible to request the advice of Robert Orr QC, Chief-General Counsel AGS.

Kind regards

Analyst

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