
Chapter 1

Detailed explanation of new law

Schedule X—Miscellaneous amendments to the taxation laws

Amendments related to the Minerals Resource Rent Tax

Referencing addition

1.1 A note that points readers to the provisions outside Division 30 of the *Minerals Resource Rent Tax Act 2012* (MRRT Act) that also include amounts in a miner's mining revenue is amended to include a reference to section 140-20 (which includes pre-mining profits in mining revenue). [*Schedule X, item 6, note to section 30-5 of the MRRT Act*]

Conclusive evidence

1.2 The production of an MRRT notice of assessment is conclusive evidence that the assessment was properly made and (except in proceedings reviewing the assessment) that the particulars of the assessment are correct (see subsection 350-10(1) of Schedule 1 to the TAA 1953). This is identical to the treatment of notices of assessment for income tax purposes (see section 177 of the *Income Tax Assessment Act 1936*).

1.3 For MRRT purposes, the conclusive evidence rule also applies to determinations the Commissioner of Taxation makes of various MRRT amounts for the purposes of:

- the anti-profit shifting rules in Division 205 of the MRRT Act; and
- the compensating adjustment provisions of the MRRT general anti-avoidance rule in Division 210 of the MRRT Act.

1.4 Extending the conclusive evidence rule to cover those determinations is unnecessary because the determinations are only ever given effect to by making or amending an MRRT assessment, which the

rule already covers. Accordingly, the amendments remove those determinations from the scope of the MRRT's conclusive evidence rule. *[Schedule X, items 16 and 17, table item 2 of subsection 350-10(1) in Schedule 1 to the TAA 1953]*

1.5 This amendment has two versions, only one of which can commence. That is necessary to address the fact that the original MRRT conclusive evidence rule had two versions: one that was part of a new generic assessment regime; and one that amended an existing generic assessment regime added by other legislation. Which of those applies depends on the sequencing of the commencement of the various pieces of legislation. The version of the amendment that removes the determinations from the conclusive evidence rule modifies the *relevant* version of the original addition of that rule. *[Clause #, items 2 and 3 of the table]*

Incomplete definition

1.6 An incomplete definition is amended to ensure the MRRT Act has its intended effect. *[Schedule X, items 2 and 3, section 960-265 and subsection 995-1(1) of the ITAA 1997]*

1.7 A starting base loss that is not used in a year is uplifted and carried forward to the next year. Under the market value method for valuing and depreciating starting base assets, the uplift factor is based on the Consumer Price Index (CPI) (see paragraph (b) of the definition of 'uplift factor' in subsection 80-45(1) of the MRRT Act).

1.8 However, the MRRT Act does not currently achieve the CPI indexation of starting base losses, since it incompletely links to the ITAA 1997 definition of 'index number'.

1.9 Paragraph (b) of the meaning of 'uplift factor' in subsection 80-45(1) of the MRRT Act refers to 'index numbers'. Division 300 in that Act provides that 'index number' has the meaning given in subsection 995-1(1) of the ITAA 1997. The subsection 995-1(1) definition then points to section 960-265, which includes a table listing 13 items.

- If the amount to be indexed relates to items 8 to 12 in that table, then the index number has the meaning given in section 960-285 — which is the estimate of full-time adult average weekly ordinary time earnings.
- If the amount to be indexed relates to another provision in that table, then the index number has the meaning given in section 960-280 — which is the CPI.

1.10 However, the list in section 960-265 does not mention MRRT starting base losses. This makes it unclear which ‘index number’ to use in the formula provided in subsection 80-45(1) of the MRRT Act.

1.11 The intention is that unused starting base losses under the market value approach should be uplifted in line with the CPI. The amendment adds an item to the table in section 960-265 of the ITAA 1997 to ensure amounts under paragraph (b) of the meaning of ‘uplift factor’ in subsection 80-45(1) of the MRRT Act are indexed according to the CPI. *[Schedule X, item 2, section 960-265 of the ITAA 1997]*

1.12 An amendment is also made to the definition of ‘index number’ in subsection 995-1(1) of the ITAA 1997 to ensure that the default uplift of an amount is based on the CPI, even if the amount is not mentioned in the table in section 960-265. That ensures that future uses of ‘index number’ will always have a clear meaning. *[Schedule X, item 3, subsection 995-1(1) of the ITAA 1997]*

1.13 A consequential amendment amends a Guide provision so that it no longer implies that the indexation provisions are only used for the purposes of the income tax law. *[Schedule X, item 1, section 960-260 of the ITAA 1997]*

Mining revenue under the safe harbour method

1.14 When a mining revenue event occurs, some part of the revenue amount for the event (for example, the sale price of the taxable resources) is attributed to the taxable resource. That amount becomes mining revenue that is subject to tax under the MRRT.

1.15 Normally, the method used to attribute part of the revenue amount to the taxable resource must be the ‘most appropriate and reliable’ method. However, to improve certainty and reduce compliance costs, a ‘safe harbour’ method is provided that is taken to be the most appropriate and reliable method for a miner who chooses to use it (see subsection 30-25(5) of the MRRT Act).

1.16 The safe harbour method works out the amount to be attributed by subtracting, from the revenue amount, the amounts that a notional entity would charge to provide the miner with the downstream activities that are actually undertaken if that notional entity were to recover its operating costs, depreciation on its capital assets, and a sufficient return to justify committing its capital.

1.17 In applying the safe harbour method, the miner is only allowed to deduct the costs relating to what the notional entity is “assumed by subsection (4) to do”. Those words were intended to pick up all the assumptions set out in subsection (4) but some of the assumptions are

arguably not about things the notional entity is ‘assumed to do’ and so might not be picked up. In particular, the assumption in paragraph 30-25(4)(d) that there is a competitive market for what the notional entity is assumed to do might not be picked up because it is an assumption about circumstances rather than about the notional entity’s actions.

1.18 The amendments make clear that all the matters that must be assumed when using the most appropriate and reliable method to attribute a part of the revenue amount to the taxable resource must also be assumed when applying the safe harbour method to do that attribution. *[Schedule X, item 9, paragraph 30-25(5)(a) of the MRRT Act]*

Treatment of multiple mining revenue events

1.19 A ‘mining revenue event’ in the MRRT Act is the event that triggers an amount being included in a miner’s mining revenue for a particular quantity of taxable resources. The current definition provides that there is only one mining revenue event for each quantity of taxable resources to make sure that there is no double counting of revenue (for example, taxable resources are not taxed when exported and again when later supplied).

1.20 However, there are some cases where having multiple mining revenue events for the same quantity of taxable resources is appropriate. These cases are where the mining revenue event is the supply of several things produced from the *same* quantity of taxable resource.

1.21 In those cases, treating the supply or export of each thing produced from the taxable resources as a separate mining revenue event ensures that the amount attributed to the taxable resource is based on the full value realised from the taxable resource. The amendments therefore provide that there can be more than one mining revenue event for a quantity of taxable resources that is used to produce something else. However, to avoid any double counting, they also ensure that there can be only one mining revenue event for each of the things produced. A note that explains the current effect of the definition of ‘mining revenue event’ is adjusted to reflect the amended result. *[Schedule X, items 7 and 8, paragraph 30-15(1)(c) and the note to subsection 30-15(1) of the MRRT Act]*

Example 1.1 Coal converted into electricity and fly-ash

Schofield Power Corp operates a power station fuelled from a coal mine it owns. Burning the coal in the power station produces electricity, which Schofield supplies to the grid, and fly-ash, which it exports. Schofield has one mining revenue event when it supplies the electricity and another mining revenue event when it exports the fly-ash. A portion of the revenue amount for each of those events is attributed to the coal and included in Schofield’s mining revenue.

However, if Schofield supplied the fly-ash after it had exported it, there would not be another mining revenue event for that supply. There can only be one mining revenue event for the electricity and one mining revenue event for the fly-ash.

Multiple mining revenue events under the safe harbour method

1.22 When using the safe harbour method to attribute a part of the revenue amount to the taxable resource, the costs of the notional entity providing the downstream services can only be subtracted from the revenue amount to the extent that they reasonably relate to the taxable resource.

1.23 If there are multiple mining revenue events for the same quantity of taxable resource, the safe harbour method could be interpreted as allowing the full costs of the notional entity's downstream costs to be subtracted from the revenue amount for *each* of the products produced from the taxable resource. That would double count the downstream costs and produce an incorrect figure. Therefore, the amendments make clear that only an appropriate part of the notional entity's total downstream costs can be deducted for each relevant mining revenue event. *[Schedule X, item 10, subsection 30-25(5) of the MRRT Act]*

Example 1.2 Safe harbour method for transforming coal

Continuing the previous example, if Schofield chooses to use the safe harbour method for its supplies of electricity and for its exports of fly-ash, it would work out the costs a notional entity would charge for providing the downstream activities for the coal it mined and subtract an appropriate part of those costs from the revenue amount for supplying the electricity and the remaining part from the revenue amount for exporting the fly-ash.

Mining revenue not related to a particular mining revenue event

1.24 Section 30-55 of the MRRT Act includes an amount in mining revenue for supplies or proposed supplies of taxable resources where the amount does not relate to any particular mining revenue event. This deals with so called 'take-or-pay' contracts, where a miner receives an amount in one year for a supply that will be made when the customer asks for it in another year (or perhaps even never asks for it).

1.25 However, the provision does not cover amounts received for supplies, or proposed supplies, of things produced from taxable resources. The supply of such things is the relevant mining revenue event unless it occurs after the taxable resources are supplied or exported. For example, if the miner converts iron ore into steel and supplies or exports that, the mining revenue event is the supply or export of the steel. If there is a

take-or-pay contract in relation to the supply of the steel in that case, no provision includes the amount received in the miner's mining revenue until the later year in which the steel is supplied or exported. If it is never supplied or exported, no amount would ever be included in mining revenue.

1.26 The amendments extend the provision to cover things produced from taxable resources, putting mining revenue arising from take-or-pay contracts for such things on the same footing as mining revenue arising from take-or-pay contracts for taxable resources. *[Schedule X, item 11, paragraph 30-55(b) of the MRRT Act]*

Example 1.3 Take-or-pay contract for synthetic diesel

Pyrite Energy mines coal for conversion into synthetic diesel in its plant. It enters into an agreement with Fastburn Pty Ltd, an overseas petroleum distributor, under which Fastburn will pay Pyrite an annual amount of \$100 million for the supply of a million barrels of diesel fuel, to be delivered in the amounts and at the times Fastburn specifies.

In the 2014 MRRT year, Fastburn only calls for delivery of half a million barrels. Therefore, there would be a \$50 million normal revenue amount, part of which would be attributed to the coal and become mining revenue.

The remaining \$50 million would be mining revenue as an amount not related to any particular mining revenue event. If the remaining half a million barrels of diesel is supplied in a later year, there would be no further amount included in Pyrite's mining revenue; indeed, there would probably be an amount of mining expenditure in that later year under a Division 160 adjustment to reflect the fact that not all the second \$50 million was ultimately attributable to the coal.

Allocating the mining revenue to a mining project interest

1.27 The MRRT works out an MRRT liability for each mining project interest and then adds them together to produce an amount the miner is liable to pay. Therefore, it is important to allocate every amount of mining revenue to a mining project interest. In the case of amounts included in mining revenue because they do not relate to any particular mining revenue event, the relevant mining project interest is not specified.

1.28 The amendments ensure that the amount is included in the mining revenue of the mining project interest from whose project area the taxable resources that are to be supplied are proposed to be extracted. If the supply or proposed supply relates to resources of more than one mining project interest, the amount would be apportioned between them. *[Schedule X, item 11, paragraph 30-55(b) of the MRRT Act]*

Combining mining project interests with starting base assets

Starting base assets with a base value of zero

1.29 Mining project interests (MPIs) are able to combine when they are sufficiently integrated in their operations (see section 115-10 of the MRRT Act). However, MPIs are generally not able to combine if they have starting base assets, since this would effectively allow the base value of those assets to be transferred.

1.30 An exception to this is where the same miner has had each MPI at all times from 2 May 2010 (when the resource tax reforms were announced). This exception appears in paragraph 115-10(1)(e) of the MRRT Act.

1.31 However, the current drafting of paragraph 115-10(1)(e) would not allow the combination of other MPIs with starting base assets that have been fully written off (that is, assets whose base value has reduced to zero), even though this would not involve any effective transfer of base value between the integrated MPIs.

1.32 The amendments ensure that MPIs with starting base assets that have a base value of zero need not have been held by the same miner at all times from 2 May 2010 in order to be combined. [*Schedule X, item 13, paragraph 115-10(1)(e) of the MRRT Act*]

Renewing or changing mining ventures

1.33 An entity has a mining project interest to the extent that it is entitled to share in the output of a mining venture in which it participates (see subsection 15-5(1) of the MRRT Act). A mining venture is an undertaking that has a purpose of extracting taxable resources from the area covered by a production right (see subsection 15-5(3)).

1.34 A mining project interest terminates on the day when no one has the mining project interest any longer (see section 135-5). However, an interest does not terminate simply because the production right underlying the mining venture that underlies the interest is changed or renewed (see subsection 135-10(1)). That ensures that a change or renewal of the production right cannot mean that there is a new production right and therefore a new mining project interest.

1.35 In one case though, a change or renewal of a production right does produce a new mining project interest. That is the case where the changed or renewed production right covers an additional area. In such a case, the mining project interest continues to the extent that it does not cover an additional area and, to the extent that it would otherwise cover an

additional area, it is taken to be a new mining project interest (see subsection 135-10(2)).

1.36 Similarly, a change or renewal of a mining venture (for example, a renewal of an agreement between two joint venturers) does not terminate the mining project interest (see section 135-15). However, unlike changes or renewals of production rights, there is no similar exception for changes or renewals of mining ventures that cover an additional area. The amendments put changes and renewals of mining ventures on the same footing as changes or renewals of production rights by providing that, to the extent that a change or renewal of a mining venture means that a mining project interest would cover an additional area, that additional area will be a project area for a separate mining project interest. *[Schedule X, item 14, subsection 135-15(2) of the MRRT Act]*

1.37 Consequential amendments adjust notes that point readers to the possible consequences of changing or renewing mining ventures and production rights. *[Schedule X, items 4 and 5, notes to subsections 15-5(1) and (4) of the MRRT Act]*

Relationship between mining ventures and mining project interests

1.38 The amendments also reword provisions that imply that mining ventures relate to mining project interests so that they instead talk about mining project interests that relate to mining ventures. That reflects the correct logical sequence in which a mining venture must exist *before* there can be a mining project interest (see subsection 15-5(1) of the MRRT Act). *[Schedule X, items 12 and 14, paragraph 35-40(2)(b) and subsection 135-15(1) of the MRRT Act]*

The simplified MRRT method

1.39 The MRRT provides a simplified method of working out if a miner is under the threshold for the low-profit offset that effectively exempts a miner from MRRT liability. The simplified method saves the miner from the compliance costs involved in doing a full MRRT calculation when it will end up with no MRRT liability.

1.40 Amendments to the MRRT Bill moved in the House of Representatives increased the low-profit offset threshold from \$50 million to \$75 million but no similar amendment was made to the simplified MRRT method's reference to profits of \$50 million or less. The amendments increase the profit a miner can make before it can no longer access the simplified MRRT method from \$50 million to \$75 million to align with the increase in the low-profit offset threshold. *[Schedule X, item 15, subsection 200-10(1) of the MRRT Act]*

Other amendments to the taxation laws

1.41 2009 amendments to the *Migration Act 1958* resulted in the re-numbering of certain *Migration Act* provisions. This amendment to Schedule 1 of the TAA 1953 updates a reference to a specific *Migration Act* provision, to ensure the provision operates as originally intended. *[Schedule X, item 18, paragraph (a) of the cell at table item 4, column headed “and the record or disclosure ...”, of subsection 355-65(8) in Schedule 1 to the TAA 1953]*

Application and transitional provisions

1.42 The amendments relating to the MRRT commence immediately after the MRRT Act commences. This ensures that the amendments do not fail by attempting to amend something that is not yet an Act. *[Clause #, item 1 of the table]*

1.43 An exception is the amendment to the conclusive evidence provision, which has two versions. Which of those versions takes effect depends on which version of the underlying provisions is enacted. This is discussed above. *[Clause #, items 2 and 3 of the table]*

1.44 The other amendments to the taxation laws commence on the day this Act receives Royal Assent. *[Clause #, item 4 of the table]*