



Australian mining regulations and taxation

For a country as vast, diverse and resource-rich as Australia, providing a comprehensive legislative and tax framework for the resource industry is no mean feat.

Minerals-related activities in the six states and the Northern Territory are normally administered by the Department of Mines, Minerals and Energy, or equivalent, in each jurisdiction.

While all states and the Northern Territory have their own laws governing mineral activities, in content and administration, they are very similar.

A feature of the administration of exploration and mining titles in Australia is the ready access to current tenement information, commonly through online information systems.

This enables quick identification of tenement status and title-holders, improved identification of available prospective ground and immediate registration of applications for new titles.

Land ownership

In Australia, the majority of mineral resources are publically owned. This arrangement is based on the argument that minerals are finite reserves, and their extraction permanently depletes a country's resource inventory.

The role of the government is to manage the exploitation of these resources to maximise the economic benefits to the country's population, at the same time as attracting and retaining the capital necessary to exploit these benefits for as long as possible.

Following these principles, the Mining Approval Process in Australian mining legislation outlines three basic stages of mine development: initial exploration (for which companies must provide a work programme and issue a public notice of their plans); further detailed exploration and assessment (possibly under a retention licence); and mining.

But before a mineral developer can commence exploration, the company must first negotiate an agreement regarding land rights.

At the moment, much of Australia's land is vacant, subject to long-term leases to pastoralists, or occupied by nature reserves, national parks or indigenous reserves.

Land owners, lessees and other land users have no right to sub-surface resources, and only a limited ability to influence the extent of exploration and mining activity on their land.

Generally, this is restricted to the granting of permission to access the land and to

As Australia's government seeks to maximise revenues from the resource sector without damaging its competitiveness, *Vasili Nicoletopoulos** considers whether the country's legal and tax frameworks will help or hinder the mining industry's future development.

compensation for any costs or damage incurred due to exploration and mining activity.

In some cases, however, the compensation process and related potential delays may amount to a de facto power of veto.

In most of Australia's states, consent of the owner or occupier of private land is required before mining operations can take place within 100-200 metres (or 400 metres, in South Australia) of residences. Some states also have activity-specific veto rights on freehold land.

Where open cut or surface mining is planned, it is common practice (except in the Northern Territory and South Australia) for a miner to purchase the property on which the mine is to be located.

However the scope and type of compensation is usually a matter of negotiation between landowner and the licensee.

Environmental legislation

All mining proposals in Australia are subject to environmental assessment and detailed plans must be provided before mining activities can commence.

The Clean Energy Future Plan, which came into force on 1 July 2012, is an important package of legislative measures in this area. The scheme sets out a long-term plan to reshape the Australian energy economy, by cutting cut carbon pollution and driving innovation and investment in new clean energy sources. It consists of:

- A two-stage carbon price, that encompasses the stationary energy sector, transport, industrial processes, non-legacy waste, and fugitive emissions;
- International ties to other carbon markets and emissions trading schemes;
- An Energy Security Fund;
- Assistance for households;
- Clean Energy Future programmes assisting manufacturing and energy efficiency and
- The Carbon Farming Initiative with incentives for the farming, forestry and land sectors to reduce carbon pollution and increase the amount of carbon stored on the land.

Taxation

The Australian minerals industry now faces significant tax and compliance costs given the introduction of the Minerals Resource Rent Tax (MRRT) on coal and iron ore, and the Carbon Pricing Mechanism (CPM), both of which came into force on 1 July 2012.

The taxes have faced heavy criticism by mining companies and opposition MPs since they were first proposed, and the MRRT is currently being amended in the House of Representatives.

The Minerals Resource Rent Tax

The MRRT is based on a nominal tax rate of 30%, minus an 'extraction allowance' of 25%, resulting in an effective rate of 22.5%. The effective MRRT rate is levied on mining profits, less any specified allowances.

A critical component of the MRRT involves the determination of 'mining revenue': this is assessed as the value of the resource at the point just before the mineral leaves the run-of-mine stockpile, or equivalent stage.

The legislation prescribes two methods to determine the mining revenue, and taxpayers have a choice as to which method they apply.

They can use either a statutory netback ('safe harbour') method, or an arm's length method based on accepted transfer pricing principles.

After determining mining revenue, mining expenditure is then deducted to determine profit. Mining expenditure includes all expenditure incurred in carrying on a mining operation prior to the valuation point.

It is therefore important for taxpayers to be able to keep accounts of all expenditure that occurs pre and post the valuation point, in order to accurately determine their tax liability.

Carbon Tax and CO₂ reduction

The introduction of the Carbon Tax in July 2012 was one of the largest national policy changes for the Australian industrial sector of recent years. It aimed to encourage companies to control their emissions, while at the same time generate revenue for the Australian treasury.



Mineral Royalties in Australia states**

State	Mining royalty regulations
Western Australia	<p>The 1978 Mining Act and related Mining Regulations (1981) specify two general royalty systems for minerals:</p> <ol style="list-style-type: none"> 1. A specific royalty, mostly applied to low-value, bulk, nonmetallic mining products including most industrial minerals, of A\$0.62/tonne for construction use or A\$1/tonne for metallurgical use and coal, subject to yearly adjustments. 2. An ad valorem royalty, applied to the realised value of most higher-value, generally metallic minerals, with three decreasing rates of royalty to reflect downstream value-addition, thus providing an incentive for investment in downstream processing facilities. <p>The ad valorem royalties are set at: crushed and screened, bulk material, 7.5%; concentrates, 5%; and metal, 2.5%. The regulations also provide an exhaustive list of product-specific royalty rates, with exceptions for some mineral grades including ilmenite concentrates used as feedstock for a beneficiation plant in Western Australia. The royalty rates for some economically important minerals including iron ore, mineral sands and bauxite-alumina are locked under state agreements.</p>
Queensland	<p>Queensland's Mineral Resources Regulations 2003 provide for:</p> <ul style="list-style-type: none"> • Specific royalties of between A\$0.50 and A\$1.80/tonne for a large number of listed mineral commodities; • Normal ad valorem royalties for some minerals e.g. bauxite 10%, mineral sands 5%, etc.; and • A hybrid ad valorem royalty for base, precious metals, coal and iron ore with rates fixed below a minimum price, becoming variable above the minimum as a function of prevailing market prices. <p>By using market prices, possible hedging gains and losses are excluded. Values are also adjusted for fluctuations in the value of the Australian dollar between the recoding date of a sale and that of the actual payment. Marine transport, insurance and the value of metal not recoverable during processing are deductible from the gross value for the purpose of determining the royalty base. Rail and road haulage costs and other marketing costs are not deductible. There are also concessions for small mines and 20% to 35% discounts where prescribed minerals are processed domestically.</p>
Northern Territory	<p>The Mineral Royalty Act 1982 provides for a profit based royalty/tax from most mines at a rate of 18% of the 'net value' of mineral commodities sold or extracted. 'Net value' equals GR - (OC + CRD + EEE + AD) where:</p> <ul style="list-style-type: none"> • GR is the gross realised revenue from mineral sales from individual projects; • OC represents operating costs; • CRD is a Capital Recognition Deduction akin to depreciation, but incorporating an interest factor (long-term bond rate plus 2%) over asset lives of three, five or 10 years; • EEE is any eligible exploration expenditure; and • AD represents additional deductions as approved by the relevant minister <p>Negative net value from previous years can be carried forward. The first A\$50,000 of net value is not liable to taxation, thus exempting very small mines. A provisional amount is payable six-monthly, with annual reconciliations and penalties for under-payments below 80% of the annual liability.</p>

Other key provisions of MMRT

Consolidation

The MMRT also contains a consolidation regime, which enables a company to consolidate income from its subsidiaries for MMRT purposes. Once a group has elected to do this, the consolidation is irrevocable.

Allowances

There are seven MMRT allowances available. These can be claimed on royalties; transferred royalties; pre-mining losses; mining losses; starting base; transferred pre-mining loss; and transferred mining loss.

Offsets and allowances

A low profit offset can be invoked where miners that have MMRT assessable profits under A\$75m, placing them outside the scope of the legislation. MMRT phases-in on profits between A\$75m and A\$125m, after which the tax is fully payable.

In May this year, however, the Australian government slashed expected revenue from the tax after revising down its predicted carbon price to Australian dollar (A\$) 12.10 (\$11.12**) from June 2015, compared to its previous forecast of A\$29/tonne.

In June 2015, Australia will link its trading scheme to the European Union (EU) Emissions Trading Scheme (EIS). EU carbon permits hit a low of less than \$3/tonne in March 2013, and trading at \$4.35/tonne at the time of writing.

With the viability of carbon trading in doubt as a means for Australian miners to offset their emissions, the government is now looking at other ways to reduce their carbon production.

Withholding taxes

Withholding taxes is also an important component of the resource tax system in Australia. Withholding tax is levied on payments made or services rendered by Australian-headquartered companies to their overseas subsidiaries.

The tax is payable on these transactions irrespective of profit, and as such these charges

often result in losses for the head company.

Withholding taxes also increase the costs of capital projects. Because it is imposed on technical services, such as engineering and design of processing plants, most engineering companies quote for their work on a 'net-of-tax basis', thereby increasing the cost of constructing processing plants.

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***Three states have been selected to show differences in mineral royalty policy. Western Australia's royalty system is broadly similar to those of New South Wales, South Australia, Tasmania and Victoria.*

****Conversions made June 2013*