

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates 2013

14 February 2013

Question: AET 60-62

Topic: Minerals Resource Rent Tax

Hansard Page: 93-95

Senator CORMANN asked:

Senator CORMANN: Thank you, Chair, and welcome on behalf of the coalition to Mr Jordan. It is good to have you here. I might just kick off on the topic that has been getting a lot of attention in recent weeks—namely, how much or how little the mining tax has raised in the first two quarters since it came into effect.

The advice the Senate Economics References Committee got from you, Mr Jordan, was that the total of the instalments received in relation to the Minerals Resource Rent Tax for the first two quarters is \$126 million. I am just wondering whether we can go into a little bit more context around all of this. Are we right to take it that that \$126 million represents the MRRT liability for the first two quarters, when we look at the equation that is in the act?

Mr Jordan: That is correct. That figure is the two instalments for the MRRT.

Mr Heferen: Sorry, Senator, I may have misheard, but, as the commissioner has said, they are instalments paid. It is not actually the final in MRRT liability ascertained.

Senator CORMANN: Sure. At the moment all we have are the first two quarters' instalments, which I assume is what the taxpayer's expectation is of their MRRT liability? Right?

Mr Heferen: Not quite. They have to make their instalment payments based, in part, on their expectation for their liability for the year. But at any point in time a taxpayer would be looking at various things—the overall liability is going to be a function of a range of things, as the secretary took the committee through this morning. When prices move around, at any point in time the taxpayer, I think, will be entitled to say, 'Well, at this point in time the price is this and my best guess is that the price will stay as it is or that the exchange rate will stay where it is.' I guess the exchange rate is probably more important one, because while they will have forecast of prices, which, with their demand and so forth overseas, they will probably get a good read on, as you would be aware, the exchange rate is also very relevant to the tax. Forecasting the exchange rate is a completely different kettle of fish altogether.

Senator CORMANN: Sure.

Mr Heferen: The other thing is that, whether or not the taxpayer's tax year would be our budget year—the Australian financial year—or whether it is a calendar year would be relevant. If you had a large taxpayer, for argument's sake, who balanced on a calendar year, the first two instalments is part of the 2012 year and not the 2013 year, whereas other taxpayers were balancing over 1 July 2012 to 30 June 2013, then that would be their second instalment. So all that matters.

Senator CORMANN: I understand that all that matters. Obviously we have been having the argument for some time. I understand the variables. I understand that revenue will change with quantity, prices, volumes, exchange rate, royalty credits, starting base allowance. I understand all of that. What I am trying to understand right now—bearing in mind that once you have the reconciliation for the full year things might change up or down, both ways, as far as the taxpayers that make those instalments were concerned in those first two quarters—the equation in the act, which says, 'MRRT liability = MRRT rate x [Mining profit - MRRT allowances]'. Does the \$126 million, as far as taxpayers to the best of their knowledge know at that

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time, represent what their expectation is of the MRRT liability for the first two quarters? If it is not, what is it?

Mr Heferen: I do not mean to be deliberately obtuse—far from it; I would never do that. One very important element here is it is a new tax, so the taxpayers themselves are saying: 'This is a new tax. How is this going to play out and what does it mean for my end-of-year tax liability?' There will be some teething arrangements from firms.

Senator CORMANN: Sure. If they get it wrong, if they underestimate, and they paid you too little in their instalments, what is the consequence for the taxpayer at the end of the year—they would finally have to make up the difference?

Mr Heferen: Yes—

Senator CORMANN: Is there a penalty?

Mr Heferen: If the end result is a certain amount away from the instalments that have been paid there will be the potential for an interest charge liability—

Senator CORMANN: Indeed. Certainly that is the feedback that I have been getting out of the industry; in particular, dare I say it, from smaller miners rather than, as you would expect, bigger miners, who find it more difficult to really get their head around all of the ins and outs of that new tax. It would be fair to say that they take a cautious and conservative approach in order to minimise the risk of tax penalties down the track. Is that a fair—

Mr Jordan: I would imagine that in these cases it would be the best estimate that the taxpayer could do based on the information for that quarter. That would be a normal expectation.

Senator CORMANN: Great. Beautiful. Are you able to break down the \$126 million for us on a quarter by quarter basis?

Mr Jordan: The legal advice that the ATO received was that it was protected information and should not be disclosed for the first quarter. But when you added the second quarter amount in the risk of that being inappropriate disclosure was only a low to medium risk. So it is not something I would like to—

Senator CORMANN: I am not going to get distracted on that legal point now, because we have only have a short period of time.

Senator Wong: But he is allowed to answer the question as he sees fit.

Senator CORMANN: Sure, and that is great, but you are aware that in the taxpayer confidentiality provision in the Taxation Administration Act there is a provision which says that none of these confidentiality provisions prevent the provision of protected information to a committee of either house of parliament. You are aware of that, aren't you?

Mr Jordan: Yes.

Senator CORMANN: Are you able to share with us whether it would be right to say that 100 per cent of that \$126 million over the two quarters came from iron ore projects and none of it came from coal projects?

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Mr Jordan: I do not know that information. I can take that on notice.¹

Senator CORMANN: Thank you. Does Treasury know that information, Mr Heferen?

Mr Heferen: No.

Senator CORMANN: Given that we have got this equation where you have to apply the rate to mining profit minus MRRT allowances—and the liability for the first two quarters was \$126 million, so we know what the final outcome was—

Mr Heferen: Sorry, Senator, the final outcome of the first two quarters?

Senator CORMANN: Yes.

Mr Heferen: I thought you were saying the final outcome of the year.

Senator CORMANN: We know the final outcome of the first two quarters. Given that the equation is rate times profit minus MRRT allowances, are you able to tell us what the mining profit was for the first two quarters?

Mr Jordan: I do not have that information; I can take that on notice.²

Mr Heferen: The other elements—

Senator CORMANN: Sorry, there was information in the paper, for example, and you can say that it is wrong, but on the front page of the *Australian*—

Senator Wong: Hang on, we don't—

Senator CORMANN: I am quoting.

Senator Wong: No. Mr Jordan has taken it on notice. He is not going to be responding to what I think you are doing, which is putting to him whether or not any speculation publicly is correct or not. Mr Heferen has a response.

Mr Heferen: I just wanted to urge the committee to recognise that the instalments paid are a function of the instalment calculation and not of the mining liability calculation. An instalment calculation is a different one. That is not actually dealt with in the MRRT Act; it is dealt with in amendments to the Taxation Administration Act, along with the instalment payments for a range of other taxes. The instalment rate for, say, iron ore—the default rate is eight per cent of revenue, not of profit but just revenue. Irrespective of the costs, irrespective of any expenditure they may have incurred or any depreciated starting base or anything of the like, it is simply eight per cent of the revenue. The act also makes clear that, where a taxpayer has a particular reason to vary that instalment, they can do so, and they then have to tell the ATO in their instalment return what they have varied the instalment percentage to and the reason why.

Senator CORMANN: And presumably that would be because of their expectations on how the formula would eventually play out for them.

¹ Question – AET 60

² Question – AET 61

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Mr Heferen: It could be but the lines at the moment as I understand on the instalment form—I stand to be corrected—but there are a number of reasons for varying the rate: current business structure not continuing, change in exchange rate and commodity price, use of starting base allowance, use of other MRRT allowances, changes in creditable royalties payable, change in expenditure, transferred ownership of whole or part project, interest or default rate is simply not appropriate. They are all important in their own way but 1-3, which is the change exchange rate and commodity price—when they vary instalments down, I think it would be pretty reasonable, in a situation where prices are quite volatile or indeed the exchange rate would have quite a

movement, for a taxpayer, from one quarter to another, notwithstanding they might have a view of what their overall liability might be, because they have no real way of projecting the exchange rate, to say, 'In these circumstances, I would like to vary it down, but in future ones possibly vary it back up again.' It is the long way around of saying that that 126—whilst it is the only figure about the collection that has come in, so indeed some weight needs to be given to it, it is not necessarily the case that you can think about that as being a function of the miners' expected profit over the 12 months because of the way the instalment calculation works.

Senator CORMANN: Sure. This actually raises a whole series of other questions. If somebody wanted to keep it simple, they would just say, 'I will pay you by way of instalments eight per cent of revenue,' but once they go through the process of looking at their profits, which is revenue minus expenditure, minus MRRT allowances, they might not end up with any liability at all, yet they have paid you eight per cent of instalments based on revenue. Is that right?

Mr Heferen: Potentially that could be the case, given a collection. Some taxpayers may have done that.

Senator CORMANN: This is a very important question. I am not interested in specific information about individual taxpayers, believe you me. I am just trying to understand what the behaviour of taxpayers is in relation to how they deal with their instalment obligations. Out of the taxpayers that have so far paid any MRRT instalments, have all of them paid on the basis of eight per cent of revenue, or have a number of them claimed variations based on expected MRRT allowances or losses or whatever else? What are we dealing with here?

Mr Heferen: My understanding is that a number of taxpayers have varied their instalments down.

Senator CORMANN: Has any taxpayer paid on the basis of eight per cent of revenue?

Mr Jordan: I am not aware.

Senator CORMANN: Could you on notice just check that?³

³ Question – AET 62

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Answer:

60. Not all revenue from the Minerals Resource Rent Tax (MRRT) for the first two quarters came from iron ore projects.

61. The equation stated is for calculation of annual MRRT liability for a mining project interest.

The MRRT instalments system provides for the payment of quarterly instalments towards each miner's annual MRRT liability. MRRT instalments are calculated by applying an instalment rate, either the default rate or a rate varied by the miner, to their quarterly instalment income for coal and iron ore. Mining profit and quarterly instalment income are not the same thing, they are calculated differently.

The data that the ATO collected for MRRT instalment purposes therefore, is not based on mining profit. The MRRT instalment liability notice which is used to notify the ATO of MRRT instalment obligations includes reporting of the miner's:

- MRRT quarterly instalment income for coal
- MRRT quarterly instalment income for iron ore
- MRRT instalment rate; and
- credits allowable from previous instalments paid

This is consistent with the way the ATO administers PAYG instalments for income tax.

62. Yes.