

STATEMENT OF WORK¹

Background

In May 2008 the Government commissioned a panel chaired by the Treasury Secretary, Dr Ken Henry, to undertake a review (the Henry Review) of the entire tax and transfer system at both the Commonwealth and State level. The final report (the Report), containing recommendations to the Government on possible reforms to the tax and transfer system, was handed to the Government in December 2009. The Government is yet to publicly respond to the recommendations contained in the Report. [REDACTED]

Resource Profits Tax

The Report recommends the introduction of a resource super profits tax (RSPT) that could apply to profits made by private producers from engaging in the exploitation of non-renewable resources.

Detailed information on how the RSPT would operate was provided in our meeting with you on 27 November 2009 and in our request for advice of 17 November 2009.

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Issue 3: Refunding State royalties to companies

As part of the implementation of the RSPT, it is also proposed that entities would receive a tax credit or refund for the royalties they have paid to the States and Territories. The amount of the tax credits would be capped to reflect the royalty rates applicable at the time of announcement; royalty rates as announced by a State and Territory Governments at the time of announcement; or such rate as agreed to by the Commonwealth and the relevant State.

This tax credit or refund will be used by entities to reduce their Commonwealth RSPT tax liability.

Royalty rates are set at different rates in each of the States and Territories and at different rates for different resources. We attach a table outlining the different royalty rates of each of the States and Territories.

As a result, the tax credit or refund provided to entities will vary, not only between entities, but also between States. That is, an entity will receive more of a tax credit or refund on the royalties it has paid to one State over another State if the first States' royalty rates are higher for the resource the entity extracts.

We seek an opinion on whether refunding or crediting State royalties in this way raises any constitutional issues.


