



AER Review of regulatory tax approach

Public forum

18 July 2018

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Outline

- Background to the review
- Key developments in the initial report
 - Use of information gathering powers
 - Consideration of tax pass through
- Potential RIN questions
- Next steps

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➤ **Background to the review**

- Key developments in the initial report
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Background to the review

- AER makes an allowance for tax in its revenue determinations
 - building block incentive framework
- Concern about potential mismatch between:
 - AER's regulatory forecast of tax costs
 - actual tax paid to the Australian Tax Office

Background to the review

- Australian Tax Office note to the AER
 - tax discrepancy varies by ownership
 - identifies potential drivers
- Review initiation
 - issues paper released 15 May 2018
 - timeline for final report in December
 - scope for model changes and/or rule changes

Background to the review

- Issues paper content
 - Described current regulatory tax approach
 - Quantified the regulatory forecast of tax costs
 - Surveyed available information on actual tax payments
 - Sought stakeholder submissions on sources of tax information and potential drivers

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Key developments in the initial report

- Confirmed the lack of information on the current tax practices of the regulated networks
 - stakeholder submissions agree that this information is not publicly available
 - ATO cannot provide quantitative findings
 - range of network views on provision of tax information to the AER

Key developments in the initial report

- We consider that this information is necessary for the review
- AER to exercise its information gathering powers to obtain detailed tax information from networks
 - in the form of Regulatory Information Notices (RINs) issued to service providers or related parties

Key developments in the initial report

- Recognise stakeholder submissions on this issue:
 - data exists only in consolidated form
 - AER's powers do not reach overseas
 - separation between service providers and upstream owners (taxpayers).
- Even with these limitations, this is the best way forward.

Key developments in the initial report

- Considered the advantages and disadvantages of a move to a tax pass through
 - tax allowances set based on actual tax costs for that network (via ex-post true up, possibly with a cap based on regulatory forecast)
 - shift away from incentive framework, aims to eliminate the tax discrepancy

Key developments in the initial report

- AER assessment is that we should exercise caution before such a move
 - fundamental change to regulatory framework
 - may not be in long term interests of consumers if there is no incentive to minimise tax payments
 - most stakeholder submissions were against any move towards a cost pass through

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Potential RIN questions

- Preliminary indication of the areas to be covered in the RINs
- Build on
 - discussions with stakeholders
 - written submissions
 - external professional advice
- Formal consultation on Draft RINs will follow

Potential RIN questions

1. Entity structure

- Illustrate the corporate structure for the entity, with direct and indirect ownership interests.
- Describe the ownership forms for the vehicle (partnerships, trusts, joint ventures)
- Outline funding arrangements (debt/equity) including differences between tax/accounting treatment

Potential RIN questions

2. Recent tax assessments:

- Provide key tax return information over recent period (5 years?):
 - taxable income/loss
 - losses carried forward
 - tax payable
- Identify ATO engagements (reviews, audits)
- Reconciliation against financial statements

Potential RIN questions

3. Interest expense:

- Provide interest expense from tax return
- Provide debt deduction reported in thin capitalisation schedule
- Identify any recent significant changes in funding arrangements
- Describe expected impact of legislation changes for stapled securities

Potential RIN questions

4. Depreciation expense

- Provide depreciation expense from recent tax returns and depreciation register (reconciled)
- Identify depreciation approach (e.g. diminishing value, self-assessed asset lives, capitalisation policies)
- Provide figures for tax asset base and describe any recent TAB revaluation (sale or corporate restructure)

Potential RIN questions

5. Other matters:

- Outline R&D tax incentive claims, including breakdown of R&D expenditure
- Provide any stamp duty payments
- Provide details of treatment for tax purposes:
 - labour costs on projects (including overheads)
 - unbilled income
 - repair/maintenance expenditure
 - customer contributions/gifted assets

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➤ **Next steps**

Next steps

Date	Milestone
26 July 2018	Submissions on initial report close
August 2018	Consultation on draft regulatory information notices (RINs)
September 2018	Final RINs issued
October 2018	Draft position released
November 2018	Four week submission period on draft position Public forum
December 2018	Final position released (If required) Proposed PTRM/RFM amendments and explanatory statement released (If required) Consult on recommended rule changes
January 2019	(If required) Six week submission period on proposed model amendments
April 2019	(If required) Final PTRM/RFM amendments released



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Panel discussion topics

1. Tax pass throughs
2. Better benchmark
3. Potential RIN content
4. Implementation timeline

Potential RIN content

1. Entity structure and ownership
2. Recent tax assessments
3. Interest expense
4. Depreciation expense
5. Other matters



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