

15 September 2023

Director
Special Tax Regimes Unit
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

Email: prrt@treasury.gov.au

Dear Sir/Madam,

**RE: Exposure Draft Treasury Laws Amendment (Measures for Consultation) Bill 2023:
PRRT deductions cap**

Thank you for the opportunity to provide comment on the exposure draft legislation relating to the Petroleum Resource Rent Tax (PRRT) Deductions Cap.

Australian Energy Producers, formerly the Australian Petroleum Production and Exploration Association (APPEA), is the peak body of the explorers, developers, and producers of essential energy - oil, gas and lower-emission fuels. We represent the businesses that are ensuring energy security and delivering substantial economic benefits to Australia while helping produce cleaner energy. Over the past decade, our sector has invested more than \$400 billion in the Australian economy and contributed in excess of \$60 billion to state and federal governments through taxation and royalties which assists in providing essential services for all Australians. The industry supports around 80,000 jobs directly and indirectly in Australia.

The changes to the PRRT along with the other significant interventions impacting the gas industry in Australia has had a significant cumulative impact on the industry and the attractiveness of Australia as a destination for investment. The industry requires a stable and consistent fiscal and regulatory environment to ensure investors have confidence in making investment in long-lived, capital-intensive projects. A stable investment environment will be required in developing gas supply that is necessary for Australia to transform our energy system for net-zero emissions by 2050. It will also be needed to assist regional trading partners meeting their decarbonization targets.

I note the exposure draft legislation deals with only one aspect of the announcements contained in the 2023-24 Budget, the Deductions Cap. Draft changes to the *Petroleum Resource Rent Tax Assessment Regulation 2015* (the Regulation) should be made available before the Bill is introduced into parliament so the package can be considered in full. A delay in consideration of the Regulation will lead to a revisiting of important principles at a later time. We also request that the Government produce exposure draft legislation or at a minimum commit to a timeline to implement Tranche 2 reform measures recommended as part of the Callaghan review.

The exposure draft legislation broadly aligns with the announcement in the 2023-24 Budget. However, there are several clauses that warrant further clarification.

- **Augmented denied deduction** – the intention of the exposure draft and explanatory memorandum is clear that the denied deduction amount will be 10 per cent of assessable receipts and this will be augmented by the Government long-term bond rate and carried forward. However, the drafting of section¹ 35F(2) appears to act to limit the carry forward deduction to the excess deduction, that is the amount by which the deductible expenditure exceeds assessable receipts. We would ask that this be clarified to ensure the intent on the amount of denied deduction is 10 per cent of assessable receipts. We also ask that the explanatory memorandum include examples of how the “available excess” is augmented over time.

We thank Treasury for providing alternative wording for section 35F(2) as outlined below. Members consider that this provides the necessary clarification:

Available excess is the sum of:

- a) so much of the excess as does not exceed the amount (if any) of augmented denied deductible expenditure incurred by the person in relation to the project and the financial year; and
 - b) the denied deduction amount.
- **Closing down expenditure** - The explanatory memorandum notes at paragraph 1.16 that a taxpayer would not generally derive assessable receipts in closing down a petroleum project and therefore the deductions cap does not apply. However, a project may continue to derive assessable receipts whilst producing petroleum (see ATO Taxation ruling TR 2018/1 at [6]) or derive other types of assessable receipts whilst being closed-down (see for example, paragraph 27(1)(b) and section 6). The possible application of the proposed subsections 22(3) or (4) to a project incurring closing-down expenditure may deny taxpayers refundable credits properly allowable and/or prompt taxpayers to shut-in early. This does not reflect the policy intent. We would ask that the exposure draft legislation be amended to exclude projects incurring closing-down expenditure, as defined under section 39, from the application of proposed subsections 22(3) or (4).
 - **Exclusion from the deductions cap** – The trigger for cap timing should be limited to the taxpayer deriving assessable petroleum receipts from sales gas to be liquified. Some projects may derive assessable petroleum receipts in respect of domestic gas before they derive assessable receipts in respect of sales gas to LNG. If the trigger for cap timing is any assessable petroleum receipts, such projects may be disadvantaged by being brought within the cap earlier than would otherwise be the case. This may in turn cause the projects to rethink decisions to start domestic gas production ahead of liquified gas production – which could in turn impact on domestic gas supply.
 - **PRRT instalments of tax** – instalments of tax are due and payable twenty-one days after the end of the respective instalment period. While unaffected by the exposure draft, the twenty-one-day period is insufficient time to calculate and arrange an instalment payment, particularly where assessable petroleum receipts are calculated under the Residual Pricing Method (RPM).

¹ In this submission all references to section (or subsection) are to sections (or subsections) of the *Petroleum Resource Rent Tax Assessment Act 1987* (Cth) – “the Act”, as the case may be.

The formula in section 45(2) of the Regulation should be simplified to streamline the calculation of assessable sales gas for an instalment period by removing the complexities of calculating End Product Value (EPVal) for projects which have implemented a section 52 (individual participant-based end product values) election. For example, calculating assessable sale gas for an instalment period using the participant's RPM price for the previous year of tax multiplied by the participant's quantity of assessable gas for the current instalment period.

Alternatively, we propose that an additional 30 days be allowed for the calculation and payment of instalments. Separately, as a drafting note, Part 5 of the regulations which currently refers to section 97(1AA)(b) of the Act would also need to refer to the new section 97(1BB)(b). Similarly, the time allowed for the annual balancing payment and PRRT return is not sufficient (currently 60 days after the end of the PRRT year). Members consider 150 days is more realistic and in-line with ATO's current blanket extension for lodgement of returns for the 2022 to 2024 PRRT years.

- **Priority issues to inform the ATO's administrative approach and public advice and guidance** - we consider that it is important to have clear examples/guidance to understand Treasury's interpretation of how the calculation of PRRT taxable income is to be revised given the new category of carried forward deductible expenditure created (i.e. the augmented denied deduction)
- In this regard, we consider it should rank above closing-down expenditure but below starting base expenditure). The examples should:
 - include how this new category falls into the 'order' of deductible expenditures in a subsequent year.
 - clarify that transferred exploration expenditure is limited such that it cannot be used to lower the denied deduction. The corollary being that if transferrable exploration expenditure is thereby not transferred it remains with the original project.

In addition, the Australian Taxation Office should publish as soon as possible further guidance on how the PRRT return will be updated to disclose this new category.

Australian Energy Producers and its members remain committed to working with government to find an effective, workable, and sustainable way forward on the PRRT reforms ensuring Australia continues to unlock new economic opportunities as a world leading energy supplier.

Yours sincerely



Samantha McCulloch
Chief Executive