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19 April 2024

Mr Marty Robinson
First Assistant Secretary
Corporate and International Tax Division
The Treasury
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Dear Mr Robinson,

RE: Petroleum Resource Rent Tax Regulations – 2024 remake

Thank you for the opportunity to provide a submission on the consultation for the Exposure Draft of the Petroleum Resource Rent Tax Assessment Regulations – 2024 Remake.

Recommendation 7 – Advance Pricing Arrangement (APA) rules

The draft regulations potentially renders the ability for industry to utilise an APA redundant. Recommendation 7 of the Treasury review of the PRRT: Review of Gas Transfer Pricing Arrangements said:

> Modify the Advance Pricing Arrangement (APA) rules to provide guidance to industry and the Commissioner of Taxation on the principles that the Commissioner must have regard to in agreeing an APA. If the RPM is retained, then the use of an APA should be limited to circumstances where it is required to give practical effect to the statutory residual profit split.

However, as currently drafted, the amendments at Section 22 mean the Commissioner may make an APA only where they are satisfied that it is not practicable:

- To determine a CUP under section 23 for the project sales gas; and
- To use one or more steps in the residual pricing method (RPM) in relation to the project sales gas for the participant.

In addition, the Commissioner must be satisfied that the calculation in the APA will:

- give effect to the RPM;
- result in a reasonably accurate estimation for any RPM steps that are not practicable to use;
- not depart from the RPM statement more than is necessary to address any identified impracticalities in using the RPM;

- not depart from the calculation in section 24; and
- not provide for a capital allowance to be applied to capital costs in a way that is inconsistent with sections 16, 17, 18 or 41A. This requirement has the effect of preventing the Commissioner entering into an APA if it would provide a more favourable outcome than the RPM.

This limits the Commissioners capacity to agree to an APA as a result of the additional criteria above as the Commissioner would need to be certain that it is not possible to determine a CUP under section 23.

This goes beyond the intention of Recommendation 7 to provide guidance to the Commissioner on the principles that must be considered in agreeing an APA. Rather, the amendments at section 22 effectively provides the Commissioner the discretion to unilaterally deny taxpayers the ability to seek APAs.

Recommendation: the language in section 22 be revised to provide clear guidance to the Commissioner that will allow for APAs to be agreed in line with Recommendation 7 of the Treasury review of the PRRT: Review of Gas Transfer Pricing Arrangements.

Part 5 of the exposure draft dealing with units of property entering the PRRT system for the first time should be clarified to provide certainty in respect of units of property already in the PRRT system which start to be used for additional (backfill) projects but for which no tolling fee is paid. This arises where common owners of two or more integrated gas to liquids (GTL) operations are using the same facilities to process gas. As an example:

- An existing combined PRRT project with onshore LNG processing infrastructure (hereafter referred to as "Original Project") produces and processes gas from its petroleum titles. The Original Project was sanctioned to commence production in multiple stages with multiple production licenses (PLs) being granted over time (pre and post July 2019). The onshore LNG processing infrastructure was developed on the basis that it will process gas from the Original Project production licenses PLs and subsequent PLs over the life of the project. Four Joint Venture Partners (JVPs) hold an interest in the Original Project's PLs and associated processing infrastructure.

- A subsequent PL was granted (hereafter referred to as "Extension Project") and the JVPs decided not to apply for the Extension Project to join the Original Project's combination certificate. The Extension Project is owned by the same 4 JVPs that own the Original Project. The Extension Project processes its gas using the onshore processing infrastructure of the Original Project. No tolling fee is paid by the Extension Project to the Original Project as they are same persons and are commercially, economically and operationally viewed as one project.

Based on the current regulations, Original Project and Extension Project would be considered two separate integrated GTL operations, each with its own 'participants'. The historical facility costs incurred by the participants of the Original Project remain included in the Original Project's RPM but are now apportioned because they are now only partly attributable to the Original Project. However, there is uncertainty as to whether the historical facility costs would

be included in the Extension Project's RPM because at the time those costs were incurred, they were not incurred by the *participants* of the Extension Project. Rather, they were incurred by the *participants* of the Original Project, albeit in this case they are the same taxpayers.

If the Extension Project does not pick up a portion of the historical facility costs, this gives rise to an asymmetric result and does not achieve the policy objective that the RPM should reflect the market value of the gas at the taxing point. **We seek certainty that such historical facility costs *would* be included in Extension Project's RPM (and suitably apportioned, as is the case for Original Project).**

We note that there will be another tranche of reforms to cover the remaining Callaghan recommendations. We understand that Treasury will open consultations on these outstanding recommendations after the 2024-25 Budget and seek to introduce legislation in the spring sittings of Parliament.

We note that in relation to Recommendation 6 Treasury is currently working through the issues where a production license reverts to a retention lease and then subsequently back to a production lease. As identified in the Callaghan Review this is current commercial practice and industry is seeking certainty on this in support of future gas development/investment. This is an important issue in the development of new gas supplies needed for the Australian economy and recognises standard commercial practice.

In relation to the other outstanding recommendations from the Callaghan review we offer the following comments:

> Recommendation 7 – Industry notes that there can be multiple oil and gas projects within a single production license area, and that these projects can operate independently of each other. We agree the Commissioner should have the flexibility to recognise multiple projects within a single production license area. However, this should be upon application by the taxpayer for flexibility of future development.
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> Recommendation 8 – it may be necessary to work through the issues associated with what is proposed. There may be benefits in being able to consolidate all the interests held by a group into a single PRRT return. However, there may be issues associated with the timing of the information flowing from each of the projects with the associated administrative costs of combining into a single return.
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> Recommendation 9 – companies are facing significant compliance burdens with respect to the deadlines associated with reporting. Consideration should be given to practical steps that could be taken to alleviate the pressure on reporting periods.
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> Recommendation 10 – members support the ability to elect the use of a functional currency that aligns with the functional currency used by a MEC Group for income tax purposes as an alternative and in addition the functional currency choice already available under PRRT law. This would support how companies currently operate where they adopt a single functional currency for their reporting obligations. In reality many companies would elect the USD as the functional currency as the numeraire currency

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for international gas trade. Therefore, members would also welcome the option to choose an industry accepted currency (i.e. USD) as the common functional currency for PRRT purposes in cases where the MEC Group currency for income tax purposes is something other than USD.

If you require further information or would like to discuss the comments above, please do not hesitate to contact Wayne Calder on 0424 852 384 or wcalder@energyproducers.au.

Yours sincerely

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