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**Submission from the Tax Justice Network Australia and the Centre
for International Corporate Tax Accountability on the *Petroleum
Resource Rent Tax Assessment Regulations 2024* Exposure Draft
12 April 2024**

The Tax Justice Network Australia (TJN-Aus) and the Centre for International Corporate Tax Accountability and Research (CICTAR) welcome the opportunity to make a submission on the *Petroleum Resource Rent Tax Assessment Regulations 2024* Exposure Draft. While we welcome the amendments as tightening up some of the existing loopholes in the regulation we continue to be disappointed that the Government is unwilling to make meaningful reforms to the PRRT to ensure that the Australian community gets a fair return on the extraction of offshore gas.

Research and analysis by the Tax Justice Network - Australia which highlighted the failure of the PRRT to collect any revenues from Australia's booming offshore gas industry led then Treasurer Scott Morrison, to call for a Review of the PRRT led by Michael Callaghan in 2016. Despite the PRRT Review confirming the current and future failure to collect revenue from new offshore gas projects, the industry persuaded the government to take minimal action due to trumped-up concerns of "sovereign risk" and empty threats concerning future investment by multinational oil giants.

The changes in the proposed regulations are highly inadequate. Rod Sims argued that at a minimum the revenue achieved from reform to the PRRT should have been at least three times higher than the measures currently proposed by the Government will raise.¹ Mr Sims made the very modest proposal that "when the current year profits are above a certain level, then only, say, two thirds can benefit from the carry forward of past losses, and the remaining third is subject to PRRT without the uplift."²

Years after the Government's Callaghan review into the PRRT, Treasury concluded a consultation into the gas transfer pricing mechanism in the PRRT. A small and reasonable

¹ Rod Sims, "Budget Forum 2023: Labor Could and Should Have Gone Stronger on the Petroleum Resource Rent Tax", *Austaxpolicy: Tax and Transfer Policy Blog*, 12 May 2023.

² *Ibid.*

regulatory change would raise \$90 billion in additional PRRT revenues according to an estimate in the Callaghan PRRT review. As the PRRT is a profit-based royalty regime, is much easier for companies to shift profits to reduce tax payments. The PRRT applies to the raw gas, for which there is no external market, and not to the LNG, which is manufactured and processed for export under long-term contracts.

Large LNG projects have typically been integrated projects where the same company (or group of companies in a particular project) extracts the gas and processes it into LNG. The PRRT is applied when the raw gas is transferred for processing. Currently, the PRRT allows companies to choose from a range of options in determining the “transfer price” at which point the PRRT is applied. Conveniently, the companies can calculate this price on the basis that the natural resource, owned by the people of Australia, has little value and that the value is created through the manufacturing process. In this case, a low price for the raw gas results in much lower PRRT revenues. The standard method for determining the “gas transfer price” must be restricted a net-back only approach, which is a global best practice and already part of the current methodology.

A net-back only approach would simplify regulations and increase transparency. There should only be one set of regulations based on global best practices. The net-back only method should immediately apply to all LNG projects that are subject to the PRRT. There is an easy \$90 billion on the table that will otherwise be shifted offshore by multinational oil and gas corporations defending the overly generous status quo.

The adoption of the net-back only approach was recommended by Treasury at a meeting on 10 March 2023.³ Treasury assessed that that the current residual pricing mechanism under-prices gas.⁴ Further, the under-pricing of the gas occurs because the residual pricing mechanism was conceived on flawed analysis.⁵ Treasury assessed that the Arthur Andersen analysis of the residual pricing mechanism was based on commercially unrealistic assumptions. In their view, “A particularly unrealistic outcome of the RPM is that the upstream part of the business bears all of the project losses in the event of low LNG prices but receives only half of the upside profits when LNG prices are high.”⁶ Further, the “approach directly contradicts the guidance provided by the OECD on the application of the transactional profit split.”⁷ Treasury concluded that:⁸

The lack of any sensible rationale for the asymmetric treatment of notional losses in the RPM undermines the Arthur Andersen arguments that it is an equitable mechanism to determine an arm’s length price for sales gas.

We note the proposed Regulations improve the RPM price for assessable gas. We welcome that the amendment will prevent a project’s notional loss (net-back price is less than the cost-plus price) being attributed solely to the upstream part of the project. The amendment provides a symmetric treatment between the net-back and cost-plus price in both profit and loss situations.

We welcome that the multinational corporations will be required to make an irrevocable election to use the shorter or longer asset life formula, rather than being able to change their minds to game the system.

³ Senator the Hon Katy Gallagher, “Response to the Senate Order for the Production of Documents No. 246 – Petroleum Resource Rent Tax”, 19 July 2023.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

The argument that any changes would threaten future investments and create “sovereign risk” is purely a scare tactic and one that the oil and gas industry attempts to use worldwide. The only sovereign risk is that Australia will continue to generate little or no government revenue from the boom in LNG exports while rising domestic energy prices decimate local businesses. The PRRT has been changed many times – for the benefit of the industry – and none of these changes were labelled as “sovereign risk”.

While an additional \$90 billion in revenue is considerable revenue from a minor regulatory change, it is relatively insignificant in terms of the current volume of LNG exports. The \$90 billion is the equivalent of \$3.3 billion in additional revenue per year from 2023 to 2050. LNG exports skyrocketed to \$92.8 billion in 2022.⁹ The PRRT applies a tax rate of 40% of profits from the sale of the raw gas, but the flaws in the PRRT system have generated hundreds of billions of PRRT tax credits that will buffer any PRRT payments for decades to come. Some projects may never pay any PRRT.

The shift to a net-back only approach as the default method for determining a gas transfer price in the PRRT should be implemented immediately and apply to all current and future projects that are subject to the PRRT.

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⁹ Angela MacDonald Smith, “LNG revenue hits \$92.8 billion as exporters cash in”, *The Australian Financial Review*, 5 January 2023.

Background on the Tax Justice Network Australia

The Tax Justice Network (TJN) is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels.

The Tax Justice Network believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone. But under pressure from corporate giants and the super-rich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogram their tax and financial systems.

The Tax Justice Network Australia (TJN-Aus) is the Australian arm of TJN.

In Australia, the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union (AEU)
- Australian Manufacturing Workers Union (AMWU)
- Australian Nursing & Midwifery Federation (ANMF)
- Australian Services Union (ASU)
- Australian Workers Union, Victorian Branch (AWU)
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability & Research (CICTAR)
- Community and Public Service Union (CPSU)
- Electrical Trades Union, Victorian Branch (ETU)
- Evatt Foundation
- Friends of the Earth (FoE)
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation (ITF)
- Jubilee Australia
- Maritime Union of Australia (MUA)
- National Tertiary Education Union (NTEU)
- New South Wales Nurses and Midwives' Association (NSWMWA)
- Oaktree Foundation
- Oxfam Australia
- Publish What You Pay Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Workers' Union (UWU)

- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia

Background on the Centre for International Corporate Tax Accountability & Research (CICTAR)

CICTAR is a global corporate tax research centre that produces information and analysis to untangle the corporate tax web. The Centre is a collective resource for workers and the wider public to understand how multinational tax policy and practice affects their daily lives. CICTAR's work supports public participation in the tax debate so that everybody can participate in decision-making that affects their communities.

For more information, visit the CICTAR website here: <https://cictar.org/>