Submission to the MRRT/PRRT Policy Transition Group by

BURU ENERGY LIMITED

Brief background on the party making the submission.

Buru Energy Limited (Buru) was incorporated on 16 April 2008 for the purpose of acquiring and developing the onshore Canning Superbasin exploration and production assets and liabilities of ARC Energy Limited (ARC) in the Kimberley region of northwest Australia. This occurred on 25 August 2008.

Buru is conducting a focussed exploration and development program in the Canning Superbasin and holds a large and diverse exploration portfolio, with a very active exploration program for both conventional and unconventional resources currently underway.

During June 2010, an international joint venture party (Mitsubishi Corporation ("MC")) "farmed in" to Buru's assets in the Canning Superbasin. This farmin assists Buru to meet the objectives of its exploration program in the Canning Superbasin and will result in expenditure of up to $150 million in exploration and development funding by MC over the next two years out of a total budget of in excess of $180 million in that period.

The Canning Superbasin is a "frontier" basin that has seen little exploration over the last 20 years because of the lack of infrastructure, the high cost structure, and the perceived limited market for the extensive gas reserves which are believed to be present in the Superbasin.

Buru has undertaken systematic pre-commercialisation planning to allow discoveries in the Canning Superbasin to be commercialised in a timely and cost-effective manner. One of the key commercialisation initiatives is the progression of the pre-FEED process for the 400km, +$500 million, Great Northern Pipeline between Broome and Port Hedland. The Great Northern Pipeline will allow any Canning Superbasin gas discoveries (made by Buru or any other explorers in the Canning Basin) to be delivered into the Dampier to Bunbury Natural Gas Pipeline and transported to the Perth and the wider South Western Australian gas market.

The investment decisions by both Buru and MC were made in an environment where the taxation burden was restricted to the state royalty regime and Commonwealth corporate tax. The proposed introduction of the PRRT to the onshore has caused a major review of the economic viability of the exploration programs proposed to be undertaken in the Canning Superbasin.

Concise summary of key points.

Background

A considerable difficulty in preparing this submission has been gaining understanding of the complex nature of the PRRT regime and addressing the lack of clarity around the transitional provisions and the operation of the tax in relation to onshore projects. This is complicated by the fact that onshore projects are considerably different in scope, operational complexity, project structure and cost structure to the offshore projects for which the PRRT was originally designed.

Onshore exploration and subsequent development projects are also generally the province of smaller companies and are generally much more difficult to fund than offshore projects. The addition of a complex and potentially distortionary tax to the onshore raises many difficult issues for small companies particularly in regard to project funding and compliance.

Small companies also generally have insufficient internal resources to adequately deal with the

complexities of the proposed tax regime and its impact on their business. Their ability to comply with onerous and complex record keeping requirements for the PRRT regime is also severely limited.

Financial modelling overview

Buru has modelled the potential effects of the proposed tax on its operations. However, due to the inherent uncertainties in assumptions, the complexity of the financial models, and the short time frame available for submissions, the Company has sought input from outside consultants (BDO Corporate Tax (WA) ("BDO")) and has restricted its focus to aspects of the proposed tax that specifically impact its operations.

Due to these time and resource constraints the modelling undertaken by Buru has focused specifically on an unconventional gas development in the Canning Superbasin. This type of development is seen as the most likely to be able to supply the volumes of gas required to support the extensive new infrastructure required to develop the Canning Superbasin, and is also believed to be the most vulnerable to the imposition of the onshore PRRT. Buru has previously developed detailed cash flow models for such a development as part of its internal assessment of its future investment activities, and in regard to its dealings with its major investors, including Alcoa of Australia and MC, and also for its modelling of the commercial viability of the Great Northern Pipeline.

This cash flow modelling has demonstrated the economic viability under the existing state royalty regime of an unconventional gas development in the Caning Superbasin (including the development of the Great Northern Pipeline) which produces some 400 BCF of dry gas (the unconventional base case or "UBC"). An unconventional gas development is viable for smaller volumes of gas if there are liquids (condensate) associated with the gas. The total capital expenditure for such a development, including the Great Northern Pipeline, the associated production infrastructure and pipelines and the numerous wells required, is in excess of $1 billion.

This cash flow modelling was then used as the basis for inputs to a PRRT model prepared by APPEA and which was supplied to smaller companies in the sector. APPEA undertook the preparation of the PRRT model as most small companies do not have the resources to construct a working PRRT model from first principles. Buru and its advisers have verified the computational accuracy of this model and have used it as a platform to test the effects of the proposed tax on the UBC development. Buru and its advisers have also modelled other development scenarios under the proposed tax. The results of this modelling are strongly dependent on the range of input assumptions including the treatment of the starting base, exploration uplift, and the definition of project expenditure. Several financial parameters were considered in the model scenarios including Net Present Value and the profit to investment ratio ("P/I"). These metrics are considered to be appropriate in the context of the large investments required and the necessity to ensure investors funds are used appropriately. As a general conclusion, absent the adoption of the policy measures suggested in this submission, the implementation of the proposed tax will have a negative impact on the viability of projects in frontier areas like the Canning Superbasin and is likely to result in resources that would otherwise be developed becoming "stranded", ie undeveloped.

Complementary submissions

Officers of Buru have also been engaged in the preparation of the submission by APPEA. Buru has relied on APPEA's submission to address the more general aspects of the proposed tax (copy attached as Appendix 1). The submission by APPEA should be read in conjunction with, and be treated as forming part of, Buru's submission except to the extent of the comments below. Buru has also communicated with other small companies who have similar views on the matter.

Key Issues

The following principal areas are where Buru believes the negative impact of the proposed tax on its operations could be partly ameliorated. This would help ensure that the proposed tax does not result in a reduction of exploration in the Canning Superbasin, an area that has the potential to provide a significant contribution to the domestic gas requirements of Western Australia and to also help address Australia's rapidly increasing balance of payments deficit for liquid fuels. These matters are addressed in more detail below.

1) Frontier Exploration Status

The Canning Superbasin and other Australian interior basins such as the Amadeus and the Officer Basins are remote, underexplored, and have little infrastructure to support development. It is proposed that this unique set of circumstances be recognised through two mechanisms:

a) Recognition of the frontier nature of exploration in these basins by a 150% uplift on exploration expenditure. This recognition of frontier exploration is currently in place for offshore frontier areas and it is proposed this should be extended to onshore frontier areas.

b) The inclusion in general project expenditure of the development costs for essential infrastructure and the financing costs associated with this infrastructure in frontier basins. Frontier basins by definition are lacking in infrastructure and the establishment of pipelines, roads, airfields, storage tanks, export routes etc are essential components of any development and should be recognised as such in the calculation of the proposed tax.

2) Unconventional resource recognitions

The development of unconventional resources (tight gas and shale gas) follows a very different path to the development of conventional resources and these developments are not appropriately treated under the existing PRRT arrangements. The potential for these resources to provide a major energy source for Australia has been clearly demonstrated by the growth of these industries in the US and the enormous growth of the CSM industry in eastern Australia. Proper recognition of the unique circumstances of these developments is required.

3) Starting base recognition

Buru has no material producing assets at this time but has previous expenditure in the Superbasin through its predecessor companies of close to $100 million, and is spending, in conjunction with MC, up to $180 million over the next two years. There is no reflection of this prior expenditure in Buru's enterprise value and it is therefore essential that a "look back" method of starting base calculation is applied. Buru agrees with the APPEA submission in this regard.

4) Administrative complexity

Small exploration companies do not have the resources to put in place appropriate administrative arrangements to ensure full compliance with what is a complex and difficult tax regime. The preparation of this submission has clearly demonstrated that the administrative arrangements around the proposed tax and the associated reporting requirements will be well outside the internal capabilities of most small companies. There are neithersufficient staff nor advisers available in the industry to adequately deal with the burdens placed on small companies by the proposed new tax.

Buru has no defined suggestions for dealing with this issue, apart from the proposed amnesty as set out below. Little information is available from current PRRT payers, but anecdotally it appears that the current arrangements are unclear and complex, and relationships with the ATO are difficult due to staff and skills shortages. This problem will be greatly compounded by the induction of all of the onshore petroleum companies into the PRRT regime and the concurrent establishment of the MRRT regime which will significantly increase the burden on the ATO.

5) Financial impacts of the proposed tax

Due to the limited time available to prepare this submission and uncertainty and complexity of modelling of potential future projects, Buru is not in a position to be able to provide detailed financial models as part of a submission. However, as set out above, it has been able to draw some general conclusions from the limited, and necessarily generalised, modelling that has been undertaken using the base PRRT model supplied by APPEA and adapted to Buru's circumstances.

This modelling demonstrates that if the proposed "look back" starting value, and the frontier basin and unconventional policy measures are adopted, the impact of the proposed tax is likely to be somewhat ameliorated, such that projects that would have been viable under the existing royalty regime will still be financially attractive following the introduction of PRRT. The failure to implement these suggested policy measures will have a negative impact on the viability of projects in frontier areas like the Canning Superbasin, and is likely to result in resources that would otherwise be developed and which have the potential to supply very large economic benefits to Western Australia and Australia more generally

becoming "stranded", ie undeveloped, as a result of the distorting impact of the proposed tax.

Issue 1: The classification of certain interior basins in Australia as "Frontier" with associated policy provisions in relation to exploration expenditure and "Essential Infrastructure".

Describe the basis for concern, propose solutions or outline preferred alternatives, provide supporting evidence where available, including from modelling.

The Canning Superbasin and other Australian interior basins such as the Amadeus and the Officer Basins are remote, underexplored and have little infrastructure to support development. It is proposed that this unique set of circumstances is recognised through two mechanisms:

a) Recognition of the frontier nature of exploration by a 150% uplift on exploration expenditure. This recognition of frontier exploration is currently in place for offshore frontier areas and this should be extended to onshore frontier areas.
b) The inclusion in general project expenditure of the development costs for essential infrastructure and the financing costs associated with this infrastructure in frontier basins. Frontier basins by definition are lacking in infrastructure and the establishment of pipelines, roads, airfields, storage tanks, export routes etc are essential components of any development, and should be recognised as such in the calculation of the proposed tax.

Definition of Frontier Basin

In order to ensure the reasonable application of this policy, a definition of a Frontier Basin is required. APPEA has engaged with Government in this regard in 2007 and 2009 and the definition proposed by APPEA and adapted to suit the current policy proposals is as follows:

"With the agreement of federal and state/NT technical experts, all interior Australian basins, excluding areas within a 50 kilometre radius of an existing commercial development of 20 million barrels of oil and/or 500 BCF of gas."

Uplift on exploration expenditure

Exploration in frontier basins is risky and difficult to justify in commercial terms, but these areas have the highest potential to supply the large new discoveries that Australia needs to address its liquids deficiency and to also supply domestic gas, particularly into the Northern Territory and Western Australia. Such discoveries will also bring very substantial benefits to the regional development of these areas.

Given the difficult nature of exploration in these areas, the offshore incentives which provide a150% uplift on frontier exploration should be applied to the onshore as well. In addition, the uplift should be applied to the "look back" starting base. For illustration, the "order of magnitude" numbers in this regard for Buru are a "look back" value of approximately $100 million.

Project impact

Indicative scoping modelling shows that the adoption of the "look back" policy would increase the P/I ratio of the UCP from 0.65 to 0.89. This is a substantial uplift to the P/I and much closer to the P/I of 1.00 which is generally required for an investment to proceed.

Essential Infrastructure in project expenditure

Frontier basins by definition are lacking in infrastructure and the establishment of pipelines, roads, airfields, storage tanks, export routes etc are essential components of any development and should be recognised as such in the calculation of the proposed tax. This would most effectively be accomplished through the broadening of the definition of a "petroleum project", and this is formally addressed as a separate matter below. In addition to the broadening of the petroleum project definition, it is proposed that financing costs be included in the Essential Infrastructure cost base. The cost of financing has not been included in the financial modelling undertaken given the complexity this introduces, however, the assistance in attaining commercial viability such an inclusion would make can be obtained by inspection.

Issue 2: The definition of "petroleum project" in section 19 of the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA) for Frontier Basins for both conventional and unconventional gas and oil projects needs to be modified to reflect the greater risks and costs associated with Frontier Basin exploration and development.

Describe the basis for concern, propose solutions or outline preferred alternatives, provide supporting evidence where available, including from modelling.

The Issues Paper appropriately recognises that,

"Coal seam methane and unconventional gas projects may involve a much larger number of wells and a broader geographic boundary than conventional oil and gas projects. The ability to combine wells which feed a common processing facility at the taxing point (eg. the gas plant which produces the marketable petroleum commodity) is appropriate" (Page 83 *Issues Paper* - Summary Section)

Further the Issue Paper states,

"The application of the PRRT to other unconventional gas sources (such as tight gas) will also need to be considered for any potential anomaly. The PTG welcomes industry input, including examples of production processes or value chains which would need to be accommodated." (Page 85, paragraph 341 *Issues Paper).*

There is a clear case for the proposal to broaden the unconventional project definition as set out in the issues paper: *"unconventional gas projects may involve a much larger number of wells and a broader geographic boundary than conventional oil and gas projects"*, to encompass infrastructure associated with other developments in frontier basins. The application of a broader concept of "Essential Infrastructure" as proposed here will have a complementary and significant positive effect on the development of Frontier Basins when applied in conjunction with the broadening of the unconventional definition.

The definition of Essential Infrastructure is therefore proposed as: *"All production facilities, pipelines, export facilities, communications, transport and community infrastructure required to develop the initial commercial production from a Frontier Basin"*. For illustration, in the case of the Canning Superbasin this would include the costs of the construction of the Great Northern Pipeline, the construction of all-weather roads, the construction of airstrips and accommodation facilities, the construction of an export facility (tank and loadout facility) at the Broome Port for oil/condensate, and all other infrastructure necessary to for a foundation project to achieve commercial viability.

The costs of Essential Infrastructure should therefore be reflected in the calculation of taxable profit for the purposes of section 22 of the PRRTAA, to reflect the greater costs and risk in bringing such a project onstream. This will require amendments to subsection 19(4) of the PRRTAA to include Essential Infrastructure as set out above. By this amendment, it will classify the expenditure on Essential Infrastructure as general project expenditure for the purposes of section 38 of the PRRTAA.

The effects of this proposal on the commercial viability of projects are difficult to model as it requires a broad range of assumptions as to what is an appropriate netback price in the case that the Essential Infrastructure concept is not adopted, and estimates of the capital costs of the various components of the infrastructure. However, indicative scoping models suggest that there is a considerable improvement in the P/I ratio using reasonable assumptions for these factors which will then allow a foundation project to proceed.

Issue 3: Paragraphs 338 to 341 of the *Issues Paper* recognises the specific characteristics of coal seam methane and unconventional gas. Buru is involved in exploring for unconventional gas and confirms the need for special consideration under PRRT for unconventional gas.

Unconventional resources can be defined as follows in accordance with standard industry definitions:

"Unconventional resources exist in petroleum accumulations that are pervasive throughout a large area and that are not significantly affected by hydrodynamic influences (also called "continuous-type deposits"). Examples include coalbed methane (CBM), basin-centered gas, shale gas, gas hydrate, natural bitumen (tar sands), and oil shale deposits. Typically, such accumulations require specialized extraction technology (e.g., dewatering of CBM, massive fracturing programs for shale gas, steam and/or solvents to mobilize bitumen for in-situ recovery, and, in some cases, mining activities). (Also termed "Non-Conventional" Resources and "Continuous Deposits.")"

A characteristic of the development of unconventional resources is a prolonged period of evaluation before a declaration of commerciality can be made. There is also often not a defined point where a production licence or specific project sanction is made. By the nature of these deposits it may require a number of years, and the drilling and bringing into production of a large number of wells, to properly define the resource. Many of these wells would fall under the classification of appraisal or development wells under the offshore PRRT regime, but are more appropriately classified as exploration wells under an unconventional development.

In view of this, Buru recommends that for PRRT purposes in relation to unconventional gas projects, the status of exploration should apply to all activities until five years from when the project proceeds to full scale development. This will require an amendment to the definition of "general project expenditure" in section 38 of the *Petroleum Resource Rent Tax Assessment Act 1987.*

Further, Buru recommends that the test in definition of "relevant pre-commencement day" in section 1 to Part 1 of the Schedule to the *Petroleum Resource Rent Tax Assessment Act 1987* should be amended in relation to unconventional gas projects such that the relevant pre-commencement day is the day occurring 5 years before the date on which the project proceeds to full scale development.

Issue 4: Section 11.3.2 of the *Issues Paper* recognises the uncertainty of the treatment of native title payments. It is recommended that to put the matter beyond doubt, all amounts incurred in relation to native title and Aboriginal heritage should be treated as expenditure incurred by a person in relation to a petroleum project and in carrying on or providing operations, facilities or other things of a kind referred to in section 37 of the PRRTAA.

Describe the basis for concern, propose solutions or outline preferred alternatives, provide supporting evidence where available, including from modelling.

This is a matter covered by paragraphs 355 to 363 of the *Issues Paper*. Buru considers the comments made at paragraphs 202 to 209 of the *Issues Paper* dealing with native title payments under the proposed MRRT regime, to be relevant in describing the fact that the structuring of native title and Aboriginal heritage payments can have a bearing on their tax treatment.

Although not decided in the context of the PRRTAA, it is useful to note the decision of the Federal Court in *Cape Flattery Silica Mines Pty Limited v. F.C of T.* 97 ATC 4,552. In that decision, the issue related to three types of payments :

- Certain recurrent compensation payments paid to an aboriginal council;
- Bursaries paid by the taxpayer for training people in the aboriginal community; and
- Legal fees incurred by the taxpayer in negotiating the compensation payment and renewing a lease.

In relation to the compensation issue, the Federal Court concluded that,

"The essential character of the payments in issue ... is that of a series of recurrent payments in the nature of rental, for the right of occupation by the taxpayer, a right which would be enjoyed by the aboriginal community. The quantum of the recurrent payments is calculated by reference to the value of

silica sands that is won from the mining lease.

In my opinion the payments made under the compensation deeds are on revenue account." (at p. 4563)

It is important to note that this conclusion was reached by the Federal Court after dismissing the Commissioner's argument that the compensation payments were more for damage to the land rather than payments for the rights to possession and use. Concerning the bursary, the Federal court concluded that the bursary was a business expense and on revenue account as it was clear the importance of good relations between the taxpayer and the aboriginal community to the success of the taxpayer's business. Lastly, in relation to the legal expenses, the characterisation of the legal expense followed the treatment of the compensation payments.

To remove the uncertainty in relation to the appropriate treatment of native title and related payments, it is submitted that such payments be treated as expenses incurred directly in relation to exploration or production, depending on the facts of each case, and be deductible expenditure for the purposes of the PRRTAA.

In the course of the consultation with the PTG a question was raised about satisfaction of native title payments by the issue of shares by the relevant taxpayer and whether deductibility should be allowed in these circumstances. Buru considers the deductibility treatment remains valid in these circumstances. In this regard, reference is made to Taxation Ruling TR 2008/5 *Tax Consequences for a Company of Issuing Shares for Assets of for Services*. At paragraph 4, the following is stated:

"However, when a company which has incurred a loss or outgoing or expenditure, that is something other than an obligation to issue its shares, to acquire assets or services and sets off its obligation in satisfaction of an obligation of the vendor of the assets or provider of the services to subscribe for shares in the company, the fact that the loss or outgoing arising for the acquisition of the assets or services has been set-off against, and so is satisfied by, the loss or outgoing incurred to subscribe for the issue of shares does not affect any deductions under section 8-1 to which the company would otherwise be entitled. The two obligations, one to pay for assets or for services other than by issuing shares, the other to subscribe for shares, are then each paid by the set-off."

In Buru's view, so long as the liability to make the relevant native title or Aboriginal heritage payment is established before the agreement to satisfy the liability by shares in the taxpayer, and then there is a subsequent agreement between the parties for a set-off, *TR2008/5* provides a basis for the amount of the liability to be deductible.

Issue 5: Clarification is required in relation to paragraph 364 of the *Issues Paper* in that the paragraph confirms that State, Territory and Australian Government royalty charges will be credited against PRRT liabilities. Paragraph 229 of the Issues Paper states that the amount of the credit is at least up to the amount imposed at the time of the announcement, including scheduled increases and appropriate indexation, in the context of MRRT.

Describe the basis for concern, propose solutions or outline preferred alternatives, provide supporting evidence where available, including from modelling.

A full credit should be allowed for State, Territory and Australian Government royalty charges, not just a credit for royalty amounts imposed at the time of the announcement, including scheduled increases. To not allow a full credit is distortionary in relation to the principles behind a true resource rent tax and could lead to double tax.

Importantly, in the *Issues Paper* at paragraph 35, fourth bullet point, the following is stated,

- *"Under the MRRT/PRRT, State mining royalties are not viewed as costs that reduce profits from extracting resources, as they are for income tax purposes. Instead they are viewed as another way of taxing the resource, and so are credited against the liability for MRRT/PRRT* ***to avoid double taxation.***" (para 35, *Issues Paper* emphasis added)

The *Issues Paper* supports the view therefore that to the extent there is not a full credit for State and Territory royalties, double taxation arises. Clearly this should be prevented.

Issue 6: At paragraph 378 of the *Issues Paper* in discussing the election proposed for establishing a starting base, the "look back" approach was raised. This is further discussed at paragraphs 397 and 398 of the *Issues Paper*. This approach is strongly recommended by Buru.

The *Issues Paper* describes this approach as a,

"... relatively simple and effective approach for new projects that have only recently incurred expenditure." (para.398 *Issues Paper*)

Buru considers that this is an alternative fair and equitable method that should be introduced. Had PRRT applied to onshore projects from 1987, exploration expenditure incurred on these projects would have been included for augmentation and uplift at the appropriate rate.

Buru has had the opportunity to review the submission by APPEA in this regard and endorses the comments made in relation to this issue.

Issue 7: In dealing with joint venturers and how they may elect the appropriate option for starting base, Buru submits a further option to the two included in paragraph 379 should be allowed.

Describe the basis for concern, propose solutions or outline preferred alternatives, provide supporting evidence where available, including from modelling.

In relation to joint ventures, the manner in which the uniform capital allowances rules work is to deem an interest in a depreciating asset, as if it were a depreciating asset itself (refer section 40-35 of the *Income Tax Assessment Act 1997*). This enables joint venturers to each choose for example which method of depreciation they will apply (section 40-70 of the *Income Tax Assessment Act 1997* Diminishing Value Method or section 40-75 of the *Income Tax Assessment Act 1997* Prime Cost Method).

Buru considers that the same could apply for the purposes of the starting base election. Accordingly taxpayers should elect on a project-by-project basis and where they have an interest in a joint venture, that be deemed to be a project in itself, and for each project a taxpayer can elect to take up the starting base either under the book value method, the market value method, or the "look back" method discussed at paragraph 378 and paragraphs 397 and 398 of the *Issues Paper*.

Issue 8: Exploration Incentives

Describe the basis for concern, propose solutions or outline preferred alternatives, provide supporting evidence where available, including from modelling.

Buru considers that the joint submission made in 2008 by APPEA and by the Association of Mining Companies Inc, Australasian Institute of Mining and Metallurgy, the Australian Securities Exchange, the Australian Shareholders Association, The Chamber of Minerals and Energy of Western Australia, the Minerals Council of Australia, the Queensland Resources Council and the South Australian Chamber of Minerals and Energy is best described in the options outlined in the *Issues Paper* as the Exploration Tax Credit scheme. There have not been any material changes in the market to suggest that such a scheme

would not provide a stimulus for Australians to invest in Australian shares where the companies carry out exploration in Australia.

Other

Issues not already identified, and other relevant considerations.

Issue 9: Small Producer Threshold

Section 8 of the *Issues Paper* discusses the proposed $50 million threshold for small iron ore and coal producers from a MRRT perspective. Buru is concerned that in the discussion in the *Issues Paper* in relation to the extension of the PRRT regime, no mention is made of a similar concession applying to the oil and gas industry.

Buru considers that this is distortionary and inequitable in that an investor who could invest in a mining company subjected to MRRT versus an oil and gas company, the risk / return analysis will be skewed in favour of the mining company which benefits from the proposed $50 million threshold. Of equal concern is the impact on accessing loan funds; financiers are also likely to favour projects who benefit from this concession as opposed to projects without this benefit.

In this regard, Buru endorses the comments made by APPEA in its submission to the Policy Transition Group.

Issue 10: Administrative

Buru considers that the administrative aspects of the PRRT as they apply to small companies should be simplified

Aspects of this recommendation are set out in the Key Issues at the start of this submission, but there are two other matters that Buru considers require addressing.

a) Substantiation of exploration and project expenditure for transactions.

   By the nature of the industry it is likely that smaller companies will be required to engage companies with greater financial resources to assist with project development. Many small companies are also taken over when they have made a substantial discovery. These transactions will require both the transferability of exploration and project expenditures, and also the substantiation of these amounts, which may have considerable value to the parties. A mechanism needs to be put in place to allow such a substantiation to be legally binding, and not subject to audit and variation by the ATO. Such uncertainty is liable to destroy substantial value for the shareholders of the vendor company.

b) Substantiation of exploration and project expenditure for financing

   Small companies are generally not capable of funding projects from internal resources like larger companies are able to do, and will therefore need to raise finance to complete their developments. Financiers will require detailed cash flows of the projects, and in a similar manner to that set out above, will require the quantum of prior expenditure to be confirmed beyond doubt. The certification process therefore needs to be transparent and binding.

Issue 11: Amnesty

Buru recommends that the Australian Taxation Office should announce an amnesty from the extension of the PRRT regime in relation to any adjustments that may be made to the PRRT returns of relevant taxpayers affected by the extension of the regime, for the 2012 and 2013 PRRT years.

There are several precedents for such a measure.

When the trust loss rules were introduced on 17 April 1998, to apply from 9 May 1995, the Deputy Commissioner of Taxation announced an amnesty in relation to the 1994/1995, 1995/1996 and 1996/1997 years of income to enable taxpayers to lodge amendments to income tax returns for this period.

Further on 9 August 2009, the Commissioner announced an amnesty for taxpayers to correct past mistakes regarding payments and loans from related private companies and avoid penalties under Division 7A of the *Income Tax Assessment Act 1936* in the circumstances of an honest mistake or an inadvertent omission.

Lastly a limited amnesty was granted by the Deputy Commissioner of Taxation on 30 November 2009 to taxpayers in relation to the declaration of income arising from offshore activities, following a more generous amnesty offer in 2007 in relation to the same matter.

Buru considers the imposition of the tax would justify the grant of an amnesty in relation to the 2012 and 2013 PRRT years. The complexities of complying with the PRRT legislation are well recognised; in this regard, refer to the Australian National Audit Office Report *Administration of the Petroleum Resource Rent Tax*, released in 2008.

Buru recommends a full amnesty be granted on this basis.