

21 October 2011

The Committee Secretary
Standing Committee on Economics
PO Box 6021
Parliament House
CANBERRA ACT 2600

Tax Laws Amendment (2011 Measures No.8) Bill 2011

The Australian Petroleum Production & Exploration Association Ltd (APPEA) is the peak national body representing the collective interests of companies engaged in petroleum exploration, development and production operations in Australia. The Association's membership comprises companies that account for an estimated 98 per cent of Australia's petroleum production and the vast majority of exploration. APPEA is pleased to make the following comments in relation to Tax Laws Amendment (2011 Measures No.8) Bill 2011 ('the Bill').

Background

The petroleum resource rent tax (PRRT) is the primary resource taxation mechanism that the Australian Government uses to tax oil and gas projects in Australia. PRRT was introduced in the mid 1980's for new projects and replaced the existing crude oil excise and Commonwealth royalty systems that were in place at the time. The regime was expanded and significantly modified in the early 1990's, including transitioning the Bass Strait project into the regime..

PRRT is an economic based tax with the following basic features:

- it is assessed on a project basis;
- liability to pay PRRT is on a producer/company;
- it is assessed at a rate of 40 per cent;
- a liability is incurred when all allowable expenditures (including compounding) have been deducted from assessable receipts;
- assessable receipts include the amounts received from the sale of all petroleum;
- deductions include capital and operating costs that relate to the petroleum project, and are deductible in the year they are incurred; and
- undeducted expenditures are compounded forward at a variety of set rates depending on the nature of those expenditures.

In the 2011-12 Federal Budget, the Government announced an intention to retrospectively change a number of elements of the resource taxation arrangements as they apply to petroleum operations in Australia. In context of PRRT, the Government indicated a desire to amend the law (with the stated objective of providing greater certainty) around how the 'taxing point' is determined. The change is proposed to apply

HEAD OFFICE

Level 10
60 Marcus Clarke St
Canberra ACT 2600

GPO Box 2201
Canberra ACT 2601

T +61 2 6247 0960

F +61 2 6247 0548

E appea@appea.com.au

ABN 44 000 292 713

BRISBANE OFFICE

Level 9
320 Adelaide St
Brisbane QLD 4000

T +61 7 3211 8300

E brisbane@appea.com.au

PERTH OFFICE

Level 1
190 St Georges Tce
Perth WA 6000

PO Box 7039
Cloisters Square
Perth WA 6850

T +61 8 9321 9775

F +61 8 9321 9778

E perth@appea.com.au

from 1 July 1990, and follows the outcome of a Federal Court case (*Esso Australia Resources Pty Ltd v the Commissioner of Taxation* [2011] FCA 360 (13 April 2011)). The proposed change is contained in Tax Laws Amendment (2011 Measures No.8) Bill 2011, Schedule 2.

In July 2010, the Government also announced an intention to extend the scope of the PRRT regime to cover production from onshore areas and the North West Shelf project. The proposed amendment will therefore potentially be relevant for both offshore and onshore operations following the proposed extended scope of the PRRT.

Specific Comments

APPEA would like to make the following comments in relation to the revised definition to the 'taxing point' that is contained in the Bill.

- *Impact on Existing Taxpayers*

In Budget Paper No.2 (2011-12), it is stated that “*(t)his measure will confirm existing application of the PRRT in relation to the taxing point and will provide greater certainty for PRRT taxpayers.*” (p.40), while the Second Reading Speech to the Bill states that “*(b)ecause the measure serves only to clarify and affirm the current application of the PRRT, it does not impose any additional tax burden. Accordingly, these amendments have no revenue impact.*”

APPEA would observe that until such time as the Australian Taxation Office (the agency responsible for the administration of the PRRT regime) issues guidance or advice that their existing interpretation of the law has not changed, all taxpayers operating under the regime will have a heightened degree of uncertainty as to whether the application of the new provision will be different to the existing definition. In particular taxpayers will seek assurance that the retrospective aspect of the amendment will not result in the Commissioner of Taxation amending past assessments which have been made earlier than 4 years from the date of Royal Assent

Recommendation: APPEA recommends that the Committee seeks advice from the Australian Taxation Office that the current application of the law will be unchanged as a result of the proposed amendment for all existing projects covered by the scope of the PRRT regime.

- *Impact of New Petroleum Projects*

As indicated above, the Government has announced a desire to extend the scope of the PRRT to cover onshore petroleum operations and the North West Shelf project. The new definition of the 'taxing point' proposed under the Bill will therefore apply to all future taxpayers operating under the regime (as well as existing taxpayers). APPEA is aware that the application of the current definition of the 'taxing point' has been raised in a number of submissions lodged in the Government's consultations associated with the PRRT Exposure Draft Legislation that deals with the extension of the regime.

It is not clear as to whether consideration has been given to ensuring that the amended definition will address the potential complexities associated with this proposed extension, as operations undertaken as part of onshore petroleum activities are often

different to those encountered offshore. Until such time as further clarification is provided by the ATO and Treasury about the way the 'taxing point' definition will apply onshore, APPEA is unable to confirm whether the proposed new definition will be applied differently to the current definition.

Recommendation: The Committee seeks advice from Treasury as to the impact of the new definition on onshore operations, and whether it is Treasury's view that the revised definition will ensure that the recommendations of the Policy Transition Group report into the New Resource Taxation Arrangements will be fully implemented.

- *Impact on Existing Litigation*

APPEA notes that Esso Australia Resources Pty Ltd has appealed the 13 April 2011 decision of the Federal Court of Australia in relation to the application of the existing taxing point definition to the Bass Strait project. This legislation directly pre-empts the appeal rights of the litigants. The impact of the passage of the legislation will effectively be to deny the litigant the option to seek a full judicial review of the original decision, and impose a significant cost on the company for a case that may no longer be able to proceed.

Investors value a predictable, stable and simple tax system when making investment decisions. A predictable and stable tax system includes the ability for taxpayers to legitimately dispute the incidence of past taxation with executive government without the Parliament intervening to retrospectively favour the executive. Retrospectivity can damage the confidence of investors in the tax system and reduce the attractiveness of Australia as a place to do business. This is particularly so in the above case where the matter is longstanding, and there is no suggestion of fraud or mischief on the part of the taxpayer. The retrospective amendment of tax laws some 21 years in arrears in these types of circumstances can impact on the confidence that legitimate taxation disputes can be ever settled.

Recommendation: The Committee recommend to Parliament that the amendments to PRRT contained in the Bill be amended to apply on a prospective basis only.

Contact in APPEA is Noel Mullen, telephone 02 62670904 or email nmullen@appea.com.au.

Yours sincerely



David Byers
Chief Executive

The voice of Australia's oil and gas industry