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Tax Laws Amendment (2009 Measures No. 3) Bill 2009

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Law and Bills Digest Section

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Tax Laws Amendment (2009 Measures No. 3) Bill 2009

Date introduced: 14 May 2009

House: House of Representatives

Portfolio: Treasury

Commencement: The formal provisions and Schedules 2 and 4 commence on Royal Assent. Parts 1 and 3 of Schedule 1 commences on the day after the Act receives Royal Assent. Part 2 of Schedule 1 commences on 1 July 2014 and Part 1 of Schedule 3 commences on 1 July 2009. Parts 2, 3 and 4 of Schedule 3, operate retrospectively, with Parts 2 and 3 commencing on 1 July 2008 and Part 4 commencing on 12 May 2009.

Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at http://www.aph.gov.au/bills/. When Bills have been passed they can be found at ComLaw, which is at http://www.comlaw.gov.au/.

Purpose

The Bill amends the *Taxation Administration Act 1953* (TAA 1953), the *Petroleum Resource Rent Tax Assessment Act 1987* (the PRRTA Act) and the *Income Tax Assessment Act 1997* (ITAA 1997).

It may assist to include some details about the amendments at this point. The Bill amends the TAA 1953:

- to set the adjustment for gross domestic product (GDP adjustment) at 2 per cent for the 2009–10 income year for taxpayers who pay quarterly pay-as-you-go (PAYG) instalments using the GDP-adjusted notional tax method (**Schedule 1**), and
- to allow taxpayers who are voluntarily registered for goods and services tax (GST) and who choose to remit GST annually to choose to make their PAYG instalments annually if they meet the new eligibility tests (**Schedule 2**).

It amends the PRRTA Act:

- to introduce a functional currency (or foreign currency) rule into the petroleum resource rent tax in order to reduce compliance costs for petroleum rent resource taxpayers who keep their financial accounts in a foreign currency

- to ensure that all exploration expenditure (including expenditure incurred outside the retention lease area but inside an exploration permit area) is deductible for PRRT purposes by inserting 'internal petroleum provisions'
- to enable a petroleum project to claim a deduction or receipt if another project participant processes his or her petroleum prior to the petroleum resource rent tax taxing point, and
- to permit a 150 per cent upfront deduction for petroleum exploration expenditure incurred in the 2009 annual offshore acreage release by extending the offshore exploration incentive (**Schedule 3**).

Finally, the Bill amends the ITAA 1997 to expand the list of deductible gift recipients (DGRs) and thus enable taxpayers to claim income tax deductions for gifts to the Diplomacy Training Program Limited, the Royal Institution of Australia Incorporated and the Leeuwin Ocean Adventure Foundation Limited (**Schedule 4**).

Background and Main Provisions

As the Bill has no central theme, the Digest deals simultaneously with the background and main provisions of each of the four schedules to the Bill

Schedule 1—Reduction in 2009–10 PAYG instalments

Schedule 1 amends the TAA 1953 to set the GDP adjustment at 2 per cent for the 2009–10 income year for taxpayers who pay quarterly PAYG instalments using the GDP-adjusted notional tax method. In announcing the measure on 28 March 2009, the Government said the measure will provide relief for about 1.5 million taxpayers, primarily 'small business at a difficult time'.[1] The reduction is intended to reflect the expected increase in the Consumer Price Index (CPI), rather than previous years' GDP figures.[2]

Ordinarily the GDP adjustment using the formula in the TAA 1953 is around 9 per cent, which means that without the reduction, PAYG taxpayers would be paying around 6 per cent more tax (by instalments) than they are ultimately assessed as liable to pay at the end of the financial year.[3] While ordinarily any over-payment of tax is refunded to the

1. W Swan MP (Treasurer) and C Emerson MP (Minister for Small Business, Independent Contractors and the Service Economy) '$720 million cash-flow relief for small business', *media release*, No. 030, 28 March 2009, viewed 23 May 2009, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/030.htm&pageID=&min=wms&Year=&DocType=0
2. W Swan MP and C Emerson MP, '$720 million cash-flow relief for small business'.
3. For further details on how the ATO works out the GDP adjustment of a PAYG taxpayer's instalment amount, see ATO, 'How we work out the GDP adjustment in your PAYG

taxpayer after his or her tax liability is assessed at the end of the relevant income year, the measure means that small business (and other taxpayers who use the PAYG system) will have more cash in their own hands now (when they might need it to keep their business afloat) rather than waiting till their tax liability is assessed at the end of the relevant income year.[4]

By setting the GDP adjustment at 2 per cent for the 2009–10 income year now, the measure also saves taxpayers from the possibility of paying large penalties that may be incurred as a result of underestimating their income and reducing their PAYG instalments to match the underestimated income.

The measure is intended to help PAYG taxpayers by letting them know in advance exactly what amount they are required to pay by periodic instalment, and thereby freeing up money that would otherwise be paid to, and held by, the Australian Tax Office (ATO) pending the final assessment of the taxpayer's assessable income at the end of the income year. The Assistant Treasurer stated in his second reading speech for the Bill that the reason for the measure is to 'provide cash flow benefits to small businesses, self-funded retirees and other eligible taxpayers by ensuring that their PAYG instalment amounts more closely approximate their actual income tax liability for the 2009-10 income year'.[5]

Subdivision 45–L of Schedule 1 to the TAA 1953 sets out how the Commissioner of Taxation works out the amount of quarterly PAYG instalment on the basis of GDP-adjusted notional tax. The formula for how the Commissioner works out GDP-adjusted notional tax is set out in section 45–405 of Schedule 1. **Item 1** of **Schedule 1** to the Bill amends the definition of the term '*GDP adjustment*' in subsection 45–405(3) of Schedule 1 to the TAA 1953 to mean either:

- if the current year is the 2009–10 income year, 2 per cent, or
- the percentage arrived at by applying the formula appearing below (which is ostensibly the same as in the current provision), rounded to the nearest whole number, or 0 per cent if the percentage worked out using the formula is negative):

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instalment amount', *Fact sheet for PAYG payers*, June 2008, viewed 23 May 2009, http://www.ato.gov.au/content/downloads/Bus00148909N72215.pdf

4. Under section 6–10 of Schedule 1 to the TAA 1953, a taxpayer is entitled to credits for the amounts collected under the PAYG system. The credits are applied against the taxpayer's tax debt, and any excess is refunded to the taxpayer. The GDP adjustment notional tax method is only available to the classes of taxpayers listed in section 45–130 of Schedule 1 to the TAA.

5. C Bowen (Minister for Competition Policy and Consumer Affairs, and Assistant Treasurer), 'Second reading speech: Tax Laws Amendment (2009 Measures No. 3) Bill 2009', House of Representatives, *Debates*, 14 May 2009, p. 5, http://www.aph.gov.au/hansard/reps/dailys/dr140509.pdf, viewed 21 May 2009.

$$\left(100 \times \frac{\text{Sum of GDP amounts (current year)}}{\text{Sum of GDP amounts (previous year)}}\right) - 100$$

This is not the first time the Government has set the GDP adjustment for an income year for taxpayers who pay quarterly PAYG instalments using the GDP-adjusted notional tax method. For example, earlier this year a similar reduction was made by Schedule 1 to the *Tax Laws Amendment (2009 Measures No. 1) Act 2009*.[6] There the GDP-adjusted amount was reduced by 20 per cent for the instalment quarter in which 31 December 2008 fell. It applied to any small business entity for the 2007–08 or 2008–09 income year; a partner of a partnership that is a small business entity for the 2007–08 or 2008–09 income year; or a beneficiary of a trust that is a small business entity for the 2007–08 or 2008–09 income year.[7] It only applied to payers of four quarterly instalments.[8]

Part 2 of Schedule 1 to the Bill contains amendments to the TAA 1953 that will apply on 1 July 2014, when the amendments contained in Part 1 of Schedule 1 end. **Item 3** sets out the definition of '*GDP adjustment*' in subsection 45–405(3) of Schedule 1 to the TAA Act that will apply after 1 July 2014. From that date, the reference to the figure of 2 per cent applying for the 2009–10 income year is repealed, but the method for calculating the percentage for other years (contained in **proposed paragraph 45–405(3)(b)**—see **item 1** of Schedule 1 to the Bill) will remain the same as it appears following the passage of the Bill.

Financial impact

There will be no net cost to the Commonwealth over the full forward estimates period.[9]

Schedule 2—Choosing annual PAYG instalments if voluntarily registered for GST

Schedule 2 amends Division 45 of Schedule 1 to the TAA 1953 to allow taxpayers who are voluntarily registered for GST and who choose to remit GST annually to choose to make their PAYG instalments annually if they meet the new eligibility tests.[10] Currently, because of their voluntary GST registration, some PAYG taxpayers are not eligible to choose to make their PAYG instalments annually and must remit their PAYG payments by

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6. The text of Schedule 1 to the to the *Tax Laws Amendment (2009 Measures No. 1) Act 2009* is available at http://www.austlii.edu.au/au/legis/cth/num_act/tla2009mn1a2009314/sch1.html, viewed 23 May 2009.

7. See now subsections 45–400(6)–(7) of Schedule 1 to the TAA 1953.

8. See generally section 45–400 of Schedule 1 to the TAA 1953, including the section heading.

9. W Swan MP and C Emerson MP, '$720 million cash-flow relief for small business'.

10. Division 45 of Schedule 1 to the TAA 1953 deals with instalment payments.

periodic (usually quarterly) instalments. The ability to choose to make PAYG payments annually means that the taxpayer who is voluntarily registered for GST and who chooses to pay GST annually will be able to pay GST and PAYG tax at the same time, thus reducing compliance and administrative costs.

The measure was announced on 13 May 2008 as part of an explanation of the Rudd Government's plans to deal with tax measures announced by the Howard Government but not enacted before the federal election in 2007.[11] The measure appears (as item 28) in a list of 'Category 3' measures that 'the Rudd Government has decided to proceed with and where legislation is not expected to be introduced before 2009'.[12]

The main provision in **Schedule 2** to the Bill is **item 3**, which amends section 45–140 of Schedule 1 to the TAA 1953 to allow taxpayers who are voluntarily registered for the GST to choose to pay annual PAYG instalments, provided:

- they are not a partner in a partnership that is required to be registered under Part 2–5 of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act)
- their most recent notional tax (notified by the Commissioner) is less than $8000, and
- in the case of a company, the company is neither a participant in a 'GST joint venture' under Division 51 of the GST Act, nor part of an 'instalment group'.[13]

Items 4–14 make consequential amendments to existing sections 45–140, 45–150, 45–155, and 45–160 to recognise the amendments to section 45–140 contained in **items 2 and 3**.[14]

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11. W Swan MP (Treasurer) and C Bowen MP (Assistant Treasurer and Minister for Competition Policy and Consumer Affairs), 'The way forward on tax measures announced, but not enacted, by the previous government', *media release*, no. 053, 13 May 2008, viewed 23 May 2009, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/053.htm&pageID=003&min=wms&Year=2008&DocType=0

12. W Swan MP and C Bowen MP, 'The way forward on tax measures announced, but not enacted, by the previous government'. The measure was originally contained in the Howard Government's 2007–08 Budget but the Rudd Government decided to defer it until 1 July 2009.

13. The term '*instalment group*' is defined in section 45–145 of Schedule 1 to the TAA 1953 to mean a company that has majority control of at least one other company, but of which no other company has majority control; and 'any other company of which the first-mentioned company has majority control'. The first part of the definition usually means the head company (or holding company) of a consolidated group.

14. **Section 45–150** provides that an entity stops being an annual payer if it is involved with a GST registration or instalment group; **section 45–155** provides that an entity stops being an annual payer if its notional tax is $8,000 or more, or the entity chooses to pay quarterly; and

Item 15 states that the amendments in Schedule 2 to the Bill apply in relation to instalments for income years commencing after 30 June 2009.

Financial impact

The measure will cost $230 million over four years (2009–10 to 2012–13).[15]

Schedule 3—Petroleum resource rent tax

Schedule 3 deals with amendments to the petroleum resource rent tax regime. As the ATO explains:

> The petroleum resource rent tax applies to all petroleum projects in offshore areas (or Commonwealth Adjacent Areas) under the *Offshore Petroleum Act 2006*, other than production licences derived from the North West Shelf exploration permits WA-P-1 and WA-P-28. These are subject to the excise and royalty regime.[16]

The petroleum resource rent tax has applied since 1 July 1987 and is assessed on either a project basis or production licence area. It applies to taxable profits from the recovery of petroleum in a project (including crude oil, condensate, natural gas, liquefied petroleum gas (LPG), and ethane). It includes the project's treatment and processing facilities that are 'integral to production' but does not include 'downstream activities (such as refineries and facilities for transporting marketable product beyond project boundaries)'.[17]

As noted at the beginning of this Digest, **Schedule 3** contains four measures**:**

- **Part 1**: the introduction of a functional currency rule into the petroleum resource rent tax, along the lines of the functional currency rule in section 960–70 of the ITAA 1997[18]
- **Part 2**: the introduction of a 'look-back' rule for exploration expenditure related to a production licence derived from an exploration permit and a retention lease

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section 45–160 provides that an entity stops being an annual payer at the start of an instalment quarter if Subdivision 45–Q starts applying to the entity as the head company of a consolidated group during that quarter.

15. Explanatory Memorandum, p. 8.

16. ATO, 'Petroleum resource rent tax', *Large Corporates and Multinationals*, http://www.ato.gov.au/businesses/pathway.asp?pc=001/009/029, viewed 23 May 2009.

17. ATO, 'Petroleum resource rent tax: overview', *Large Corporates and Multinationals, Basics*, http://www.ato.gov.au/businesses/content.asp?doc=/content/39230.htm&pc=001/009/029/010/001&mnu=&mfp=&st=&cy=1, viewed 23 May 2009.

18. The text of section 960–70 is available electronically at http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/cth/consol_act/itaa1997240/s960.70.html, viewed 23 May 2009.

- **Part 3**: the introduction of internal petroleum provisions to deal with the situation where a participant in a petroleum project sources petroleum from another participant in the same project (known as 'internal petroleum'),[19] and
- **Part 4**: extends the offshore exploration incentive to permit a 150 per cent upfront deduction for petroleum exploration expenditure incurred in the 2009 annual offshore acreage release.

It is appropriate to deal with these measures in turn.

Part 1—Functional currency rule

Part 1 inserts various definitions and provisions into the *Petroleum Resource Rent Tax Assessment Act* 1987 dealing with functional currency. The provisions are modelled on those in the ITAA 1997 but there is some variation to take account of the petroleum resource rent tax arrangements.

Generally, functional currency rules have the potential to simplify financial reporting because they allow a taxpayer whose accounts are kept solely or predominantly in a foreign currency to use the functional currency, rather than the Australian dollar, to work out his or her taxable income.[20] Functional currency rules are the exception to the core foreign currency translation rules, which require foreign currency amounts to be translated into Australian dollars and set out how the translation will occur in particular circumstances.[21]

Item 19 inserts **proposed Division 7** into Part V of the PRRTA Act. Part V deals with liability to taxation. **Proposed Division 7** deals with functional currency and includes **proposed sections 58A–58M**.

Proposed section 58A sets out the objects of proposed Division 7, including to allow a person whose accounts are kept solely or predominantly in a particularly foreign currency to calculate the person's taxable profits and certain other amounts by reference to the functional currency (**proposed paragraph 58A(a)**). It also allows companies in a

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19. 'Internal petroleum' can be contrasted with 'external petroleum', where one project sources petroleum for processing from another project, either for processing (for a tolling fee) or for purchase. In such a case, the fees or moneys paid are an assessable receipt in the hands of the party receiving the moneys and are a deductible expense to the party paying the fees or moneys.

20. For further details of how the functional currency rules work in the context of foreign exchange, see the ATO's guide at ATO, 'Foreign exchange (forex): guide to functional currency rules', http://www.ato.gov.au/corporate/content.asp?doc=/content/46528.htm, viewed 23 May 2009.

21. ATO, 'Foreign exchange (forex): guide to functional currency rules'.

'designated company group' that is in the same situation to do the same (**proposed paragraph 58A(b)**).[22]

Proposed section 58B provides that a person *may* elect to be bound by the functional rules, and sets out matters such as the date when the election takes effect and how the election is to occur.

Proposed section 58C describes the person's '*applicable foreign currency*' as being primarily the sole or predominant currency in which a person (or the head company of a designated company group) kept its accounts either immediately before the end of the year of tax or when the person made the election under **proposed section 58B**.

Proposed section 58D contains the basic translation rules, whereas **proposed section 58E** sets out the translation rule that applies to assessable receipts and **proposed section 58F** sets out the translation rules that apply to deductible expenditure. **Proposed section 58G** sets out the translation rule that applies to the transfer of an entity's entire entitlement to assessable receipts, and **proposed section 58H** sets out the translation rule that applies to the transfer of only part of an entitlement to assessable receipts.

Proposed section 58J sets out the rules that apply to the translation of taxable profit, or excess closing-down expenditure, into Australian dollars—including the fact that any election made under this provision must be in writing and is 'irrevocable' (**proposed subsection 58J(2)**).

The Explanatory Memorandum does not explain why the election is irrevocable, nor does it explain the relationship (if any) between **proposed section 58J** and **proposed section 58L** (which, as explained below, sets out how a person withdraws his or her election)—assuming the conditions for withdrawal are met. The plain and ordinary meaning of the verb 'to revoke' is 'to withdraw', and therefore some explanation of the distinction drawn between the two words in **proposed Division 7** may be useful.[23] If a taxpayer has made an election under proposed section 58B to be bound by the functional currency rules, and proposed paragraph 58D(1)(d) or (e) requires the translation of that person's taxable profit or an amount of excess closing-down expenditure for the purpose of working out a credit to which the person in entitled, then the taxpayer may also *elect* to use an exchange rate that is an average of all the exchange rates during the year or tax (proposed paragraph 58J(1)(c)) <u>or</u> to use the exchange rate applicable on the last day of the year of tax (proposed paragraph 58J(1)(d)). If the taxpayer makes an election under proposed

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22. The term '*designated company group*' is defined in **item 4 of Schedule 3** (containing an amendment to section 2 of the PRRTA Act) to have 'the meaning given by section 2BA'. **Proposed section 2BA** is contained in **item 16 of Schedule 3** and sets out the method for identifying a designated company group.

23. *Macquarie Encyclopaedic Dictionary*, 1990, p. 814, 'revoke'.

paragraph 58J(1)(c) or (d), then the election must be in writing and is irrevocable.[24] However, if either proposed paragraph 58D(1)(d) or (e) applies, and the taxpayer does not make an election under proposed paragraph 58J(1)(c) or (d), then the person is taken to have made an election under paragraph (1)(c).

The difficulty with the proposed provisions lies in the following series of events. If the taxpayer who makes an election under proposed section 58J later withdraws his or her election under proposed section 58B (according to the process set out in proposed section 58L), then any election he or she has made under proposed section 58J will cease to be relevant. However, what is the position of the taxpayer who has not actively made an election under proposed section 58J, but is simply taken to have made the election. In such as case, there is no explicit requirement for the purported election to be made in writing, and the legislation does not expressly mention whether such an election is irrevocable. Further, the difficulty remains that any withdrawal made under proposed section 58L only has effect from 'immediately after the end of the year of tax in which the person withdraws the election'.[25] The concept of irrevocable elections is not uncommon in tax law, so as to provide some certainty in calculating tax, but it may be useful in the interests of simplifying tax law and making it more accessible to ordinary people (as opposed to tax specialists) if the legislation were to spell out some of the answers to these issues, including what is the situation for earlier years of tax when the election had effect?

Proposed section 58K sets out the special translation rules that apply to events that happened before the current election took effect. **Proposed section 58L** sets out how a person who has made an election under **proposed section 58B** withdraws that election if the person's applicable functional currency has ceased to be the sole or predominant currency in which the person keeps the person's accounts.[26] Finally, **proposed section 58M** sets out the special translation rules that apply to events that happened before the withdrawal of an election took effect.

Item 20 states that the amendments in Part 1 of Schedule 3 to the Bill apply for years of tax that start on or after 1 July 2009.

Financial impact

The measures contained in Part 1 will have no fiscal cost over the forward estimates period. They are expected to reduce compliance costs.[27]

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24. Proposed subsection 58J(2).
25. Proposed subsection 58L(1).
26. Under proposed subsection 58L(3), the withdrawal of an election under proposed subsection 58L(1) does not prevent the person making a fresh election under proposed section 58B.
27. Explanatory Memorandum, p. 9.

Parts 2 and 3—Exploration expenditure and the processing and internal petroleum

Parts 2 and 3 of Schedule 3 to the Bill deal respectively with exploration expenditure and 'internal petroleum'.

Part 2 inserts a modified 'look-back' rule into the PRRTA Act to ensure that all exploration expenditure (including expenditure incurred outside the retention lease area but inside an exploration permit area) is deductible for PRRT purposes. Currently, an '*exploration permit*' gives the holder a right to look for petroleum in a particular area, and a '*retention lease*' gives the holder the right to any petroleum discovery in a particular area that is currently not commercially viable for development but may become so in the future.[28] A '*production licence*' gives the holder the right to produce petroleum from a particular area.

Items 23–25 amend section 5 of the PRRTA Act to draw a distinction between the current law (which will continue to apply to any petroleum project where the applicable production licence comes into force before 1 July 2008), and the new law (in **proposed subsections 5(5)–(7)**), which will apply to any petroleum project where the applicable production licence comes into force after 30 June 2008.

Under **proposed paragraph 5(6)(a)**, if a current production licence derived from a prior exploration permit, then any exploration that occurred in (or any recovery of petroleum that occurred from) the exploration permit area before the current production licence came into force is treated as expenditure that relates to the petroleum project for the post 30-June 2008 licence. Similarly, under **proposed paragraph 5(6)(b)**, if before the current production licence came into force one or more retention leases (or other production licences) came into force and were derived from the prior exploration permits, then exploration in (or recovery of petroleum from) the 'exploration permit area' includes all expenditure for these previous production licences (and not just the most recent production licence).[29]

Part 2 might benefit from having its language and concepts simplified in order that it might be more readily understood by lay people and taxpayers to whom the provisions will apply. For example, it might benefit from the individual provisions being restructured as their own sections (and subsections) rather than trying to include all the material into subsections and paragraphs of existing provisions.

Part 3 deals with the processing of internal petroleum. As mentioned earlier, it inserts 'internal petroleum' provisions into the PRRTA Act to deal with the situation where a

28. These terms are defined in the PRRTA Act by cross-reference to their use and meaning in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

29. For the case where a production licence is derived from a retention lease, see proposed **paragraphs 5(6)(b) and (c)**.

participant in a petroleum project processes petroleum for another participant in the same project. They also deal with the situation where a participant in a petroleum project sells his or her share of petroleum (etc) to another participant in the same project.

The provisions in **Part 3** of Schedule 3 to the Bill also amend the existing provisions in that Act that apply to 'external petroleum' (that is, where the parties to any transaction are participants in different projects). Specifically, **Part 3** amends the following provisions of the PRRTA Act:

- section 19 (Petroleum project)
- section 24A (Assessable tolling receipts)
- section 37 (Exploration expenditure)
- section 38 (General project expenditure)
- section 41 (Effect of procuring the carrying on of operations etc. by others).

For further explanation of the practical application of these amendments, the reader is referred to pages 42–45 of the Explanatory Memorandum.

Item 26 inserts a definition for the term '*internal petroleum*' into section 2 of the PRRTA Act to make it clear that the recovery or processing of petroleum (or its constituents) recovered from the relevant production licence area must be done by a person entitled to derive assessable receipts in relation to the project for, on behalf of, another person entitled to derive assessable receipts in relation to the same project. Similarly, the term applies to petroleum (or its constituents) that is to be sold by one participant in a project to another participant in the same project.

Financial impact

Parts 2 and 3 will have no fiscal impact over the forward estimates period. The measures in Part 2 are expected to have no impact on compliance costs, whereas those in Part 3 are expected to reduce compliance costs.[30]

Application/commencement

Clause 2 of the Bill, and **item 36 of Schedule 3**, provide that the amendments in **Parts 2 and 3 of Schedule 3** will apply retrospectively from 1 July 2008. While in some circumstances the retrospective application of law should be avoided (particularly where it interferes with people's substantive rights), in this case two things can be said. First, the first three measures were first announced on 8 May 2007 by Peter Dutton MP, then

30. Explanatory Memorandum, p. 9.

Minister for Revenue and the Assistant Treasurer in the Howard Government.[31] Second, the Rudd Government announced on 13 May 2008 its intention that the amendments would apply from 1 July 2008.[32] Specifically, the Rudd Government said:

> The Government will implement three minor changes to the Petroleum Resources Rent Tax (PRRT) directed at lowering compliance costs and removing inconsistencies, with effect from 1 July 2008.
>
> The first change is to introduce a functional currency rule into the PRRT, similar to the functional currency rule for income tax. This will reduce compliance costs for PRRT taxpayers.
>
> The second change is to introduce a 'look-back' rule for exploration expenditure related to a production licence derived from an exploration permit or a retention lease. This change will ensure that all exploration expenditure is deductible for PRRT purposes.
>
> The third change is to remove an inconsistency in the PRRT 'external petroleum' provisions to address the circumstance where two or more petroleum projects are not independent of each other.[33]

The text of the Rudd Government's announcement on 13 May 2008 deals with the same three issues as the text of the Howard Government's announcement on 8 May 2007. Further, the text of **Schedule 3**, while much more detailed than either announcement, does not deviate from the intentions of government expressed in the two earlier announcements.

Part 4—150 per cent upfront deduction for exploration expenditure in prescribed remote locations

The fourth measure in **Schedule 3** extends the incentive for businesses to engage in offshore petroleum exploration. The Assistant Treasurer and the Minister for Resources and Energy explained in their joint media release on 12 May 2009 that the incentive 'reduces the cost of petroleum exploration in Australia's remote offshore areas, stimulating exploration activity and increasing the likelihood of discovering a new oil

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31. For the first three measures, see page 7 of the Digest. For details of the 2007 press release, see P Dutton MP (then Minister for Revenue and the Assistant Treasurer), 'Improvements to petroleum resource rent tax', *press release*, no. 049, 8 May 2007, viewed 23 May 2009, http://assistant.treasurer.gov.au/DisplayDocs.aspx?pageID=&doc=pressreleases/2007/049.htm&min=pcd

32. W Swan MP and C Bowen MP, 'The way forward on tax measures announced, but not enacted, by the previous government', Attachment, under the heading 'Minor changes to petroleum resources rent tax'.

33. W Swan MP and C Bowen MP, 'The way forward on tax measures announced, but not enacted, by the previous government'.

province'.[34] Under the incentive, a business can claim a 150 per cent upfront deduction for exploration expenditure in prescribed remote locations. Such locations are known as '*designated frontier areas*'. This term is defined in section 2 of the PRRTA Act to mean a block (or blocks) that constitute both:

(a) an area or part of an area:

(i) specified in section 36A [as a designated frontier area for 2004]; or

(ii) specified in an instrument made under subsection 36B(1) [designated the area as a frontier area for 2005 to 2008]; and

(b) an exploration permit area.

The term '*exploration permit area*' is defined in section 2 to mean 'a petroleum exploration permit area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*'.

The 2009 annual acreage release will be announced in June 2009. The incentive has applied to the annual designation of frontier areas since 2004 and will be assessed later this year following the release of the final report of the Australia's Future Tax System Review and the Energy White Paper.[35]

Part 4 contains only one item: **item 37**. It amends existing subsection 36B(2) of the PRRTA Act to replace '2008' with '2009'. Section 36B currently provides that the Minister administering the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* may designate, in writing, up to (and including) 20 per cent of potential exploration permit areas as frontier areas for 2005 to 2008. The amendment in **item 37** will allow the Minister to designate frontier areas for 2009.

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34. C Bowen MP (Assistant Treasurer) and the M Ferguson MP (Minister for Resources and Energy and Minister for Tourism), 'Offshore exploration incentive extended', *media release*, No. 041, 12 May 2009, viewed 20 May 2009, http://assistant.treasurer.gov.au/DisplayDocs.aspx?pageID=003&doc=../content/pressreleases/2009/041.htm&min=ceb

35. Bowen and Ferguson, 'Offshore exploration incentive extended'. The 'Australia's Future Tax System' review was announced by the Rudd Government on 13 May 2008. Details of the review are available on the Treasury's website at http://taxreview.treasury.gov.au/Content/Content.aspx?doc=html/home.htm, viewed 20 May 2009. Details of the Government's Energy White paper are available on the website of the Department of Resources, Energy and Tourism at http://www.ret.gov.au/energy/facts/white_paper/Pages/default.aspx, viewed 20 May 2009.

Financial impact

The measures in Part 4 have no financial impact in 2009–10 and 2010–11, but are expected to have a 'small but unquantifiable fiscal cost in 2011–12 and 2012–13'.[36]

Schedule 4—Deductible gift recipients

Schedule 4 amends the ITAA 1997 to enable taxpayers to claim income tax deductions for gifts to the Diplomacy Training Program Limited, the Royal Institution of Australia Incorporated (RiA) and the Leeuwin Ocean Adventure Foundation Limited. The measure was announced by the Assistant Treasurer on 11 May 2009 and is intended to assist the three organisations 'in attracting public support for their charitable activities'.[37]

Item 1 amends existing subsection 30–25(2) to include the RiA in the table of education deductible gift recipients. The RiA is not due to open until October 2009 but will be 'the first international "satellite" of the world-renowned Royal Institution of Great Britain (RiGB), the flagship of science communication in the UK for over 200 years'.[38] Gifts made to RiA after 16 April 2009 will be tax deductible.

Item 2 amends existing subsection 30–80(2) to include the Diplomacy Training Program Limited in the list of international affairs deductible gift recipients. Founded in 1989 by Jose Ramos-Horta (who is now President of East Timor), the Diplomacy Training Program Limited is affiliated with the University of New South Wales and is 'an independent NGO which seeks to advance human rights and empower civil society in the Asia Pacific region through quality education and training'.[39] Gifts made to the Diplomacy Training Program after 16 April 2009 will be tax deductible.

Item 3 amends existing section 30–105 to include the Leeuwin Ocean Adventure Foundation Limited (the Foundation) in the list of 'other' recipients of deductible gifts. Based in Fremantle in Western Australia, the Foundation's mission is to 'challenge and inspire young people to realise their personal potential and make a positive contribution to the wider community, through the unique medium of a tall sailing ship [the Leeuwin II,

36. Explanatory Memorandum, p. 9.

37. C Bowen MP (Assistant Treasurer and Minister for Competition Policy and Consumer Affairs), 'Deductibility of Gifts to Three Entities', *media release*, no. 040, 11 May 2009, viewed 25 May 2009, http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/040.htm&pageID=003&min=ceb&Year=&DocType=

38. Royal Institution of Australia Incorporated, 'Introduction', http://www.riaustralia.org.au/centric/home.jsp, viewed 25 May 2009.

39. Diplomacy Training Program, 'The Diplomacy Training Program – Making a Difference', http://www.dtp.unsw.edu.au/, viewed 25 May 2009.

built in the three-masted, rigged style of the 1850s]'.[40] The Foundation offers 'adventurous voyages' along the Australian coast between Esperance and Broome, including a 'wide range of programmes … to suit all ages and interests, from short 3 hour sails to 12 day voyages'.[41] The Foundation's activities are 'designed to encourage teamwork, communication, goal setting, problem solving and leadership'.[42] In addition to its youth voyages, the ship is also available for private and corporate hire.[43] Gifts made to the Foundation after 16 April 2009 will be tax deductible.

Items 4–6 amend section 30–315 to include reference to the three organisations mentioned above in the index to Division 30 of the ITAA 1997, which deals with gifts or contributions.

Item 7 states that the amendments made by Schedule 4 will apply to the 2009–10 income year and later income years.

Financial impact

The measures in **Schedule 4** will have the following financial impact:

Organisation	*2009-10*	*2010-11*	*2011-12*	*2012-13*
Royal Institution of Australia Incorporated	–$57,500	–$122,400	–$124,848	–$127,345
Diplomacy Training Program Limited	–$33,750	–$46,125	–$47,278	–$48,460
Leeuwin Ocean Adventure Foundation Limited	–$1,500,000	–$1,500,000	–$300,000	–$307,500
Total	**–$1,591,250**	**–$1,668,525**	**–$472,126**	**–$483,305**

Source: Explanatory Memorandum, p. 10.

40. Leeuwin Ocean Adventure Foundation Limited, 'About us: the Leeuwin Vision', http://www.sailleeuwin.com/, viewed 25 May 2009.

41. Leeuwin Ocean Adventure Foundation Limited, 'The Ship', http://www.sailleeuwin.com/, viewed 25 May 2009.

42. Leeuwin Ocean Adventure Foundation Limited, 'About us: the Leeuwin Vision'.

43. Leeuwin Ocean Adventure Foundation Limited, 'About us: A Voyage to Suit Everyone', http://www.sailleeuwin.com/, viewed 25 May 2009.