



10 December 2010

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## Native Title, Indigenous Economic Development and Tax – Consultation Paper

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.

The upstream petroleum industry in Australia has both long standing and collaborative relationships with the indigenous communities within which we operate. Indigenous communities are important stakeholders in the resource development process and the overall level of employment and workplace participation by indigenous Australians in our industry has substantially increased.

Payments made to individuals, communities and/or representative indigenous bodies can take various forms and be for a variety of purposes. From a tax perspective, it is important that payments that have the same underlying objective be treated in a consistent manner for the party or parties making the relevant payments. In particular, alternative or different fiscal treatments should not influence the manner in which payments are structured. Taxation settings should also not impose undue complexity or uncertainty on taxpayers.

Specific comments in relation to Section 4 of the Consultation Paper (*Implications for Business and Non-Government Stakeholders*) are outlined below.

- Question (1): Would adopting one or more of the options outlined above change the way in which you approach agreement making?

APPEA submits that adopting one or more options outlined in the Consultation Paper would not significantly change the way petroleum exploration and production companies engage in developing agreements with native title and indigenous groups.

However, Option 2 could potentially streamline the processes of negotiation as native title groups would be able to establish an entity that is able to receive a range of payments and benefits. The suggestion that such a body might also be used for the benefit of Indigenous Australians more generally, would only be effective if the body is genuinely representative and has strong and widespread support from the indigenous community.

*The voice of Australia's oil and gas industry*

- Question (m) – Would adopting one or more of the options outlined above affect the nature of payments.

APPEA does not support the adoption of the withholding tax option for native title payments as we believe it would introduce undue and unnecessary complexity. Advice from member companies indicates that introducing such an approach would create increased uncertainty and potentially lead to differential treatments between monetary and non-monetary payments under the *Native Title Act 1993* (NTA). The net impact may be to diminish the final flow through benefits to indigenous Australians. The application of a separate regime for the non-monetary payments would also add to complexity.

APPEA recognises that the native title withholding tax option and the other options would be mutually exclusive for the efficiency of the tax system. If payments become exempt under the income tax exemption or a new tax exempt option, APPEA questions whether it is necessary to retain the current four per cent mining withholding tax. Payments under NTA agreements are exempt from being treated as income when received by indigenous people or their representative body. As such, APPEA recommends that the government considers the abolition of mining payment withholding tax if either an income tax exemption and/or new tax exempt vehicle option is adopted and implemented.

APPEA also requests that the options outlined in the Consultation Paper be extended to payments made to indigenous people under other Commonwealth and State legislation that is ancillary or supplementary to the operation of NTA. For example, in Queensland, a company entering into an agreement under the NTA would be typically required to enter into a cultural heritage management plan agreement pursuant to Queensland *Aboriginal Cultural Heritage Act 2003*. Under such an agreement, companies are required to engage indigenous people to carry out relevant works prior to major development on the land that may be greater than the subject of native title negotiation (i.e., including surrounding land). In order to avoid uncertain tax treatments associated with payments under such agreements, companies will often directly employ indigenous people or a special purpose entity may be established. Should a new 'tax exempt entity option' be adopted, it would be efficient for the new entity to carry out other ancillary functions. If the Government is willing to consider extending the scope of the Consultation Paper to payments made under other relevant Acts, APPEA will consult with its members to obtain a listing of all relevant Federal and State legislation that operates in conjunction with the NTA.

APPEA would be pleased to further expand on the issues contained in this letter. Contact officer in APPEA is Noel Mullen (email: [nmullen@appea.com.au](mailto:nmullen@appea.com.au)) or telephone 02 6267 0904.

Yours sincerely



Belinda Robinson  
CHIEF EXECUTIVE

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100 YEARS