

9 February 2024

Mr Marty Robinson
First Assistant Secretary
Corporate and International Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600

prrt@treasury.gov.au

Dear Mr Robinson,

RE: Petroleum Resource Rent Tax – anti-avoidance provisions and clarifying treatment of ‘exploration’ and MQPRs

Thank you for the opportunity to provide feedback on the amendments to the *Treasury Laws Amendment (Measure for Consultation) Bill 2023: Capital Allowances for Mining, Quarrying or Prospecting Rights and Clarifying the meaning of Exploration for Petroleum*.

Australian Energy Producers does not support the introduction of retrospective changes to the definition of Exploration of Petroleum in relation to the Petroleum Resource Rent Tax (PRRT) as proposed in the draft bill.

Such retrospective changes to the taxation system cannot be supported in-principle and represent poor policy. The oil and gas industry has made very significant investments over a sustained period in long-lived, capital-intensive assets. Australia’s reputation of political and regulatory stability has been essential in motivating this investment, including from international investors. It is critically important that policy settings and legislative frameworks provide the stability and certainty needed to attract and retain investment in Australia.

This proposed change needs to be considered in terms of the cumulative impact of multiple policy reforms and gas market interventions over the last 12-18 months. These interventions have shaken investor confidence, requiring significant efforts by industry and government to put at ease our international partners who depend on secure and reliable energy supplies for their economies and to support their own decarbonisation objectives.

In relation to the Exposure Draft and Explanatory Materials, Australian Energy Producers consider that the current drafting lacks clarity and substantially overreaches the original policy intent and application of the law with respect to deductibility of activity in the exploration for petroleum.

As outlined in the Exposure Draft Explanatory Materials at 1.13 “The clarification **does not define** what ‘exploration for petroleum’ is. Rather, activities engaged in for the **purpose** of determining how to recover petroleum or whether the recovery of petroleum is commercially, economically, or technically viable are excluded for the purpose of paragraph 37(1)(a) of the PRRTAA”

This provides for a negative test for deductibility of exploration for petroleum with retrospective effect from August 2013. In effect, this would allow for all expenditure incurred after the discovery phase of petroleum to be denied as expenditure involved in the exploration of petroleum. This introduces a significant uncertainty on what is eligible expenditure for exploration of petroleum, including over the period where such costs are treated as exploration under the prevailing law and ATO Taxation Ruling (TR) 2014/9. It will also remove significantly more costs associated with exploration for petroleum than the policy intention. The test should be revised to positively state what the definition of exploration for petroleum is so that it effectively isolates the expenditure that is deductible as exploration.

The test also introduces the concept of purpose of exploration of petroleum where activities of assessing if the recovery of petroleum is commercially, economically or technically viable is excluded from 'exploration of petroleum', while not defining the meaning of commercially, economically, or technical viability. It is unclear who defines the purpose of the activity in question and how it would relate to exploration for petroleum or the commercial, economic, or technical viability.

In reality, the activities undertaken, and the data collected in appraisal activities will be used across the entire process from discovery through to understanding the commercial, economic, or technical viability of a project. Every appraisal well is not just to work out the boundary of the reserve. The industry efficiently collects data it needs at every opportunity to determine the constitution of the reserve and this eventually, with other work done (such as the expenditure targeted under the ATO ruling (TR) 2014/9) informs whether the resource is a commercially viable project. The draft legislation directly conflicts with the intent of the ruling and potentially creates a black hole for appraisal and other work done that does not meet the definition of general expenditure.

If Government is to enact a special definition of exploration for petroleum, that definition should be clearly established within the draft legislation. As the draft stands, there will be no clarity on the definition leaving significant investments with little certainty on the treatment they will receive in developing new gas supplies. New supplies of gas are required to underpin the transition to a net zero economy and also support the decarbonisation objectives of our regional partners.

If you require further information or would like to discuss the comments above, please do not hesitate to contact Wayne Calder on 0424 852 384 or wcalder@energyproducers.au

Yours sincerely



Samantha McCulloch
Chief Executive