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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

EXPOSURE DRAFT EXPLANATORY MATERIALS

TREASURY LAWS AMENDMENT BILL 2025: PRRT CALLAGHAN REVIEW
RECOMMENDATION 6

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon Jim Chalmers MP)

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
Bill	<i>Treasury Laws Amendment Bill 2025: PRRT Callaghan Recommendation 6</i>
Callaghan Review	The Petroleum Resource Rent Tax Review 2017, led by Michael Callaghan AM PSM
Commissioner	Commissioner of Taxation
PRRT	Petroleum Resource Rent Tax
PRRTA Act	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
TAA 1953	<i>Taxation Administration Act 1953</i>

General outline and financial impact

Recommendation 6 of the Callaghan Review

Outline

The amendments implement recommendation 6 of the Callaghan Review to empower the Commissioner to make a continuation determination in respect of a project, where appropriate.

Date of effect

Schedule # to the Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.

Proposal announced

Schedule [#] to the Bill implements Recommendation 6 of the Government's response to the Callaghan Review announced on 7 May 2023.

Chapter 1: Recommendation 6 of the Callaghan Review

Outline of chapter

- 1.1 Schedule # to the Bill amends the PRRTA Act in response to Recommendation 6 of the Callaghan Review. These amendments give the Commissioner the power to treat a later project as a continuation of an earlier project. This will allow, for example, certain expenditure from the earlier project to be applied to certain receipts of the later project.
- 1.2 Unless otherwise stated, all legislative references in this Chapter are references to the PRRTA Act.

Context of amendments

- 1.3 The Callaghan Review was an extensive evaluation of Australia's PRRT. It was initiated to assess the effectiveness of the PRRT in ensuring that Australians receive a fair return from the exploitation of the nation's petroleum resources and examined various aspects of the tax's design and operation. The final report was submitted to the Government on 13 April 2017.
- 1.4 The Australian Government released its Final Response to the Callaghan Review on 2 November 2018, where it supported proceeding with 8 of the 12 Recommendations. The Government acknowledged the need for reforms to the PRRT to provide certainty to the industry and to ensure that Australians receive a fair return for the exploitation of their resources.
- 1.5 As part of its response, the Government tasked the Treasury with leading a review of the gas transfer pricing arrangements, addressing concerns about whether or not the outcomes of the gas transfer pricing arrangements were equitable for the Australian community, in terms of tax receipts from offshore liquefied natural gas projects.
- 1.6 The gas transfer pricing review, which commenced in 2019, was finalized and delivered to the Government in December 2022. The Treasurer released the "Petroleum Resource Rent Tax: Review of Gas Transfer Pricing Arrangements" final report and the Government's response on 7 May 2023. These steps aimed to ensure that the PRRT system remains effective, and that the Australian community receives a fair return from the nation's petroleum resources.

Recommendation 6

- 1.7 Schedule # to the Bill implements Recommendation 6 of the Callaghan Review, which states the following:
- The PRRT design feature which links a project to a production licence does not align with current commercial practice whereby a production licence may revert to a retention lease. The Commissioner should be given the power to treat a later project as a continuation of an earlier project, where it would be reasonable to do so.

Summary of new law

- 1.8 The Recommendation 6 amendments give the Commissioner the power to make a continuation determination in relation to a petroleum project and another petroleum project that has ceased.
- 1.9 The Commissioner may only make this determination if a qualifying application is made, and the Commissioner is satisfied that the later project is a continuation of the earlier project.
- 1.10 In considering whether the later project is a continuation of an earlier project, the Commissioner must have regard to several criteria, including:
- differences in each project's production licence area and marketable petroleum commodities;
 - similarities in each project's operations and facilities;
 - progression from production licence to retention lease and back to production licence; and
 - any other matters the Commissioner considers relevant.
- 1.11 The effect of the continuation determination is that the later project will, in relation to the financial year when the continuation determination is made, have access to assessable receipts derived, deductible expenditure incurred and, in limited circumstances, tax paid in relation to the earlier project for that financial year.

Detailed explanation of new law

- 1.12 Schedule # to the Bill implements Recommendation 6 of the Callaghan Review, amending the PRRTA Act to allow the Commissioner to treat a new petroleum project, which meets certain criteria, as a continuation of an earlier project.

- 1.13 The substantive recommendations are primarily contained in new sections 49A to 49M, within Division 5A of Part V of the PRRTA Act. Division 5A outlines the effect of the continuation determination in relation to the financial year when the continuation determination is made, including the transfer of assessable receipts, deductible expenditure and tax paid in respect of the earlier project in relation to that financial year.
- 1.14 The amendment in Schedule # to the Bill allows assessable receipts derived, deductible expenditure incurred and in limited circumstances, tax paid in relation to the earlier project to be utilised in the later project, if the Commissioner is satisfied that the later project is a continuation of the earlier project.

Continuation Determinations

Making Continuation Determinations

- 1.15 These amendments give the Commissioner the power to make a continuation determination in relation to a later project and an earlier project that has ceased.
[Schedule #, item 3, subsection 49A(1)]
- 1.16 Later and earlier projects are defined in temporal relation to each other. A later project is a petroleum project that commences when a new production licence is derived from a retention lease that, when the retention lease was issued, had caused the earlier project to have ceased. An earlier project is a petroleum project that has ceased because a retention lease was issued in relation to the entire production licence area.
[Schedule #, item 1, section 2 and item 3, section 49A]
- 1.17 The Commissioner may only make a continuation determination in relation to a later project and an earlier project if a qualifying application is made, and the Commissioner is satisfied that the later project is a continuation of the earlier project.
[Schedule #, item 1, section 2 and item 3, subsection 49A(2)]
- 1.18 A qualifying application may be made by one person or jointly by multiple persons. The application must be made within 90 days from when the most recent production licence in relation to the later project came into force, or a longer period allowed by the Commissioner. The applicant or applicants jointly must have been entitled to receive at least half of the receipts from the sale of petroleum or petroleum commodities recovered from the production licence area in relation to the later project. The applicant or applicants jointly must meet this entitlement threshold immediately before the application was made.
[Schedule #, item 3, section 49B]
- 1.19 There are a number of factors that the Commissioner must consider when determining whether or not a later project is a continuation of an earlier project. These include the differences between the two projects in terms of the

production licence areas and commodities produced, and similarities between the two projects in terms of the operations and facilities. The Commissioner must also consider the progression of the projects from production licence to retention lease and then back to production licence.

[Schedule #, item 3, section 49C]

- 1.20 The amendments limit the Commissioner to making only one continuation determination per earlier project. If a continuation determination is in force in relation to an earlier project, then the Commissioner cannot make another. However, this does not prevent a continuation determination from being revoked altogether or varied to correct an error in the determination under section 49L of the PRRTA Act.

[Schedule #, item 3, section 49D]

Consequences of Determination

- 1.21 If a continuation determination is made in a financial year for an earlier project and a later project, and a person has an interest in the earlier project and later project, then the assessable receipts that would have been derived in that financial year by the person in relation to the earlier project are taken to be derived by the person in relation to the later project.

[Schedule #, item 3, subsections 49E(1)]

- 1.22 However, if a continuation determination is made in a financial year for an earlier and later project, and a person has an interest in the earlier project but not the later project when the continuation determination is made, then the amount of assessable receipts that would have been derived in that financial year in relation to the earlier project by that person is deemed not to be derived by that person.

[Schedule #, item 3, paragraphs 49E(2)(a) to (d)]

- 1.23 Each person that has an interest in the later project when the continuation determination is made is taken to derive, in relation to the later project, a share of that amount of assessable receipts, which is equal to that amount multiplied by the person's entitlement percentage for the later project.

[Schedule #, item 3, paragraph 49E(2)(e)]

- 1.24 If a continuation determination is made in a financial year for an earlier project and a later project, and a person has an interest in the earlier project and later project, then the deductible expenditure that would have been incurred in that financial year by the person in relation to the earlier project is taken to be incurred by the person in relation to the later project.

[Schedule #, item 3, subsections 49F(1)]

- 1.25 However, if a continuation determination is made in a financial year for an earlier project and later project, and a person has an interest in the earlier project but not the later project when the continuation determination is made, then the amount of deductible expenditure that would have been incurred in that financial year in relation to the earlier project by that person is deemed not to be incurred by that person.

[Schedule #, item 3, paragraphs 49F(2)(a) to (d)]

- 1.26 Each person that has an interest in the later project when the continuation determination is made is taken to incur, in relation to the later project, a share of that amount of deductible expenditure, which is equal to that amount multiplied by the person's entitlement percentage for the later project.

[Schedule #, item 3, paragraph 49F(2)(e)]

- 1.27 The amount of deductible expenditure includes unused exploration expenditure.

[Schedule #, item 3, section 49G]

- 1.28 A person's entitlement percentage for a later project is the proportion of the petroleum or marketable petroleum commodities produced from petroleum recovered from the production licence area in relation to the later project that the person is entitled to when the continuation determination is made. The reference to "production licence area or areas" ensures combined projects are also captured, given that combined projects may have more than one production licence area.

[Schedule #, item 3, section 49J]

- 1.29 To ensure that the sum of the shares of amounts of assessable receipts and deductible expenditure in relation to the later project equal those amounts, the Commissioner may make adjustments to a person's share.

[Schedule #, item 3, sections 49E, 49F, 49G and 49K]

- 1.30 The deeming of assessable receipts derived and deductible expenditure incurred by the person in relation to the later project and the financial year when the continuation determination is made is intended to allow assessable receipts derived and deductible expenditure incurred in relation to the earlier project in that financial year to be accounted for in the later project for that particular financial year for the purposes of determining any taxable profit in relation to the later project for that financial year.

Effect of Continuation Determination on Deductions Cap Exemption and PRRT Paid

- 1.31 The deductions cap exemption under paragraph 22(5)(a) applies from the first financial year when assessable petroleum receipts were derived by any person in relation to the earlier project.

[Schedule #, item 2, subsection 22(6)]

- 1.32 Consistent with allowing the deductible expenditure of an earlier project to be used by a later project, in limited circumstances, an excess tax amount for a person in relation to the earlier project may be used in determining the entitlement of a credit in respect of closing down expenditures in relation to the later project. This amount is only taken into account in a later project if a person has an interest in both the earlier project and later project.

[Schedule #, item 3, section 49H(1)]

- 1.33 An excess tax amount for a person in relation to a financial year and the earlier project is the difference between the total amount of tax paid or payable and the total amount of any credits allowed or allowable to the person under section 46. If the difference is negative, then the amount is nil.
[Schedule #, item 3, subsection 48H(2)]

Amendment or Revocation etc of Determination

- 1.34 The continuation determination, once made, may only be amended, varied, revoked, repealed or rescinded in limited circumstances.
[Schedule #, item 3, subsection 49L(1)]
- 1.35 A continuation determination must be revoked if information which was not available to the Commissioner at the time of making the determination later becomes available and, if the Commissioner had been aware of this information at the time of making the determination, the Commissioner would not have made the determination. In such cases, the determination is taken never to have been made.
[Schedule #, item 3, subsection 49L(2)]
- 1.36 If a determination is repealed, rescinded or revoked by a Court or Tribunal, then that determination is taken never to have been made.
[Schedule #, item 3, subsections 49L(1) and (3)]
- 1.37 The Commissioner may repeal, rescind, revoke, amend or vary a continuation determination to correct an error in the determination.
[Schedule #, item 3, paragraph 49L(1)(b)(iii)]
- 1.38 These provisions displace the general rules provided by subsections 33(3) and (3A) of the *Acts Interpretation Act 1901*, which provide that the amendment or revocation of an instrument must satisfy the same conditions as making the instrument.

Notification of Determination

- 1.39 The Commissioner must notify in writing the persons who applied for the determination of the outcome of the determination within 30 days, if the Commissioner decides:
- to make a continuation determination;
 - not to make a continuation determination; or
 - to revoke a continuation determination.

[Schedule #, item 3, subsections 49M(1), (2) and (3)]

Review of Determination Decision

- 1.40 A person who receives a notice, as outlined immediately above, may object against the Commissioner's decision to which the notice relates, as set out in Part IVC of the TAA 1953, which deals with the objection, review, and appeal

processes for taxpayers disputing tax assessments and decisions made by the Commissioner.

[Schedule #, item 3, subsection 49M(4)]

Example 1.1 Earlier Project – Retention Lease – Later Project

Alpha Co has a majority interest in the Beta petroleum project, the earlier project, which produced LNG. The Beta petroleum project had a life-of-field production licence in force over a single block.

Production ceased in the block and Alpha Co applied for and was granted a retention lease over the block. At this time, the Beta petroleum project ceased to exist.

Years later, Alpha Co assessed that production had become viable again. Alpha Co applied for and was granted a production licence over the block, which became the Gamma Project, the later project.

Alpha Co applied for and was granted a continuation determination, such that the Gamma Project was a continuation of the Beta Project.

The ownership interests in the Beta Project, the intervening retention lease and the Gamma project remained the same throughout.

In relation to the financial year when the continuation determination was made, any amount of assessable receipts that would have been derived in relation to the Beta Project in that financial year is instead deemed to be derived by Alpha Co in relation to that financial year and the Gamma project.

Similarly, the augmented deductible expenditure that would have been incurred in relation to the Beta petroleum project is instead taken to be incurred in relation to the Gamma project. The deductible expenditure is available for Alpha Co according to its ownership interest in the Gamma Project.

Commencement, application, and transitional provisions

- 1.41 Schedule # to the Bill commences on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Royal Assent.