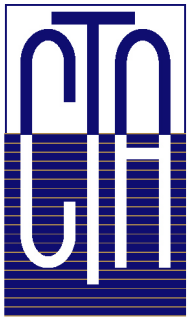

CORPORATE TAX ASSOCIATION
of Australia Incorporated

# House of Representatives

# Standing Committee on Economics

# Enquiry into Tax Laws Amendment (2011 Measures Bill No 8) Bill 2011

**Submission by**

# Corporate Tax Association of Australia Inc.

## October 2011

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## INTRODUCTION

The Corporate Tax Association (CTA) wishes to express its concerns about the retrospective nature of an amendment to the *Petroleum Resource Rent Tax Assessment Act 1997* (the PRRT Act) included in the *Tax Laws Amendment (2011 Measures Bill No 8) Bill 2011* (the Bill) and which has been referred to the House Standing Committee on Economics.

The practice of governments over the years has been to avoid introducing tax laws that retrospectively impose new obligations except in very unusual circumstances.

Such restraint is well justified, as citizens and corporations should be able to structure their affairs in the expectation that their rights will not be retrospectively diminished by a change in the law that goes back as far as 21 years, as in the present case. It is vital for a small capital importing country like Australia to avoid creating concerns among international investors about the stability and fairness of its tax laws.

A report commissioned by the former government on the review of self-assessment in 2004 suggested circumstances that warrant retrospective change might include:

- correcting unintended consequences where the ATO or taxpayers have applied the law as intended;
- addressing a tax avoidance issue; or
- preventing undesirable behavioural changes (such as bringing forward or delaying the disposal of an asset)

It is not entirely clear what was meant by the first dot point, but the context of the report and the wording used suggest there is a shared understanding about what was intended under the law. In spite of the assertion in the Explanatory Memorandum that the recent Federal Court decision involving and Exxon/Mobil subsidiary confirms "the long-established application of the PRRT" in relation to the taxing point, the fact is that the joint venturers engaged in Australia's oldest major off-shore oil and gas operation have a different view, and this different view has been known about by the Tax Office for many years. The second and third dot points have no application to the circumstances of Exxon/Mobil and its joint venture partner either.

More recently, the 2008 *Better Tax Law Design and Implementation* report by the Tax Design Panel also expressed the view that retrospective tax law changes are undesirable. However, where they are unavoidable any announcement should clearly explain the reasons for their retrospective application.

The Panel also commented (at para 3.21) that retrospective legislation might be appropriate to rectify a technical deficiency or to address "a serious risk to the revenue". The issue here is not a technical deficiency but a legitimate dispute about the interpretation of the PRRT legislation. On the revenue aspect, any dispute that justifies taxpayers pursuing a matter in the Federal Court is likely to involve material amounts of revenue, but nothing in the Bill or the Explanatory Memorandum justifies the conclusion that this dispute presents "a serious risk to the revenue".

It is unprecedented for a corporation to have its appeal rights in a legitimate tax dispute to be nullified in the way envisioned under the Bill. The Tax Office has had more than a decade and a half to resolve this matter. Its failure to do so, and the failure of successive governments to introduce prospective changes to clarify the issue much earlier does not justify compromising Australia's reputation as a safe and predictable investment destination.

The CTA urges the committee to reject the retrospective element of the proposed PRRT amendment.

Yours Faithfully,

(Frank Drenth)

Executive Director
Corporate Tax Association

26 October 2011