The Senate

Economics Legislation Committee

Provisions of the Taxation Laws Amendment Bill (No. 8) 2002

June 2003

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ISBN 0 642 71267 0

Printed by the Senate Printing Unit, Parliament House, Canberra.

Senate Economics Legislation Committee

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Taxation Laws Amendment Bill (No. 8) 2002

Reference of the Provisions of the Bill to Committee

1.1 The Senate referred Schedule 5 of the Taxation Laws Amendment Bill (No. 8) 2002 to the Economics Legislation Committee on 19 March 2003 with a reporting date of 16 June 2003.[1]

Submissions

1.2 The Committee advertised its inquiry in *The Australian* on Wednesday 26 March 2003. It also wrote to a number of individuals and organisations, including the relevant government agencies and Departments, who were identified as possibly being interested in the Bill. They were alerted to the inquiry and invited to make a submission.

1.3 The Committee received one submission from the Australian Petroleum Production and Exploration Association (APPEA).

Hearing

1.4 The Committee held one public hearing on this inquiry in Parliament House, Canberra on Wednesday, 11 June 2003. Witnesses who appeared before the Committee at that hearing are listed in Appendix 2.

1.5 Copies of the Hansard transcript are tabled for the information of the Senate. They are also available through the Internet at http://aph.gov.au/hansard.

Acknowledgment

1.6 The Committee is grateful to, and wishes to thank, all those who assisted with its inquiry.

Purpose of the Bill

1.7 The Bill provides various amendments to the following Acts:

- *Income Tax Assessment Act 1936;*
- *Income Tax Assessment Act 1997;*
- *Income Tax (Transitional Provisions) Act 1997;*
- *Fringe Benefits Tax Assessment Act 1986;*

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1 *Report No. 3 of 2003* of the Selection of Bills Committee, 19 March 2003.

- *Petroleum Resource Rent Tax Assessment Act 1987;*
- *A New Tax System (Family Assistance and Related Measures) Act 2000;*
- *A New Tax System (Goods and Services Tax) Act 1999;*
- *A New Tax System (Pay As You Go) Act 1999;*
- *A New Tax System (Tax Administration) Act (No. 2) 2000;*
- *Superannuation Legislation Amendment Act (No. 3) 1999;*
- *Taxation Administration Act 1953;*
- *Taxation Laws Amendment Act (No. 3) 1999;*
- *Taxation Laws Amendment Act (No. 4) 1997;*
- *Taxation Laws Amendment Act (No. 4) 2000;*
- *Taxation Laws Amendment Act (No. 7) 2000; and*
- *Tax Law Improvement Act (No. 1) 1998.*

1.8 The Bill contains six schedules. Each schedule deals with the following matter:

- – income tax deductions for gifts (Schedule 1);
- – employee share schemes (Schedule 2);
- – franking of distributions by co-operatives (Schedule 3);
- – reasonable benefit limits (Schedule 4);
- – petroleum resource rent tax (Schedule 5); and
- – a number of technical amendments to ANTS legislation (Schedule 6).

1.9 The Committee received evidence only in respect of Schedule 5, the schedule referred to the Committee.

Schedule 5 amendments

1.10 Schedule 5 proposes changes to the petroleum resource rent tax (PRRT) by amending the *Petroleum Resource Rent Tax Assessment Act 1987* (the Act). The proposed amendments to the Act respond to concerns raised by the industry in regard to the operation of the present legislation.

1.11 Currently, the closing down costs incurred by an operator of a petroleum facility are not deductible until the facility has ceased to be used for any purpose. The amendments will allow the licensee to estimate and deduct the future closing down costs while the facility continues in use under an infrastructure licence. The intention of the amendment is to encourage companies involved in oil and gas exploration and production (upstream petroleum producers) to take up infrastructure licences.[2]

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2 *Second reading speech*, dated 5 December 2002.

1.12 Additionally, the amendments will resolve the timing issue of when assessable receipts are due versus the cost of closing down a facility.[3] The amendments will allow the estimation of the closing down costs to be adjusted through a discount rate equivalent to the bond rate plus two percentage points.[4]

1.13 The second proposed amendment to the Act intends to create a more uniform treatment of situations that involve the partial use of facilities. The partial use of a facility occurs when more than one petroleum project makes use of the same facilities.[5] The amendments will ensure that all revenue earned from tolling and sale situations will be included as assessable receipts and that the capital and operating costs involved in processing the tolled or purchased hydrocarbons will be available for deduction by the processing parties.[6]

Petroleum Resource Rent Tax

1.14 The *Petroleum Resource Rent Tax Assessment Act 1987* provides for the collection of the petroleum resource rent tax (PRRT). The PRRT applies to oil and gas projects within Australia's Exclusive Economic Zone (EEZ) of 200 nautical miles. However, there are exceptions to this application. Firstly, under an agreement between the Commonwealth, states and territories the Commonwealth has jurisdiction over the offshore areas beyond the three nautical mile territorial sea, while the states and territories have jurisdiction within the three nautical mile territorial sea. The result being that different taxation regimes are in place depending on the jurisdiction in which a particular project operates. Additionally, there are various other exceptions to the PRRT such as the North West Shelf project area.[7]

1.15 The application of the tax is intended to provide for an efficient and equitable rate of return. This is balanced against the risks associated with exploration that are undertaken by the private sector while offering the community a fair return on its non-renewable resources.[8]

1.16 The PRRT is levied at a rate of 40 per cent on the net cash flows of upstream producers after the recovery of their eligible exploration expenditure, operating costs and capital expenditure.[9]

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3 APPEA submission, p. 4.

4 APPEA, submission, p. 4.

5 *Explanatory Memorandum,* p. 39.

6 *Explanatory Memorandum*, p. 39.

7 ABARE, *Australia's, petroleum resource rent tax, An economic assessment of fiscal settings*, January 2003, p. 11.

8 Department of Primary Industries, *Report on the Operation of the Petroleum Resource Rent Tax Assessment Act 1987*, 1992, p. 2.

9 Department of the Parliamentary Library, *Research Note 20 200-01.*

Production and infrastructure licences

1.17 Currently, there are two types of licence that are applicable to the upstream petroleum industry. Firstly, the production licence which in broad terms authorises the holder to conduct operations to recover petroleum in areas where petroleum has been discovered.[10] For the purposes of the Act petroleum is defined as any naturally occurring hydrocarbon whether in a gaseous, liquid or solid state.

1.18 The second licence that is applicable to petroleum projects under the Act is the infrastructure licence. Introduced in March 2000, the purpose of the infrastructure licence is to provide for operations that do not fall strictly within the ambit of the production licence.[11] As noted in the explanatory memorandum for the bill, infrastructure licences allow for the construction and operation of infrastructure facilities in Commonwealth waters without a necessary connection to any specific PRRT project.[12] The holder of the licence is entitled, subject to any conditions, to construct and operate infrastructure facilities as set out in the licence.[13] The licence is not an authorisation for the holder to conduct exploration or recovery of petroleum or construct a pipeline. The facilities that are defined to be infrastructure include: processing and storage facilities and facilities for preparing petroleum for transport.[14]

Comparison of key features of new law and current law[15]

New law	**Current law**
Where a project licensee ceases production and applies for an infrastructure licence to toll process or carry out some other related process, much of the project's infrastructure would still be in place at the time the project closes down for the purposes of the PRRTAA 1987. In such situations the new law will provide for estimated closing down costs to be deductible, for PRRTAA 1987 purposes, when the project is terminated.	Closing down costs incurred in certain situations may not be deductible for the purposes of the PRRTAA 1987.

10 *Petroleum Resource Rent Tax Act 1987*, Explanatory Memorandum, p. 21.

11 *Petroleum (Submerged Lands) Legislation Amendment Act 1999*, Explanatory Memorandum, p. 2.

12 Taxation Laws Amendment Bill (No.8) 2002, *Explanatory Memorandum*, p. 35.

13 Department of the Parliamentary Library, *Bills Digest No. 45 1999-2000.*

14 Department of the Parliamentary Library, *Bills Digest No. 45 1999-2000.*

15 *Explanatory Memorandum*, p. 37.

Where a project licensee has to pay an amount to a new user to take over a project facility located on an infrastructure licence, or where the value of the facility at the cessation of the production licence is deemed (taking into account closing down costs) to be negative, this amount is treated as a deductible closing down cost for PRRT purposes.	When a project ends and the facilities move into an infrastructure licence, the project licensee either sells the facility and receives a property receipt, or retains the facility and receives a deemed property receipt. If the costs of closing down the project exceed the value of the facility at this time, such that the property receipt would be negative, this amount is not deductible for PRRT purposes.
Capital expenditure incurred by petroleum production operators for plant that is used to process petroleum from one or more petroleum projects will be deductible expenditure for the purposes of calculating the PRRT liability, irrespective of whether the partial use was or was not anticipated.	Capital expenditure incurred by petroleum production operators for facilities intended to be used for processing petroleum from more than one petroleum project is apportioned for the purposes of calculating the petroleum resource rent taxable value for a project. The apportionment occurs at the commencement of the project and does not change even if relative use does change.
Revenue received as a toll fee from another project will be assessable.	Revenue received as a toll fee from another project is not assessable.
Toll fees paid by a project will be deductible expenditure.	Toll fees paid by a project may not be deductible expenditure.
Entities engaged in tolling operations will be able to deduct the operating costs involved in such processes.	Entities engaged in tolling operations can not deduct the operating costs involved in such processes.
Operating costs incurred and revenue received in situations where one project purchases another project's hydrocarbons and processes them for sale are included in determining a project's petroleum resource rent taxable amount.	Operating costs incurred and revenue received in situations where one project purchases another project's hydrocarbons and processes them for sale are not included in determining a project's petroleum resource rent taxable amount.

Issues

1.19 In general, APPEA, the peak body representing approximately 95 per cent[16] of the oil and gas production in Australian, strongly supports the Bill. In their

16 APPEA submission, p. 1.

submission, the Association (APPEA) noted the importance of having an internationally competitive taxation system to ensure that the impact of taxation on projects is minimized in addition to supporting a local reliable and well priced energy supply.[17]

1.20 Nevertheless, APPEA's representatives expressed concerns about the 'current PRRT settings', arguing that changes, as embodied in the bill, were necessary to ensure Australia's future energy policy objectives were met.

1.21 While supportive of the thrust of the legislation, the APPEA raised concerns about three matters, which the Committee describes and discusses in the following paragraphs:

- Licence transition – the discount rate applied;
- The extension of the scope of the PRRT provisions; and
- Uncertainty arising from unresolved technical issues.

1.22 During the public hearing, committee members also examined the timing of the deduction and its financial impact.

Licence transition – the discount rate applied

1.23 As pointed out by APPEA in its submission, under the current legislation, a licensee may be required to calculate the notional value of a facility at the time of transition between a production licence and infrastructure licence under the assessable property receipt provision of the Act. APPEA noted that at the same time, the licensee may be denied the opportunity to deduct the estimated cost of closing down the facility. The proposed Bill modifies this situation by allowing the licensee to estimate and deduct the future closing down costs.[18]

1.24 Section 6 of schedule 5 of the bill sets a formula for determining the present future closing down expenditure for use in the transition process from a production licence to an infrastructure licence. The formula used applies the bond rate plus two percentage points, adding a premium over and above the prevailing bond rate.

1.25 While supportive of the terms of the amendment, APPEA disagrees with the proposal to add a premium of two percentage points. In evidence, the Executive Director of APPEA, Mr Jones, told the Committee that 'APPEA can see no case for the adoption of a rate other than the long-term bond rate'.[19]

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17 APPEA submission, p. 3.

18 APPEA submission, p. 4.

19 *Proof Committee Hansard*, 11 June 2003, p. 2.

The extension of the scope of the PRRT provisions

1.26 The second issue raised by APPEA is the intention to include all revenues generated from the sale, treatment, storing and processing of petroleum as assessable receipts, including receipts generated from processing petroleum for third parties (tolling).

1.27 The Executive Director of APPEA, Mr Jones, described the nature of the problem that had led to the proposed change:

> …the current PRRT provision inadequately determines the ineligible costs associated with the facility where such a facility also processes petroleum from outside its own project area. Indeed, it is arguable that the legislation in its present form could lead to a mismatch between the cost and revenues in relation to determining a PRRT liability, leading to a serious symmetry problem…[20]

1.28 Mr Allen noted that the proposed amendment addresses the symmetry problem:

> The amending legislation proposes an all-in approach whereby all revenues earned from tolling and sales activities are to be included as part of the assessable receipts, while all capital and operating costs incurred by the processing party are to be regarded as being deductible.[21]

1.29 However, while acknowledging the practicality of the proposed solution, he contended that it 'is not the perfect solution', recording APPEA's opposition to extending the scope of PRRT provisions to 'activities wider than originally envisaged'. For example, in its submission, APPEA suggested that a possible effect of the proposed change was to expose petroleum to the resource rent tax more than once.[22]

1.30 Despite its concerns about a widening of the scope, APPEA advised that they did not oppose the amendment. Instead, APPEA sought a commitment to re-examining this arrangement, 'if it can subsequently be shown that the practical application of the provision is adversely impacting on project economics'.[23]

Uncertainty arising from unresolved technical issues.

1.31 The APPEA submission states that the legislation in its current form has up to 20 technical issues that create uncertainty in the industry and that the current Bill only addresses two of these technical concerns.

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20 *Proof Committee Hansard*, 11 June 2003, p. 2.

21 *Proof Committee Hansard*, 11 June 2003, p. 2.

22 APPEA submission, p. 5.

23 *Proof Committee Hansard*, 11 June 2003, p. 2.

1.32 Mr Allen elaborated on how APPEA had developed a detailed submission in early 2002, raising nearly 20 issues that industry need to have clarified. He complained that many of these issues had been brought to the ATO's attention previously, but were still awaiting resolution. He concluded:

> From the industry's perspective, it is essential that the levels of uncertainty that currently confront taxpayers be removed as soon as possible.

1.33 The Committee notes the Association's comments and brings them to the attention of the ATO and the Treasury.

Timing of the deduction

1.34 Committee members questioned both APPEA and Treasury about why they considered it appropriate to bring forward a deduction relating to the decommissioning of a facility when that facility would not be decommissioned but instead be put to another productive use.

1.35 The Treasury representative told the Committee that the measure had been developed in response to the principle that 'economic infrastructure should be used in the most efficient means possible and infrastructure should not be closed down early or unnecessarily'. Treasury representatives explained that the amendment would bring the PRRT into an alignment with previous amendments made to the Petroleum (Submerged Lands) Act that introduced infrastructure licences. The officer advised that there is a tax disincentive associated with taking up an infrastructure licence, because if the operators closed the facility down, an immediate deduction would be claimable. However, if the facility continued operating in a tolling or for-storage capacity, no closing-down deduction could be claimed until sometime in the future.[24]

1.36 The officer pointed out that the issue was essentially a timing issue about when the deduction is claimed:

> This arrangement is one of timing of a deduction. When the nature of the activity changes - that is, the production phase has finished - it is appropriate that the cost of decommissioning is recognised at that time even though the moneys may not have been spent.[25]

1.37 Committee members questioned the Treasury representative about which companies was likely to benefit from the proposed change. The officer advised that they did not see this as something that would occur frequently. However, he identified possible examples of where the provisions might be used in a number of areas, particularly in Bass Strait:

> You are looking, of course, at Esso BHP in Bass Strait. We would consider this one of the prime areas where this could happen, because they have a lot

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24 *Proof Committee Hansard*, 11 June 2003, p. 12-13.

25 *Proof Committee Hansard*, 11 June 2003, p. 15.

> of fixed platform structures out there in what is a maturing field. Of course, it is going to be moving from being a major oil field to becoming more of a gas field. Some of these platforms will probably reach the end of their use as producing platforms and they may terminate their use in the production licence sense. They may use them as infrastructure for gas projects. That is a big area where we think there is a potential some time in the next 15 years.[26]

Committee view

1.38 The Committee accepts that this proposed measure is appropriate and necessary. The proposal is also consistent with promoting the efficient use of economic infrastructure. While it does bring the deduction forward, there are likely to be offsets resulting from a continued flow of income (and hence, taxes) from infrastructure that would otherwise be decommissioned.

Financial impact

1.39 Uncertainty exists in relation to the possible financial impact of this measure. The financial impact statement for the bill identifies a range between $0.28m and $56m.

1.40 Questioned about the vagueness of this estimate, the Treasury representative advised that in the absence of a specific proposal to utilise the provisions, the Treasury were ‘not actually in a position to cost it’. Committee members pointed out that potential cost of the measure is open ended, and asked whether consideration had been given to capping the potential cost.

1.41 The Treasury representative advised that as far as he was aware, no consideration had been given to capping the deduction. However, officers did provide the Committee with some information about how it had arrived at the costing quoted:

> It was prepared on the advice of the ATO, which works with the industry. There is only a relatively small number of PRRT taxpayers. The ATO has data on the size of those productions and on what closing down costs have been in the past. It looked at what would be the cost if a small field were to utilise this measure or if a larger field were to utilise it.[27]

1.42 The Department of Industry, Tourism and Resources subsequently provided the Committee with an answer to a question taken on notice, which showed that there are a total of 50 active production licences, of which 36 are in areas subject to the PRRT. One productive licence is inactive, that is, not producing.[28]

1.43 The Treasury also provided supplementary information, reiterating that the measure does not involve a revenue cost to the forward estimates as there are no

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26 *Proof Committee Hansard*, 11 June 2003, p. 13.

27 *Proof Committee Hansard*, 11 June 2003, p.12.

28 Response to question on notice, DITR, 11 June 2003.

projects that will be immediately affected. Officers also stated that the ATO does not have any data on the average cost of closing down an offshore platform.

Committee view

1.44 The Committee accepts the explanation provided by the officers about why the estimate of what the measure might cost is expressed in a broad range. In circumstances where there is no known proposal to use the provision it is difficult to do otherwise.

1.45 The Committee accepts the Treasury's views in regard to the desirability and utility of the legislation.

Recommendation

The Committee recommends that the bill be passed.

Senator George Brandis
Chairman

LABOR SENATORS
MINORITY REPORT
EMPLOYEE ENTITLEMENT FUNDS
TAXATION LAWS AMENDMENT BILL (No.8) 2003

The purpose of the bill is to provide an proposes to allow expenditures associated with closing down a petroleum processing project, where the facility continues to be used for another processing project under an infrastructure licence, to be deductible against the first project's PRRT receipts.

The bill raises a number of issues:

1. The appropriateness of allowing a deduction for the expense of closing down a petroleum production platform before it is incurred.
2. The cost to revenue of the proposal.
3. The integrity of the petroleum resource rent tax regime.

<u>Allowing a deduction from PRRT before the expense is incurred.</u>

The Petroleum (Submerged Lands) Act was amended in 2000 to provide for Infrastructure licenses which would allow a production platform to be converted for use as a processing facility.

Under the PRRT arrangements it is currently assumed that when a platform ceases to be a production facility it will be closed down and the costs associated with its decommissioning will be a deduction against PRRT.

The bill proposes that if a production facility is converted to an infrastructure license the notional costs of decommissioning will be allowed as an immediate deduction against PRRT liability even though they have not yet been incurred.

Evidence was received that a platform could operate for decades. Bringing forward the deduction would therefore be a substantial tax concession. The explanatory memorandum estimated the cost to revenue at between $280,000 and $56 million per platform.

Evidence was received that the transfer of the facility from a processing license to an infrastructure licence for another project, at the conclusion of the PRRT project confers on the facility a residual value that adds to the profitability of the PRRT project for which the facility was originally constructed. As the infrastructure is used longer and generates more income it creates value and that value is subject to PRRT and income tax.

The decommissioning expense is a legitimate deduction but it ought to be deducted at the time that it is incurred. This could be against PRRT or income from the infrastructure facility as it is an expense necessarily incurred in earning income.

Cost to revenue of the proposal.

Evidence was received that the estimates of the cost of the measure were determined by the Australian Taxation Office without reference to either the industry or to Treasurer.

These estimates were between $280,000 and $56 million per platform.

Neither Treasury nor the Australian Petroleum Production and Exploration Association could give any indication of the number of platforms for which this concession might be used.

The total cost to revenue of the concession will be a large multiple of the indicative figures for one platform in the explanatory memorandum.

The integrity of the PRRT regime.

The PRRT regime was negotiated as a package and legislated in 1987.

Evidence received from the industry is that it is the best taxation regime for shallow water oil in the world.

As it was negotiated as a package changing it carries the risk that the integrity of the arrangements will be jeopardised.

Recommendation

The bill should be amended to provide that decommissioning expense is a legitimate deduction but can only be deducted at the time that it is incurred.

Senator Jacinta Collins
Deputy Chair

Senator Ruth Webber

Appendix 1

Submissions Received

Submission Number	Submittor
1.	Australian Petroleum Production & Exploration Association (APPEA)

Further information

Further information accepted as public evidence of the inquiry:

Additional information provided by Mr Mike Buckley, Manager, Business Income Division, The Treasury, dated 12 June 2003.

Additional information provided by Mr Bill Layer, Dept of Industry, Tourism & Resources, dated 11 June 2003.

Appendix 2

Public Hearing and Witnesses

Wednesday, 11 June 2003, Canberra

BUCKLEY, Mr Michael Thomas, Manager, Business Income Division, Treasury

JONES, Mr Barry Richard, Executive Director, Australian Petroleum Production and Exploration Association

LAWRY, Mr Michael John, Manager, Group Taxation, Santos Ltd; and Australian Petroleum Production and Exploration Association

LAYER, Mr William, Resource Tax Manager, Department of Industry, Tourism and Resources

MULLEN, Mr Noel Christopher, Director - Commercial, Australian Petroleum Production and Exploration Association