



# ***PCG 2016/13 - Petroleum Resource Rent Tax - deductibility of general project expenditure***

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## Petroleum Resource Rent Tax – deductibility of general project expenditure

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### Relying on this Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this Guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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### What this Guideline is about

1. This Guideline explains how we will allocate compliance resources according to our assessment of risk in relation to the application of section 38 of the *Petroleum Resource Rent Tax Assessment Act 1987* (the Act).

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## **Date of effect**

2. This Guideline will apply in relation to general project expenditure that is actually incurred (or taken by Division 5 of Part V of the Act to be incurred) on or from 1 July 2015 by an entity in relation to a petroleum project.

## **What entities are covered by this Guideline?**

3. This Guideline is intended to cover an entity that is entitled to derive assessable petroleum receipts in relation to a petroleum project in a financial year.

## **Background**

4. Generally a payment is deductible under section 38 of the Act as general project expenditure where it is not excluded, exploration or closing-down expenditure, and:

- (a) it has a close or quite direct connection with the physical activities of the petroleum project, and
- (b) it can either be traced or reasonably allocated to the operations, facilities or other things set out in subsection 19(4) of the Act.

5. Generally a payment will not be deductible as general project expenditure where it is too remote from the physical activities of the petroleum project or future petroleum project, or only has an incidental connection with such activities.

6. Payments that cannot be reasonably allocated to the operations, facilities and other things in subsection 19(4) of the Act will be considered 'indirect' for the purposes of paragraph 44(1)(j) of the Act.

7. Section 112 of the Act requires a person to keep records that record and explain all transactions and other acts including deductions for general project expenditure, that are relevant to ascertaining the person's liability under the Act.

8. The approach set out in this Guideline also applies to payments made to procure the carrying on or providing of operations, facilities or other things of a kind described in section 38 of the Act by another entity where paragraph 41(1)(d) of the Act applies.

## **Expenditure types that are outside the scope of this Guideline**

9. Expenditure types that are outside the scope of this Guideline are:

- (a) social infrastructure costs arising from a statutory requirement or an entity's social licence to operate. This includes sponsorship costs and costs to build hospitals, roads, transport, water and sewerage assets and other facilities for the general community, and
- (b) the overhead component of a time written cost charged to a joint venture billing statement or sole risk operation account to the extent that the expenditure is actually incurred (or taken by Division 5 of Part v. of the Act to be incurred) on or from 1 July 2015<sup>1</sup>.

## **Allocation of compliance resources – expenditure types we consider to be low risk**

10. Paragraph 11 of this Guideline sets out examples in relation to various activities that are described as low risk for the purposes of this Guideline. We will not generally apply significant compliance resources to examining whether these expenditure types

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<sup>1</sup> This type of expenditure is the subject of Practical Compliance Guideline PCG 2016/12.

qualify for deduction under section 38 of the Act to the extent that an entity satisfies the relevant provisions of the Act<sup>2</sup> and the following conditions:

- (a) the payment or part payment does not include a cost relating to a downstream asset or activity, and
- (b) the Commissioner is satisfied that the entity keeps records in accordance with section 112 of the Act including using reliable systems, processes, procedures and policies to reasonably capture, record and allocate payments to the petroleum project.

11. Low risk expenditure types are:

- (a) technical labour cost that is allocated to the petroleum project via time writing or another reasonable allocation method
- (b) technical labour cost of a project participant relating to their obligation as a member of a Joint Venture Operating Committee that is allocated to the petroleum project via time writing or another reasonable allocation method (see Example 4 in Appendix 1 to this Guideline)
- (c) Non-technical labour cost relating to:
  - (i) human resource (HR)
  - (ii) information technology (IT)
  - (iii) contracts and procurement
  - (iv) legal, commercial or finance
  - (v) health, safety, security and environment (HSSE), or
  - (vi) public and government affairs (excluding investor and corporate/shareholder public relations)that is allocated to the petroleum project via time writing or another reasonable allocation method (see Example 1 in Appendix 1 to this Guideline)
- (d) cost relating to an asset that is used for the recovery or treatment of petroleum for processing prior to becoming a marketable petroleum commodity (within the meaning of section 2E of the Act) and for the transfer or storage of project product prior to becoming an excluded commodity, including operations and maintenance service costs dedicated to supporting and controlling the asset
- (e) cost relating to a head office building that is remotely located from the project site and which accommodates technical and non-operational staff to the extent that it can be reasonably allocated to the physical activities involved in the particular petroleum project (see Example 3 in Appendix 1 to this Guideline)
- (f) cost relating to an operation or facility carried on or provided for an environmental purpose (such as a water treatment cost) and any other environmental requirement that must be complied with in accordance with any applicable legislation and regulations
- (g) cost relating to employee amenities (as defined in section 2 of the Act) at the project site or at the nearest township
- (h) cost relating to insurance of an upstream project asset
- (i) cost relating to the joint venture accounting system that supports the preparation of billing statements and other accounting information for

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<sup>2</sup> Subsection 19(4) and sections 38 and 44 of the Act.

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dissemination to joint venture participants in relation to carrying on, or providing, the operations, facilities or other things comprising the petroleum project

- (j) cost relating to the preparation of a joint venture business activity statement
- (k) legal cost relating to an employment contract in respect of an employee working directly on the petroleum project (a project employee), a contract for a supplier of goods or services for the petroleum project (project supplier) or an issue concerning a project employee or a project supplier
- (l) professional development cost as part of deploying a qualified person into a petroleum project
- (m) travel cost of a technical employee to a project site (see Example 4 in Appendix 1 to this Guideline)
- (n) travel cost of a technical employee to attend a training conference or workshop that is directly related to the petroleum project
- (o) travel cost of a technical employee to attend a technical conference as part of the cost of deploying a qualified person into a petroleum project
- (p) overhead cost relating to office rent and associated utilities and other costs relating to operator support services, allocated to a petroleum project by reference to a project asset or activity via a reasonable allocation method (see Example 2 in Appendix 1 to this Guideline).

#### **Allocation of compliance resources – expenditure types we consider to be high risk**

12. Expenditure types that we consider high risk and likely to require the allocation of a higher level of compliance resources to determining whether they qualify for deduction under section 38 of the Act include those that:

- (a) do not have a close or quite direct connection to the operations, facilities and other things comprising a petroleum project as defined in subsection 19(4) of the Act, or
- (b) are not liable to be made in a year of tax but are provisions or contingent liabilities under accounting standards.

13. These expenditure types include the following:

- (a) enterprise or corporate shell cost (for example. company registration cost, listing fee, ASIC fee and financial statement audit cost)
- (b) non-technical labour cost relating to investor and corporate/shareholder public relations issues
- (c) joint venture audit cost
- (d) cost relating to the preparation of a petroleum resource rent tax (PRRT) annual return or instalment statement
- (e) legal expense in relation to drafting a joint venture agreement
- (f) cost relating to the preparation of an income tax return or general corporate business activity statement
- (g) expense charged to joint venture participants on a generalised basis for operator support services without reference to a specific underlying service, activity or cost (for example the cost of general joint venture assistance, management, administration and other support service that is non project-specific, including a cost that is in the nature of what is commonly referred to as parent company overhead)

- (h) membership fee (for example:.. association of petroleum industry companies)
- (i) professional development cost to the extent that it addresses or improves the general capability or skill of a person (as distinct from a specific skill that is necessary for a person to be deployed into a petroleum project)
- (j) travel cost for attending a professional development course of a kind described in paragraph 13(i) above
- (k) administrative or non-operational cost (including overhead cost) that is indivisibly directed at more than one project, or at a project and non-project activity, and the taxpayer is unable to show reasonable apportionment
- (l) legal expense associated with an ongoing dispute between its joint venture partner and another company over a liability to pay private overriding royalties in respect of a production field<sup>3</sup>
- (m) hedging expense<sup>4</sup>
- (n) fee paid for the purposes of operating a mutualised research program which affiliate companies in the payer's economic group may join and giving the payer access to royalty-free licences over patent rights and other technical information for use in a petroleum project
- (o) legal cost in defending a negligence claim or a prosecution under environmental protection legislation in relation to an oil spill caused by damage in the offshore-to-onshore processing plant pipeline, and damages and fines in relation to this, and
- (p) legal expense in relation to a state royalty agreement.

### More information

14. For more information concerning apportioning payments, refer to [Apportionment of PRRT deductible expenditure](#).<sup>5</sup>

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**Commissioner of Taxation**

12 September 2016

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<sup>3</sup> ATO Interpretative Decision ATO ID 2006/312.

<sup>4</sup> ATO Interpretative Decision ATO ID 2005/111.

<sup>5</sup> To access this page, visit [ato.gov.au](http://ato.gov.au) and search for 'QC 37839'.

## APPENDIX 1 – Examples

Paragraph	Activities
11(c)	<p data-bbox="443 315 1374 376"><b>Example 1 – Non-technical labour cost allocated to the project via time writing</b></p> <p data-bbox="443 398 1374 459">An employee is stationed at a site office that services the operations of two petroleum projects. The duties of the employee are to:</p> <ul style="list-style-type: none"> <li data-bbox="539 499 1342 600">(i) maintain the time keeping records for technical employees performing petroleum project operations at the project sites of the two projects</li> <li data-bbox="539 618 1374 678">(ii) send time keeping information in relation to the technical employees to the payroll department</li> <li data-bbox="539 696 1374 757">(iii) implement the occupational health and safety policy and measures at the project sites</li> <li data-bbox="539 775 1273 813">(iv) maintain employee amenities at the project sites;</li> <li data-bbox="539 831 1294 891">(v) manage investor and corporate/shareholder public relations issues, and</li> <li data-bbox="539 909 1374 1010">(vi) provide site reports to assist in the preparation of income tax returns, PRRT instalment statements and PRRT annual returns.</li> </ul> <p data-bbox="443 1032 1374 1193">For any part of the employee’s salary cost to constitute general project expenditure of a particular petroleum project, it is necessary to determine the part of the employee’s time attributable to the activities the employee supports that are in carrying on or providing relevant operations, facilities or other things for that petroleum project.</p> <p data-bbox="443 1234 1374 1361">The activities set out at (i) to (vi) above will relate to the staff served by the site office employee and therefore the site office employee’s salary cost, to the extent that it relates to these activities, will have a close or quite direct connection to a project.</p> <p data-bbox="443 1402 1337 1503">The determination of the site office employee’s time attributable to a particular project will depend on that employee’s time spent on supporting the technical staff.</p> <p data-bbox="443 1543 1374 1697">On the other hand, payments relating to investor and corporate/shareholder public relations or income tax/PRRT returns and statements will not constitute general project expenditure as they do not have a close or quite direct connection with the physical activities of a petroleum project.</p> <p data-bbox="443 1738 1310 1865">Where the salary cost of the site office staff cannot be reasonably allocated to the operations, facilities and other things comprising a petroleum project, that payment will be considered ‘indirect’ for the purposes of paragraph 44(1)(j) of the Act.</p>
11(p)	<p data-bbox="443 1912 1305 1973"><b>Example 2 – Overhead cost charged in accordance with joint venture operating agreement</b></p> <p data-bbox="443 1995 1374 2051">Petroleum Co is the operator and participant of an unincorporated joint venture that governs the operations of a petroleum project. The joint</p>

	<p>venture operating agreement contains accounting procedures that are intended to establish equitable methods agreed between the parties for determining charges and credits applicable to operations covered under the agreement.</p> <p>The agreement contains provisions concerning, among other things, the allocation of costs on an equitable basis, the treatment of 'direct' and 'indirect' costs, and the audit of joint accounts, sole risk operation accounts and records of the operation.</p> <p>These provisions govern the basis of charges to the joint venture billing statements and sole risk operation accounts and are regularly reviewed by each party to the joint venture to ensure the accounting procedures are reasonable.</p> <p>We recognise that in these circumstances a commercial tension exists amongst unrelated joint venture participants, and the accounting policy in the joint venture operating agreement is a suitable reference in working out the appropriate method of apportionment for PRRT purposes.</p> <p>Accordingly, an overhead cost (not embedded in any time written cost) which is charged to the joint venture billing statement or sole risk operation account in accordance with the terms of the joint venture operating agreement by reference to a specific underlying upstream activity, asset or facility may be deductible. This is on the basis that the overhead is also an undisputed, direct and identifiable charge.</p> <p>Acceptable allocation methods may include time write allocation of personnel labour hours through timesheets, headcount, maintenance hours across facility assets and floor space.</p> <p>However, an overhead cost charged to joint venture participants on a generalised basis for operator support services (including IT, HR and HSSE) without reference to a specific underlying service, activity or cost will not constitute deductible general project expenditure under section 38 of the Act.</p>
11(e)	<p><b><i>Example 3 – Remotely located head office building</i></b></p> <p>Petroleum Co carries on a petroleum project and its project engineers, together with its non-operational staff, are housed in its head office that is leased and remotely located from the project site. The non-operational staff include staff in the accounting, finance, HR and other departments that provide support services.</p> <p>The project engineers devote 100% of their time to the petroleum project and occupy 10% of the remotely located head office building. The non-operational staff provide 6% of their time to support the project engineers and they occupy 20% of the same building.</p> <p>The remotely located head office is a site where the operations, facilities and other things comprising a petroleum project are carried out. Therefore, the lease payments associated with the head office building have a close or quite direct connection to the physical activities of Petroleum Co's petroleum project and are not excluded expenditure under paragraph 44(1)(k) of the Act.</p>

	<p>In determining the extent to which the lease payments associated with the remotely located office building will be deductible, Petroleum Co should have regard to: (i) the percentage of time that project engineers and non-operational staff supporting the project engineers devote to the petroleum project; and (ii) the floor space occupied by the project engineers and the non-operational staff supporting those engineers.</p> <p>In this instance the project engineers devote 100% of their time to the petroleum project and occupy 10% of the remotely located head office building while the non-operational staff that support those engineers spend 6% of their time on project activities and occupy 20% of the building.</p> <p>Consequently, 11.2% (that is <math>[100\% \times 10\%] + [6\% \times 20\%]</math>) of the lease payments was treated as being incurred in carrying on or providing the operations and facilities comprising Petroleum Co's petroleum project and deducted under section 38 of the Act.</p> <p>In these circumstances, the 1.2% <math>[6\% \times 20\%]</math> of the lease payments that is attributable to the non-operational staff would not be excluded expenditure under paragraph 44(1)(k) as it was reasonably allocated to the petroleum project activities carried out by the project engineers.</p>
11(m)	<p><b><i>Example 4 – Visits by parent company officers and overseas technical experts</i></b></p> <p>Petroleum Co is an Australian subsidiary of an overseas parent company that carries on a petroleum project as an operator and participant of an unincorporated joint venture. From time to time, senior officials and technical specialists from the parent company visit Australia to oversee its operations.</p> <p>The visits by the parent company officers and overseas technical experts involve:</p> <ul style="list-style-type: none"> <li>• discussing the running of the business and the current and proposed petroleum projects of the Australian company</li> <li>• reviewing specific project activities being conducted by the Australian company, and</li> <li>• meeting government officials to discuss the proposed activities of the Australian company.</li> </ul> <p>Petroleum Co bears all the costs associated with the travel of the parent company officers and technical specialists to Australia.</p> <p>The travel costs of the senior officials in relation to reviewing the activities of Petroleum Co and meeting with government officials will generally not constitute general project expenditure as they do not have a close or quite direct connection with the physical activities of a petroleum project. Where the senior officials review specific project activities, the travel costs would be deductible to the extent that they relate to these project activities and where they are based on a reasonable allocation method.</p> <p>The travel costs of the overseas technical specialists (for example, petroleum engineers) relate to visits they make to project sites in order</p>

to assist Petroleum Co to meet its obligations as an operator pursuant to programmes and budgets relating to joint operations which have been approved by the Joint Venture Operating Committee. Therefore, these costs do have a close or quite direct connection with the physical activities of a petroleum project.

Petroleum Co collates expenditure information sourced from its natural systems and incorporates it into a series of excel spreadsheets that contain automated settings (for example, based on the Approval For Expenditure, general ledger account descriptions, etc.). The spreadsheets identify and exclude obviously non-deductible PRRT expenditure including interest, provisions, corporate memberships and downstream costs.

Petroleum Co manually reviews the preliminary classification of travel expenditure incurred by non-Australian based officers in order to identify any costs which were not incurred by visiting technical specialists in relation to project activities. Based on an analysis of the itineraries of the visiting parent company officers, an appropriate percentage of the remaining travel costs are excluded as not related to project activities.

In these circumstances where Petroleum Co is able to demonstrate effective internal management processes which provide a fair and reasonable basis to ensure that only genuine general project expenditure is deducted, the parent company travel costs are treated as low risk. This obviates the need to take an extensive 'line by line' analysis of each item of travel expenditure.

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## References

ATOlaw topic(s)	Petroleum resource rent tax ~~ Deductible expenditure ~~ General expenditure Petroleum resource rent tax ~~ Other
Legislative references	PRRTAA 1987 PRRTAA 1987 2 PRRTAA 1987 2E PRRTAA 1987 19(4) PRRTAA 1987 38 PRRTAA 1987 41(1)(d) PRRTAA 1987 44(1)(j) PRRTAA 1987 44(1)(k) PRRTAA 1987 Pt V Div 5 PRRTAA 1987 Pt V Div 6 PRRTAA 1987 112
Other references	ATO ID 2005/111 ATO ID 2006/312.
BSL	ITX

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