Petroleum Resource Rent Tax Assessment Amendment Act 2006

No. 78, 2006

An Act to amend the *Petroleum Resource Rent Tax Assessment Act 1987*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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Petroleum Resource Rent Tax Assessment Amendment Act 2006

No. 78, 2006

An Act to amend the *Petroleum Resource Rent Tax Assessment Act 1987*, and for related purposes

[*Assented to 30 June 2006*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Petroleum Resource Rent Tax Assessment Amendment Act 2006*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	1 July 2006.	1 July 2006
2. Schedules 1 and 2	1 July 2006.	1 July 2006
3. Schedule 3, items 1 and 2	1 July 2006.	1 July 2006
4. Schedule 3, item 3	Immediately after the commencement of Chapter 2 of the *Offshore Petroleum Act 2006*.	1 July 2008
5. Schedule 3, items 4 to 9	1 July 2006.	1 July 2006
6. Schedule 4, items 1 to 4	1 July 2006.	1 July 2006
7. Schedule 4, item 5	Immediately after the commencement of the provisions covered by table item 11.	1 July 2006
8. Schedule 4, items 6 and 7	1 July 2006.	1 July 2006
9. Schedule 4, item 8	Immediately after the commencement of the provisions covered by table item 11.	1 July 2006
10. Schedule 4, items 9 to 38	1 July 2006.	1 July 2006
11. Schedule 5	1 July 2006.	1 July 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Deducting transferable exploration expenditure from tax instalments

Part 1—Amendments

Petroleum Resource Rent Tax Assessment Act 1987

1 Section 2

Insert:

annual transfer has the meaning given by subsection 45E(4).

2 Section 2

Insert:

instalment transfer has the meaning given by subsection 45E(5).

3 Section 2

Insert:

instalment transfer charge period has the meaning given by subsection 98A(4).

4 Section 2

Insert:

instalment transfer excess has the meaning given by subsection 98A(1).

5 Section 2

Insert:

instalment transfer interest charge has the meaning given by subsection 98A(4).

6 Section 2

Insert:

liable person has the meaning given by subsection 98A(1).

7 At the end of Division 3A of Part V

Add:

45E Instalment transfers and annual transfers

(1) Subject to this section, the following provisions apply in relation to instalment periods in the same way as they apply in relation to financial years:

(a) this Division;

(b) the Schedule;

(c) definitions or other provisions of this Act as they apply for the purpose of this Division or the Schedule.

Note: A person who contravenes section 45A or 45B as the section applies in relation to an instalment period commits an offence: see subsections 45A(5) and 45B(5).

(2) The provisions mentioned in subsection (1) apply under that subsection only to the extent necessary to require or permit the making of transfers of expenditure in relation to instalment periods.

(3) For the purpose of subsection (1), the following assumptions apply in relation to any petroleum project and an instalment period in a financial year:

(a) the instalment period is taken to be a financial year;

(b) the amounts taken by subsections 33(3), 34(3), 34A(4), 35(3) and 36(1) (including because of section 48) to be incurred by any person in relation to any project on the first day of the financial year are instead taken to be only the instalment percentages of those amounts;

(c) the amounts that would, for the purposes of the Schedule, be the incurred exploration expenditure amounts in relation to financial years before that financial year are instead taken to be only the instalment percentages of those amounts.

(4) In this Act, an ***annual transfer*** is a transfer of an amount of expenditure in accordance with this Division in its application to a financial year.

(5) In this Act, an ***instalment transfer*** is a transfer of an amount of expenditure in accordance with this Division in its application under this section to an instalment period.

(6) Despite subsection 45D(3), if an instalment transfer of an amount of expenditure is made in relation to an instalment period in a financial year, the instalment transfer does not prevent the transfer of all (or a part) of that expenditure being made again:

(a) in relation to a later instalment period; or

(b) in relation to the financial year or a later financial year (as an annual transfer).

Note: In some circumstances, interest may be charged in relation to an instalment transfer if the expenditure cannot be transferred again under this Division as an annual transfer: see section 98A.

(7) In this section:

instalment period includes a period in a financial year that would be an instalment period if the financial year were a year of tax.

8 After paragraph 97(1A)(a)

Insert:

(aa) without limiting paragraph (a)—any instalment transfers in relation to the instalment period were annual transfers in relation to the year of tax; and

9 At the end of subsection 97(1A)

Add:

Note: Division 3A of Part V may require or permit the transfer (by ***instalment transfer***) of transferable exploration expenditure in relation to instalment periods: see section 45E.

10 After section 98

Insert:

98A Instalment transfer interest charge—liability

Situation in which charge applies

(1) Subject to subsections (2) and (3), this section applies to a person (the ***liable person***) in relation to an amount of expenditure (the ***instalment transfer excess***) if:

(a) an instalment transfer of the amount in relation to an instalment period in a year of tax is made:

(i) by the liable person to a petroleum project under section 45A (as the section applies because of section 45E); or

(ii) to the liable person in relation to a petroleum project under section 45B (as the section applies because of section 45E); and

(b) an annual transfer, in relation to the year of tax, of the amount to the same project, or to the liable person in relation to the same project, cannot be made because of the application of clause 22 or 31 of the Schedule (whether or not there is any other reason preventing such an annual transfer).

Note 1: This section may apply separately to a person in relation to 2 or more instalment transfers in the same year of tax, even if the same instalment transfer amount is transferred between the same projects or companies by each instalment transfer (as allowed under subsection 45E(6)).

Note 2: If a transfer is made by the Commissioner under section 45C because of a failure of a person to make a transfer as required by section 45A or 45B, the transfer is taken to be a transfer by the person under section 45A or 45B (as the case requires): see subsection 45C(4).

Instalment transfer excess—offsets

(2) The amount of the instalment transfer excess (as it would be apart from this subsection), in relation to a petroleum project, is reduced by:

(a) an amount equal to so much of the excess as must be applied or transferred to reduce or eliminate any person's taxable profit in relation to any petroleum project and the year of tax; and

(b) any amount of expenditure that must be transferred, by annual transfer in relation to the year of tax, to the project, or to the liable person in relation to the project, because the excess cannot be transferred as mentioned in paragraph (1)(b).

(3) This section does not apply if the instalment transfer excess is reduced to zero (or a negative amount) by the operation of subsection (2).

Liability to pay charge

(4) The liable person is liable to pay a charge (the ***instalment transfer interest charge***) on the instalment transfer excess for each day in the following period (the ***instalment transfer charge period***) in the year of tax:

(a) if the instalment period to which the excess relates is the first instalment period in the year—the period:

(i) starting at the start of the day on which instalments of tax are due and payable for the first instalment period in the year; and

(ii) ending immediately before the day on which instalments of tax are due and payable in relation to the second instalment period in the year;

(b) if the instalment period to which the excess relates is the second instalment period in the year—the period:

(i) starting at the start of the day on which instalments of tax are due and payable for the second instalment period in the year; and

(ii) ending immediately before the day on which instalments of tax are due and payable in relation to the third instalment period in the year;

(c) if the instalment period to which the excess relates is the third instalment period in the year—the period:

(i) starting at the start of the day on which instalments of tax are due and payable for the third instalment period in the year; and

(ii) ending immediately before the day on which tax is due and payable in relation to the year of tax.

Note 1: For when instalments of tax are payable, see section 95. For when tax is payable in relation to the year of tax, see section 82.

Note 2: For the amount of the charge, see section 98B. For when the charge is payable, see section 98C. For remission of the charge, see section 98D.

Charge payable even if person has transferred interest in project

(5) Despite sections 48 and 48A, the liable person remains liable for the full amount of the instalment transfer interest charge even if the liable person enters into a transaction that has the effect, after the end of the instalment period, of transferring part or all of the liable

person's entitlement to derive assessable receipts in relation to the project.

Statement about charge

(6) The liable person must, on or before the 60th day after the end of the year of tax, give the Commissioner information, in the approved form, for use in working out the instalment transfer interest charge.

Note: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* applies to approved forms under this section.

(7) In this section:

first instalment period, in a year of tax, means the instalment period ending at the end of September in that year.

second instalment period, in a year of tax, means the instalment period ending at the end of December in that year.

third instalment period, in a year of tax, means the instalment period ending at the end of March in that year.

98B Instalment transfer interest charge—amount

(1) The instalment transfer interest charge on an amount of instalment transfer excess, for a day in an instalment transfer charge period, is worked out by multiplying the rate worked out under subsection (2) by the sum of the following amounts:

(a) the instalment transfer tax; and

(b) the instalment transfer interest charge payable on the excess for the previous days in the instalment transfer charge period.

(2) The rate is:

$$\frac{\text{Base interest rate for the day}}{\text{Number of days in the calendar year}}$$

(3) In this section:

base interest rate, for a day, has the meaning given by section 8AAD of the *Taxation Administration Act 1953*.

instalment transfer tax is the amount worked out by multiplying the instalment transfer excess by the rate at which tax is imposed by the *Petroleum Resource Rent Tax Act 1987* in relation to the year of tax in which the instalment period to which the excess relates occurred.

98C Instalment transfer interest charge—notification and payment

Notice of charge payable

(1) The Commissioner must give a liable person a notice stating the amount of instalment transfer interest charge that the liable person is liable to pay for an instalment transfer charge period.

(2) The notice may be included in any other notice given to the liable person by the Commissioner.

(3) A notice given by the Commissioner under this section is prima facie evidence of the matters stated in the notice.

Note: See also section 106.

When payment is due

(4) An amount of instalment transfer interest charge that the liable person is liable to pay is due and payable on the 21st day after the day on which the Commissioner gives the liable person notice of the amount of the charge under this section.

Note: The Commissioner may defer the time at which the charge is, or would become, due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

98D Instalment transfer interest charge—remission

Remitting the charge

(1) The Commissioner may remit the whole or a part of an amount of instalment transfer interest charge that a liable person is liable to pay if the Commissioner considers it fair and reasonable to do so.

Reasons for not remitting

(2) The Commissioner must give the liable person a written statement of the reasons for a decision not to remit an amount of instalment transfer interest charge that the liable person is liable to pay, if the liable person requests the Commissioner, in the approved form, to remit the amount.

Note 1: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.

Note 2: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* applies to approved forms under this section.

Objecting against remission decision

(3) The liable person may object, in the manner set out in Part IVC of the *Taxation Administration Act 1953*, against a decision of the Commissioner not to remit an amount of instalment transfer interest charge that the liable person is liable to pay.

Taxation Administration Act 1953

11 Subsection 250-10(2) in Schedule 1 (after table item 45)

Insert:

45A	instalment transfer interest charge	98C(4)	*Petroleum Resource Rent Tax Assessment Act 1987*

Part 2—Application of amendments

12 Application

The amendments made by Part 1 of this Schedule apply only in relation to instalment transfers under the *Petroleum Resource Rent Tax Assessment Act 1987* for financial years that start on or after 1 July 2006.

Schedule 2—Group company transferable exploration expenditure continuity of interest rule

Part 1—Amendments

Petroleum Resource Rent Tax Assessment Act 1987

1 Subclause 22(4) of the Schedule

Omit "starting day in relation to the transferring entity occurred", substitute "expenditure was incurred".

2 Clause 31 of the Schedule

Repeal the clause, substitute:

31 Rule—continuity of interest within company group

Main rule

(1) The loss company may transfer the expenditure to the profit company in relation to the receiving project and the transfer year only if:

(a) from the start of the financial year in which the expenditure was actually incurred, until the end of the transfer year—the company which held the receiving interest at any particular time was, at that time:

(i) a group company in relation to the company which held the loss interest at that time; or

(ii) unless the time is at the end of the transfer year—the company which held the loss interest at that time; and

(b) when the expenditure was actually incurred:

(i) unless section 41 applies to the expenditure—the company which actually incurred the expenditure held the loss interest in the transferring entity; or

(ii) if section 41 applies to the expenditure—the company taken under paragraph 41(1)(b) to have incurred the liability for making the expenditure held the loss interest in the transferring entity.

Receiving project or transferring entity not in existence at particular time

(2) For the purposes of subclause (1):

(a) if the starting day for the receiving project was after the start of the financial year in which the expenditure was incurred—during the period from the start of that year until the start of the starting day, the company which held the receiving interest at the start of the starting day is taken to have held the receiving interest; and

(b) if the finishing day for the receiving project was before the end of the transfer year—during the period from the start of the finishing day until the end of the transfer year, the profit company is taken to have held the receiving interest; and

(c) if the starting day for the transferring entity was after the start of the financial year in which the expenditure was incurred—during the period from the start of that year until the start of the starting day, the company which held the loss interest at the start of the starting day is taken to have held the loss interest; and

(d) if the finishing day for the transferring entity was before the end of the transfer year—during the period from the start of the finishing day until the end of the transfer year, the loss company is taken to have held the loss interest.

Starting day for receiving project in later financial year than when expenditure actually incurred

(3) If the starting day for the receiving project was in a later financial year than the financial year in which the expenditure was incurred, the loss company may transfer the expenditure only if (in addition to the other requirements of this clause) the company which held the receiving interest at the start of the starting day was the company which had been granted the exploration permit by reference to which the starting day is determined.

Definitions

(4) In this clause:

loss interest means an interest held in the transferring entity by the loss company:

(a) at the end of the transfer year; or

(b) if the finishing day for the transferring entity was before the end of the transfer year—immediately before the start of the finishing day.

receiving interest means an interest held in the receiving project by the profit company:

(a) at the end of the transfer year; or

(b) if the finishing day for the receiving project was before the end of the transfer year—immediately before the start of the finishing day.

Part 2—Application of amendments

3 Application—years of tax that start on or after 1 July 2006

The amendments made by Part 1 of this Schedule apply only in relation to instalments and assessments of tax under the *Petroleum Resource Rent Tax Assessment Act 1987* for financial years that start on or after 1 July 2006.

4 Application—pre-1 July 2006 expenditure

(1) Transferable exploration expenditure that was actually incurred before 1 July 2006 may, unless subitem (2), (3) or (4) applies, be transferred in relation to a transfer year that starts on or after 1 July 2006 from one company (the ***loss company***) to another company (the ***profit company***) in relation to a petroleum project (the ***receiving project***) in which the profit company holds (or has held) an interest (the ***receiving interest***).

(2) The expenditure cannot be transferred if new clause 31, or any other provision of the *Petroleum Resource Rent Tax Assessment Act 1987* (as amended by this Act), prevents the transfer.

(3) If the starting day for the receiving project was before 1 July 2006, the expenditure cannot be transferred if old clause 31 would have prevented the transfer of the expenditure, in relation to the transfer year starting on 1 July 2005, from the company which actually incurred the expenditure to the company which held the receiving interest at the end of that year.

(4) If the starting day for the receiving project was on or after 1 July 2006, the expenditure cannot be transferred if paragraph 31(1)(a) of the old clause 31, subject to subclauses (2), (2AA), (2AB) and (2A) of that clause, did not, in relation to the transfer year starting on 1 July 2005, apply to the company which actually incurred the expenditure.

(5) If section 41 of the *Petroleum Resource Rent Tax Assessment Act 1987* applies to the expenditure, a reference in subitem (3) or (4) to the company which actually incurred the expenditure is taken to be a reference to the company taken under paragraph 41(1)(b) of the Act to have incurred the liability for making the expenditure.

(6) An expression used in this item has the same meaning as in Part 6 of the Schedule to the *Petroleum Resource Rent Tax Assessment Act 1987*.

(7) In this item:

new clause 31 means clause 31 of the Schedule to the Petroleum Resource Rent Tax Assessment Act 1987, as amended by Part 1 of this Schedule.

old clause 31 means clause 31 of the Schedule to the Petroleum Resource Rent Tax Assessment Act 1987, as in force immediately before 1 July 2006.

Schedule 3—Deducting closing-down costs for conversion of production licence to infrastructure licence

Part 1—Amendments

Petroleum Resource Rent Tax Assessment Act 1987

1 Section 2

Insert:

> ***future closing-down expenditure*** has the meaning given by section 2D.

2 Section 2

Insert:

> ***infrastructure licence*** means an infrastructure licence under Part III of the *Petroleum (Submerged Lands) Act 1967*.

3 Section 2 (definition of *infrastructure licence*)

Repeal the definition, substitute:

> ***infrastructure licence*** has the meaning given by section 6 of the *Offshore Petroleum Act 2006*.

Note: This item commences immediately after the commencement of Chapter 2 of the *Offshore Petroleum Act 2006*. See table item 4 in subsection 2(1) of this Act.

4 Section 2

Insert:

> ***licensed property***, in relation to a petroleum project, has the meaning given by paragraph 2D(1)(b).

5 Before section 3

Insert:

2D Future closing-down expenditure

(1) A person has ***future closing-down expenditure*** in relation to a petroleum project if:

(a) the project terminates on the cessation of one or more production licences; and

(b) on that termination, an infrastructure licence comes into force, or continues in force, permitting the use of any part (the ***licensed property***) of the operation, facilities and other things that comprised the project immediately before the termination; and

(c) but for the continued use of the licensed property (as permitted by the infrastructure licence) after that termination, the person would have incurred closing-down expenditure in relation to the project, with respect to the licensed property.

(2) The amount of the person's future closing-down expenditure is worked out as follows:

$$\frac{\text{Future closing down costs}}{(1.02 + \text{Bond rate})^{\text{Years of operation}}}$$

where:

bond rate is the long-term bond rate in relation to the financial year during which the project terminates.

future closing-down costs is the payments (not being excluded expenditure), whether of a capital or revenue nature, that the person would expect:

(a) the person; or

(b) another person who becomes responsible for carrying on operations involved in closing down the licensed property;

to be liable to make in carrying on operations involved in closing down the licensed property. It includes any environmental restoration as a consequence of closing down the licensed property.

years of operation is the number of years after the termination of the project over which the licensed property is expected to be used as permitted by the infrastructure licence.

(3) For the purposes of the definition of ***future closing-down costs*** in subsection (2), if the person intends to make alterations or

additions to the licensed property after the termination of the project, the payments referred to in that definition are to be disregarded to the extent that they relate to the alterations or additions.

(4) In subsection (2):

year means a period of 12 calendar months.

Example: On the termination of a petroleum project and the coming into force of an infrastructure licence, a person has future closing-down costs of $1 million. The licensed property is expected to be used as permitted by the infrastructure licence for 10 years, and the bond rate in relation to the financial year in question is 5%.

The amount of the person's future closing-down expenditure is:

$$\frac{\$1{,}000{,}000}{(1.02 + 0.05)^{10}} = \$508{,}349$$

6 At the end of section 27

Add:

(3) Any future closing-down expenditure in relation to licensed property and a petroleum project must be taken into account in working out the assessable property receipts derived by a person in relation to the project to the extent that the assessable property receipts are worked out under paragraph (1)(b) in relation to the termination of the use of the licensed property.

(4) Assessable property receipts worked out under paragraph (1)(b) are taken to be zero if future closing-down expenditure taken into account under subsection (3) equals or exceeds what would have been those assessable property receipts if the future closing-down expenditure was not taken into account.

Note: In this case, an extra amount may be included in the person's closing-down expenditure in relation to the project: see subsection 39(3).

7 Section 39

Before "For the purposes of", insert "(1)".

8 At the end of section 39

Add:

(2) For the purposes of this Act, if:

(a) on the termination of a petroleum project, a person disposes of all of the person's property in respect of which the person incurred capital expenditure that is eligible real expenditure in relation to the project; and

(b) there is no consideration receivable by the person in respect of the disposal;

a reference to the closing-down expenditure incurred by the person in relation to the project includes a reference to any consideration given by the person for the disposal, to the extent that the consideration relates to the future closing-down expenditure in relation to the project.

(3) For the purposes of this Act, if a person's assessable property receipts under paragraph 27(1)(b) in relation to a petroleum project are taken to be zero because of subsection 27(4), a reference to closing-down expenditure incurred by a person in relation to the project includes a reference to an amount equal to the difference between:

(a) the future closing-down expenditure in relation to the project; and

(b) the amount that would, but for subsections 27(3) and (4), have been the person's assessable property receipts in relation to the project.

Example: A production licence of Petgas Ltd ceases to be in force on 24 October 2006, but the use of some facilities of the petroleum project in question continues to be permitted by an infrastructure licence that comes into force on that day. The value of the facilities on that day is $240,000, but there are future closing-down costs that result in Petgas Ltd having a future closing-down expenditure of $360,000.

Under subsection 27(4), Petgas Ltd's assessable property receipts under paragraph 27(1)(b) are taken to be zero. In addition, Petgas Ltd's closing-down expenditure includes an amount of $120,000 (the difference between its future closing-down expenditure and the actual value of the facilities).

(4) Closing-down expenditure in relation to a petroleum project does not include closing-down expenditure in relation to operations, facilities or other things comprising the project to the extent that:

(a) the person has previously had assessable property receipts under paragraph 27(1)(a) in relation to the project and the consideration referred to in that paragraph took into account

future closing-down expenditure that relates to those operations, facilities or other things; or

(b) the person has previously had assessable property receipts under paragraph 27(1)(b) in relation to the project and such future closing-down expenditure was taken into account in working out those assessable property receipts; or

(c) the person has previously had closing-down expenditure in relation to the project that included such future closing-down expenditure.

However, this subsection does not apply if there has been a change in the ownership of those operations, facilities or other things after the assessable property receipts or closing-down expenditure arose.

Part 2—Application of amendments

9 Application

The amendments made by Part 1 of this Schedule apply only in relation to assessments of tax under the *Petroleum Resource Rent Tax Assessment Act 1987* for financial years that start on or after 1 July 2006.

Schedule 4—Self-assessment

Part 1—Amendments

Petroleum Resource Rent Tax Assessment Act 1987

1 Section 2 (paragraph (a) of the definition of *assessment*)

Repeal the paragraph, substitute:

(a) the ascertainment of the amount of a person's taxable profit (or that a person has no taxable profit) in relation to a year of tax and a petroleum project, and of the tax payable on that amount (or that no tax is payable); or

2 Section 2

Insert:

related charge means:

(a) shortfall interest charge, or general interest charge, in relation to tax; or

(b) instalment transfer interest charge in relation to an instalment of tax.

3 Section 2

Insert:

shortfall interest charge means the charge worked out under Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

4 Section 54

Repeal the section.

5 At the end of section 59

Add:

Note 1: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* applies to approved forms under this section.

Note 2: Under Divisions 357 to 360 in Schedule 1 to the *Taxation Administration Act 1953*, the Commissioner may make a ruling about the application of this Act as it affects a person's tax liability.

6 Before paragraph 60(2)(a)

Insert:

(aa) be in the approved form; and

7 At the end of paragraph 60(2)(a)

Add “and”.

8 At the end of section 60

Add:

Note: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* applies to approved forms under this section.

9 Section 61

Repeal the section.

10 Division 2 of Part VI

Repeal the Division, substitute:

Division 2—Assessments (general)

61 Making assessments

The Commissioner must, from returns and any other information in the Commissioner’s possession, make an assessment of the amount of a person’s taxable profit (or that a person has no taxable profit) in relation to a year of tax and a petroleum project, and of the tax payable on that amount (or that no tax is payable).

62 Self-assessment

(1) This section applies if:

(a) at a particular time, a person gives a return to the Commissioner in relation to a year of tax and a petroleum project; and

(b) before that time, no return has been given, and no assessment has been made, in relation to the person, the year of tax and the project.

(2) The Commissioner is taken to have made an assessment of the amount of the person’s taxable profit (or that the person has no

taxable profit) in relation to the year of tax and the project, and of the tax payable on that amount (or that no tax is payable), in accordance with what the person specified in the return.

(3) The assessment is taken to have been made on the day the return is given to the Commissioner.

(4) On and after the day the Commissioner is taken to have made the assessment, the return is taken to be a notice of the assessment:
   (a) under the hand of the Commissioner; and
   (b) given to the person on the day the Commissioner is taken to have made the assessment.

63 Default assessments

(1) The Commissioner may make an assessment of the amount of a person's taxable profit (or that a person has no taxable profit) upon which, in the opinion of the Commissioner, tax is payable by the person, and of the amount of that tax (or that no tax is payable), if:
   (a) the person makes default in giving a return to the Commissioner; or
   (b) the Commissioner is not satisfied with the person's return; or
   (c) the person has not given a return to the Commissioner, and the Commissioner has reason to believe that the person is liable to pay tax.

(2) As soon as practicable after an assessment under subsection (1) is made, the Commissioner must give notice in writing of the assessment to the person.

64 Reliance on information in returns and statements

(1) The Commissioner may accept (in whole or in part) the following for the purposes of making an assessment in relation to a person, a year of tax and a petroleum project:
   (a) a statement in a return of the assessable receipts, deductible expenditure or transferable exploration expenditure in relation to the project;
   (b) any other statement in the return, or otherwise, made by or on behalf of the person.

(2) In determining whether an assessment is correct, any determination, opinion or judgment of the Commissioner made, held or formed in connection with the consideration of an objection against the assessment is taken to have been made, held or formed when the assessment was made.

65 Validity of assessments

The validity of an assessment is not affected by a failure to comply with this Act.

66 Objections to assessments

(1) A person who is dissatisfied with an assessment made in relation to the person may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

(2) A person cannot object against an assessment ascertaining that no tax is payable by the person in relation to a year of tax and a petroleum project, unless the person is seeking an increase in the person's tax liability.

Division 3—Assessments (amendment)

67 Amendment of assessments

(1) The Commissioner may amend an assessment in relation to a person within 4 years after the day on which notice of the assessment was given to the person.

Note 1: If a person's return is taken to be an assessment under section 62, the Commissioner is taken to have given a notice of assessment to the person on the day the person gave the return to the Commissioner: see subsection 62(4).

Note 2: The amendment period may be extended: see sections 69, 70 and 71.

(2) In addition, the Commissioner may amend an assessment at any time:

(a) if he or she is of the opinion there has been fraud or evasion; or

(b) to give effect to a decision on a review or appeal; or

(c) as a result of an objection, or pending a review or appeal; or

(d) to give effect to a determination under paragraph 53(1)(c); or

(e) to take account of the operation of subsection 5(4), 20(8), 45A(3), 45B(3) or 45C(6).

(3) As soon as practicable after the Commissioner amends an assessment in relation to a person, the Commissioner must give notice in writing of the amended assessment to the person.

Note: This section applies to assessments even if no tax is payable: see the definition of ***assessment*** in section 2.

68 Amended assessments taken to be assessments

An amended assessment is taken to be an assessment for the purposes of this Act, except as otherwise provided.

69 Amending amended assessments

Limit on amending amended assessments under subsection 67(1)

(1) The Commissioner cannot amend an amended assessment under subsection 67(1) if the period mentioned in that subsection in relation to the original assessment concerned has ended.

Note: The Commissioner may amend amended assessments at any time if subsection 67(2) applies.

Refreshed amendment period for amending amended assessments

(2) The Commissioner may amend an amended assessment (the ***earlier amended assessment***), to increase a person's liability in relation to a particular, within 4 years after the day the Commissioner gave the person notice of the earlier amended assessment, if:

(a) the earlier amended assessment reduced the person's liability in relation to the particular; and

(b) the Commissioner accepted a statement made by the person in making the earlier amended assessment.

(3) The Commissioner may also amend an amended assessment (the ***earlier amended assessment***), to reduce a person's liability in relation to a particular, within 4 years after the day the Commissioner gave the person notice of the earlier amended assessment, if:

(a) the earlier amended assessment increased the person's liability in relation to the particular; or

(b) the earlier amended assessment reduced the person's liability in relation to the particular, but paragraph (2)(b) does not apply.

(4) The Commissioner cannot amend an assessment under subsection (3) in relation to a particular if the Commissioner has previously amended an assessment under subsection (2) in relation to that particular.

Note 1: The earlier amended assessment may be an amendment of the original assessment or of a previous amendment of the original assessment.

Note 2: The Commissioner may amend the earlier amended assessment at any time if subsection 67(2) applies.

Note 3: The amendment period mentioned in this section may be extended under section 70.

70 Extended periods for amendment—taxpayer applications and private rulings

Taxpayer applications

(1) The Commissioner may amend an assessment in relation to a person after the end of the limited amendment period if the person applied for the amendment in the approved form before the end of the period.

Private rulings

(2) The Commissioner may amend an assessment in relation to a person after the end of the limited amendment period if:

(a) the person applied for a private ruling under Division 359 in Schedule 1 to the *Taxation Administration Act 1953* before the end of the period; and

(b) the Commissioner made a private ruling under that Division; and

(c) the amendment gives effect to the ruling.

(3) In this section:

limited amendment period, for the amendment of an assessment, means the period mentioned in subsection 67(1) or 69(2) or (3) for the amendment of the assessment.

71 Extended periods for amendment—Federal Court orders and taxpayer consent

(1) This section applies if:
  (a) the Commissioner has started to examine the affairs of a person in relation to an assessment; and
  (b) the Commissioner has not completed the examination before the end of the limited amendment period, or that period as extended under this section.

(2) The limited amendment period is extended for an additional period if:
  (a) on an application by the Commissioner before the end of the limited amendment period (or that period as extended under this section), the Federal Court of Australia orders the extension for the additional period; or
  (b) before the end of the limited amendment period (or that period as extended under this section):
    (i) the Commissioner requests the person to consent to the extension of the limited amendment period; and
    (ii) the person, by notice in writing, consents to the extension for the additional period.

(3) The Federal Court of Australia may order an extension of the limited amendment period under paragraph (2)(a) only if the Court is satisfied that it was not reasonably practicable, or that it was inappropriate, for the Commissioner to complete the examination within the limited amendment period (or that period as extended under this section), because of:
  (a) any action taken by the person; or
  (b) any failure of the person to take action that would have been reasonable for the person to take.

(4) The limited amendment period may be extended more than once under this section.

(5) In this section:

limited amendment period, for the amendment of an assessment, means the period mentioned in subsection 67(1) or 69(2) or (3) for the amendment of the assessment.

72 Refund of overpaid amounts

(1) If, because of an amendment of an assessment, a person's liability (the ***earlier liability***) to tax or a related charge is reduced, the amount by which the tax or charge is so reduced is taken never to have been payable for the purposes of:

(a) section 85 (which applies the general interest charge); and

(b) Division 280 in Schedule 1 to the *Taxation Administration Act 1953* (which applies the shortfall interest charge).

Note: The general interest charge is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.

(2) The Commissioner must refund or apply the amount of any tax overpaid in accordance with Divisions 3 and 3A of Part IIB of the *Taxation Administration Act 1953*.

(3) However, if a later amendment of the assessment is made and all or some of the person's earlier liability in relation to a particular is reinstated, subsection (1) is taken not to have applied, or not to have applied to the extent that the earlier liability is reinstated.

Note: If the amendment of an assessment results in an increase in a person's tax liability, the person is liable to pay shortfall interest charge on the amount of the increase: see Division 280 in Schedule 1 to the *Taxation Administration Act 1953*.

11 Section 82

Repeal the section, substitute:

82 When tax and shortfall interest charge payable

Self-assessment and default assessment

(1) Tax assessed in relation to a year of tax in accordance with an assessment under Division 2 of Part VI in relation to a person is due and payable by the person on the 60th day after the end of the year of tax.

Amended assessments

(2) Tax assessed in relation to a year of tax in accordance with an amended assessment in relation to a person is due and payable on the later of the following days:

(a) the 21st day after the day on which the Commissioner gives the person notice of the amended assessment;

(b) the 60th day after the end of the year of tax.

Shortfall interest charge

(3) Shortfall interest charge payable by a person in relation to an assessment is due and payable on the 21st day after the day on which the Commissioner gives the person notice of the amount of the charge.

Note 1: The Commissioner may defer the time at which tax or the shortfall interest charge is, or would become, due and payable: see section 255-10 in Schedule 1 to the *Taxation Administration Act 1953*.

Note 2: For provisions about collection and recovery of tax or the shortfall interest charge, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

12 Subsection 85(1)

Repeal the subsection, substitute:

(1) A person is liable to pay the general interest charge on any amount of any of the following that remains unpaid after the time by which payment is due:

(a) tax the person is liable to pay;

(b) shortfall interest charge the person is liable to pay in relation to tax;

(c) instalment transfer interest charge the person is liable to pay in relation to an instalment of tax.

Note: The general interest charge is worked out under Division 1 of Part IIA of the *Taxation Administration Act 1953*.

Note: The heading to section 85 is altered by adding at the end "**and charges**".

13 Paragraph 85(2)(a)

After "tax", insert ", shortfall interest charge or instalment transfer interest charge".

14 Subparagraphs 85(2)(b)(i) and (ii)

After "tax", insert ", shortfall interest charge or instalment transfer interest charge".

15 Subsections 85(3) and (4)

Repeal the subsections.

16 Subsection 92(1)

After “tax” (first occurring), insert “or related charge”.

17 Subsection 92(1)

After “tax” (second occurring), insert “or charge”.

18 Paragraphs 92(1)(a) and (b)

After “tax”, insert “or charge”.

19 Subsection 92(4)

Repeal the subsection.

20 Paragraph 109(2)(b)

After “tax”, insert “or related charge”.

21 Paragraphs 109(3)(a) and (b)

After “tax”, insert “or charge”.

22 Subsection 109(4)

After “tax” (first occurring), insert “or charge”.

23 Subsection 109(4)

After “tax” (last occurring), insert “or related charge”.

24 Subsection 109(5)

Repeal the subsection.

Taxation Administration Act 1953

25 After paragraph 14ZW(1)(ba)

Insert:

(bb) if the taxation objection is made under section 66 of the *Petroleum Resource Rent Tax Assessment Act 1987* to an assessment under that Act—4 years after notice of the assessment is given to the person; or

26 After subsection 14ZW(1A)

Insert:

(1AA) The person cannot lodge a taxation objection against a private ruling that relates to a year of tax and a petroleum project under the *Petroleum Resource Rent Tax Assessment Act 1987* after the end of whichever of the following ends last:

(a) the 60 days after the ruling was made;

(b) the 4 years after the last day allowed to the person for lodging a return in relation to the year of tax and the project.

27 Paragraph 14ZW(1B)(b)

Omit "or (ac)", substitute ", (ac) or (bb)".

28 Section 280-1 in Schedule 1

After "income tax", insert "or petroleum resource rent tax".

29 Section 280-50 in Schedule 1

After "income tax", insert "or *petroleum resource rent tax".

30 Section 280-100 in Schedule 1 (heading)

Repeal the heading, substitute:

280-100 Liability to shortfall interest charge—income tax

31 Subsections 280-100(4) and (5) in Schedule 1

Repeal the subsections.

32 After section 280-100 in Schedule 1

Insert:

280-102 Liability to shortfall interest charge—petroleum resource rent tax

(1) You are liable to pay *shortfall interest charge on an additional amount of *petroleum resource rent tax that you are liable to pay because the Commissioner amends your assessment under the *Petroleum Resource Rent Tax Assessment Act 1987* for a year of tax (within the meaning of that Act).

(2) The liability is for each day in the period:

(a) beginning at the start of the day on which *petroleum resource rent tax under your first assessment for that year of tax was due to be paid, or would have been due to be paid if there had been any; and

(b) ending at the end of the day before the day on which the Commissioner gave you notice of the amended assessment.

(3) However, if an amended assessment reinstates all or part of a liability in relation to a particular that had been reduced by an earlier amended assessment, the period for the reinstated liability begins at the start of the day on which *petroleum resource rent tax under the earlier amended assessment was due to be paid, or would have been due to be paid if there had been any.

Note: See section 82 of the *Petroleum Resource Rent Tax Assessment Act 1987* for when the amount of petroleum resource rent tax and shortfall interest charge becomes due and payable. Section 85 of that Act provides for general interest charge on any part of the additional amount (plus any shortfall interest charge) that remains unpaid after the additional amount is due and payable.

280-103 Liability to shortfall interest charge—general

(1) Your liability to pay *shortfall interest charge exists whether or not you are liable to any penalty under this Act.

(2) Neither the Commonwealth nor an authority of the Commonwealth is liable to pay *shortfall interest charge.

33 Paragraph 280-105(1)(a) in Schedule 1

After “income tax”, insert “or *petroleum resource rent tax”.

34 At the end of subsection 280-110(1) in Schedule 1

Add “or 280-102”.

35 Section 280-170 in Schedule 1

After “income tax” (first occurring), insert “, or *petroleum resource rent tax,”.

36 Section 280-170 in Schedule 1

Omit “of income tax” (last occurring).

37 After paragraph 357-55(f) in Schedule 1

Insert:

(fa) *petroleum resource rent tax;

Part 2—Application of amendments

38 Application

The amendments made by Part 1 of this Schedule apply only in relation to returns and assessments of tax, and instalments of tax, under the *Petroleum Resource Rent Tax Assessment Act 1987* for financial years that start on or after 1 July 2006.

Schedule 5—Other amendments

Part 1—Amendments

Petroleum Resource Rent Tax Assessment Act 1987

1 Subsection 2B(5)

Omit “Subject to subsections (6) and (7), for”, substitute “For”.

2 Subsections 2B(6) and (7)

Repeal the subsections.

3 Subsection 17(3) (penalty)

Omit “$10,000”, substitute “100 penalty units”.

4 Paragraph 24(1)(b)

After “sales gas”, insert “to which paragraph (d) applies”.

5 Paragraph 24(1)(c)

After “sales gas”, insert “to which paragraph (e) applies”.

6 Paragraph 24(1)(d)

Repeal the paragraph, substitute:

(d) where:

(i) any sales gas produced from petroleum from the project becomes or became an excluded commodity by virtue of being sold; and

(ii) the sale is a non-arm’s length transaction; and

(iii) the regulations apply to the sales gas;

the amount worked out in accordance with the regulations; and

7 Paragraph 24(1)(e)

Omit “any sales gas produced from petroleum from the project”, substitute “the regulations apply to any sales gas produced from petroleum from the project, and that sales gas”.

8 Paragraph 44(h)

Omit ", the *Income Tax Assessment Act 1997* or the *Fringe Benefits Tax Assessment Act 1986*", substitute "or the *Income Tax Assessment Act 1997*".

9 Paragraph 45A(3)(a)

Omit "42 days", substitute "60 days".

10 Subsection 45A(5)

Repeal the subsection, substitute:

(5) A person commits an offence if the person contravenes this section.

Penalty: 20 penalty units.

11 Paragraph 45B(3)(a)

Omit "42 days", substitute "60 days".

12 Subsection 45B(5)

Repeal the subsection, substitute:

(5) A person commits an offence if the person contravenes this section.

Penalty: 20 penalty units.

13 At the end of section 48

Add:

(3) The vendor must give written notice of the transaction, in the approved form, to each purchaser before the end of the later of the following days:
  (a) the 60th day after entering into the transaction;
  (b) the 60th day after the purchasers give consideration for the entitlement and property.

Note: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* applies to approved forms under this subsection.

14 At the end of section 48A

Add:

Transfer notice to be given to purchasers

(11) The vendor must give written notice of the transaction, in the approved form, to each purchaser before the end of the later of the following days:

(a) the 60th day after the transfer time;

(b) the 60th day after the purchaser gives consideration for the transfer of the part of the entitlement.

Note: Subdivision 388-B in Schedule 1 to the *Taxation Administration Act 1953* applies to approved forms under this subsection.

15 Subsection 59(1)

Omit “42 days”, substitute “60 days”.

16 At the end of section 59

Add:

(3) A return under this section in relation to a petroleum project must be accompanied by a copy of any notice given to the person under subsection 48(3) or 48A(11) in relation to the project:

(a) since the person last gave the Commissioner a return under this section or section 60 in relation to the project; or

(b) if the person has not previously given a return to the Commissioner under this section or section 60 in relation to the project—since the person acquired an entitlement to derive assessable receipts in relation to the project.

17 At the end of section 60

Add:

(3) A return under this section in relation to a petroleum project must be accompanied by a copy of any notice given to the person under subsection 48(3) or 48A(11) in relation to the project:

(a) since the person last gave the Commissioner a return under this section or section 59 in relation to the project; or

(b) if the person has not previously given a return to the Commissioner under this section or section 59 in relation to the project—since the person acquired an entitlement to derive assessable receipts in relation to the project.

18 Subsection 106(2)

Omit "*prima facie*", substitute "conclusive".

19 Subsection 106(3)

Omit "or a notice of assessment", substitute ", a notice of assessment or a notice under section 98C".

20 After subsection 106(3)

Insert:

(3A) To avoid doubt, subsection (3) applies to a copy or an extract of a document that was given to the Commissioner on a data processing device or by way of electronic transmission, unless the person by whom the original of the document was purportedly authorised can show that the person did not authorise the document.

21 Subsection 106(4)

Omit "of tax or an amount payable by way of an instalment of tax or by way of penalty under section 85 or Part IX,", substitute "payable under a specified provision of this Act, or an amount of shortfall interest charge payable under the *Taxation Administration Act 1953*,".

22 Section 114

Omit "$500", substitute "5 penalty units".

Part 2—Application of amendments

23 Application

(1) The amendments made by items 13, 14, 16 and 17 apply only in relation to transactions entered into on or after 1 July 2006.

(2) The other amendments made by this Schedule apply only in relation to returns, assessments, notices and certificates under the *Petroleum Resource Rent Tax Assessment Act 1987* in relation to financial years that start on or after 1 July 2006.

[*Minister's second reading speech made in—*
House of Representatives on 25 May 2006
Senate on 15 June 2006]

(64/06)