

PS LA 2017/1 - Petroleum Resource Rent Tax: amendment period for transfers of exploration expenditure

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Petroleum Resource Rent Tax: amendment period for transfers of exploration expenditure

This Law Administration Practice Statement provides guidance to staff on the period within which a Petroleum Resource Rent Tax assessment can be amended to correct an error in a transfer of exploration expenditure.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What is this practice statement about?

This practice statement sets out the time limits in which a Petroleum Resource Rent Tax (PRRT) assessment may be amended to correct an error in the transfer of transferrable exploration expenditure (TEE).

Where a person in respect of a financial year has TEE, they are required to transfer as much of that expenditure as can be transferred in accordance with the rules set out in Part 5 of Schedule 1 to the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA).¹ A transfer of TEE is made by lodging a transfer notice not later than 60 days after the end of the financial year, or such later time as the Commissioner allows.² A purported transfer has no effect if it is not in accordance with the rules.³

Section 45B contains equivalent provisions in relation to the transfer of TEE between group companies.

Where a person fails to transfer TEE as required under sections 45A or 45B, the Commissioner may make the transfer under section 45C.

When the PRRT law was changed in 1991 to allow for the transfer of exploration expenditure, the Commissioner was given the power to amend an assessment at any time to give effect to the provisions of, inter alia, sections 45A, 45B or 45C (see former paragraph 64(7)(c)).

This power to amend at any time relates only to amounts of TEE that have not (or not properly) been transferred, as opposed to amounts purportedly transferred that were not TEE in the first place (for example, amounts properly classified as general project expenditure).

Upon the adoption of self-assessment in 2006, a number of changes were made to the amendment

provisions to replace three and six year periods with a standardised four years. The unlimited amendment period remained in relation to sections 45A, 45B and 45C with minor changes in wording (see paragraph 67(2)(e), paragraph 4.25 Explanatory Memorandum to the Petroleum Resource Rent Assessment Amendment Bill 2006).

With these changes, reference was made to particular subsections, rather than sections, of the provisions⁴ and the words 'to give effect to' became 'to take account of the operation of'. There is no indication in the explanatory materials that any change was intended to affect the amendment power.

However, the effect of the amendments is that an unlimited period of amendment is **not** available under the current law where the Commissioner transfers, under subsection 45C(2), an amount a person has failed to transfer, even though that transfer is taken to be a transfer under section 45A or 45B as the case requires (subsection 45C(4)). The reference in paragraph 67(2)(e) to subsection 45A(3) can only apply to taxpayer requested transfers and not to a Commissioner transfer even though it is taken to be a transfer under section 45A.

The Commissioner considers, if he grants an extension of time to lodge a transfer notice outside the four year period, and an amount has wrongly been transferred previously, he can amend to correct that error on the basis that to do so is part of [taking] 'account of the operation of' the relevant subsection (that is, subsection 45A(3) or 45B(3)).

2. When can you issue an amended assessment?

Except in the situations covered below in points 3, 4 or 5, you should issue an amended assessment to

¹ See section 45A of the PRRTAA. All legislative references are to the PRRTAA unless otherwise specified.

² See subsection 45A(3).

³ See subsection 45A(4).

⁴ Specifically, subsections 45A(3), 45B(3) or 45C(6).

correct an error in the transfer of TEE no later than four years after the relevant return has been lodged.⁵

3. When doesn't the four year time limit apply?

The four year time limit on issuing an amended assessment to correct an error in the transfer of TEE does not apply where any of the following occurs:

- an extension of time is granted to lodge a transfer notice outside of the four year period (see point 4)
- the Commissioner revokes a transfer of TEE under section 45C outside of the four year period (see point 5)
- the Commissioner is of the opinion that there has been fraud or evasion⁶
- an unlimited amendment period otherwise applies⁷, or
- the time limit is extended.⁸

4. Extension of time to lodge a transfer notice

You can amend an assessment at any time where all of the following conditions apply:

- a taxpayer has failed to transfer TEE in an earlier year of tax
- the taxpayer requests an extension of time to lodge a transfer notice under paragraph 45A(3)(a) or 45B(3)(a), and
- you grant an extension of time.⁹

5. Revocation of a section 45C transfer

You can amend an assessment to correct an error in the transfer of TEE at any time where all of the following conditions are met:

- there has been a failure to transfer TEE as required by section 45A or section 45B
- a transfer of TEE was made under subsection 45C(2) within the original four year period to remedy that failure
- you receive information not available at the time the transfer of TEE was made under subsection 45C(2) and had that information been available

⁵ See subsection 67(1). Where a person lodges a PRRT return, the Commissioner is taken to have made an assessment on the day the return is lodged and the return is taken to be a notice of the assessment given to the person. See subsections 62(3) and (4).

⁶ See paragraph 67(2)(a).

⁷ For example, see paragraphs 67(2)(b), (c) and (d).

⁸ See sections 70 and 71.

⁹ To take account of the operation of subsection 45A(3) or subsection 45B(3). See paragraph 67(2)(e).

at the time, the transfer would not have been made in the same way, and

- you revoke the transfer of TEE made under subsection 45C(2) and, if appropriate, make another transfer under subsection 45C(6).¹⁰

6. Examples

Example 1 – group company fails to transfer TEE

Taxpayer A was assessed for the 2010 year when it lodged its PRRT return for Project A on 30 August 2010. On 14 August 2015, another group company discovered that it had \$100,000 of TEE that it failed to transfer to Taxpayer A in relation to Project A under section 45B in the 2010 year. You can amend the assessment if you allow an extension of time to lodge a transfer notice. Absent an extension of time to lodge a transfer notice, the usual four year amendment period would apply.

Example 2 – purported transfer of excluded expenditure and TEE

Taxpayer A lodged its 2010 PRRT return for Project X, together with a transfer notice under section 45A for \$1,000,000 of TEE, on 30 August 2010. Five years later you discover that \$100,000 of the \$1,000,000 was excluded expenditure under paragraph 44(1)(j) and not TEE. Section 45A applies to the extent that Taxpayer A transferred its TEE (that is, \$900,000). None of the circumstances in point 3 apply. Therefore, the four year time limit applies and you cannot amend the assessment under section 67 to correct the \$100,000 error in the transfer.

Example 3 – purported transfer of excluded expenditure and no TEE

Taxpayer A lodged its 2010 PRRT return for Project X, together with a transfer notice under section 45A for \$100,000 of TEE on 30 August 2010. Five years later you discover that the whole \$100,000 was actually general project expenditure under subsection 38(1) and not TEE.

As Taxpayer A has no TEE in respect of the 2010 financial year, section 45A has no application and the taxpayer cannot take steps to rectify the incorrect transfer. Also, as none of the circumstances in point 3 apply, you cannot amend the assessment for Project X for the 2010 year to correct the error.

Example 4 – purported transfer is not in accordance with the rules in Part 5 of Schedule 1

Taxpayer A had \$100,000 of TEE that it purported to transfer to Project X pursuant to section 45A in the

¹⁰ To take account of the operation of subsection 45C(6). See paragraph 67(2)(e).

2010 year. The original assessment for Project X was made on 30 August 2010. Five years later it is discovered that the transfer was not in accordance with the rules in Part 5 of Schedule 1. The TEE should have instead been transferred to Project Y. The original assessment for Project Y for the 2010 year was also made on 30 August 2010. Taxpayer A requests that it be allowed to lodge a transfer notice late to transfer the TEE to Project Y to correct the error.

Pursuant to subsection 45A(4), the purported transfer to Project X was of no effect. You may accept the late lodgment of the transfer notice. You can amend the 2010 year assessments for both Project X and Project Y to take account of the operation of subsection 45A(3).

Example 5 – correct an error in a transfer made by the Commissioner

Taxpayer A lodged its 2008 PRRT return for Project X on 28 August 2008. In August 2010, you discover that

Taxpayer A has failed to transfer what you believe to be TEE of \$100,000 to Project X. You make a transfer of \$100,000 under subsection 45C(2) to correct Taxpayer A's failure to transfer TEE and issue an amended assessment to Taxpayer A for Project X.

In August 2015, you discover that \$10,000 of the \$100,000 was in fact excluded expenditure and not TEE. Had you been aware of this information at the time you made the transfer in August 2010, you would have transferred \$90,000 and not \$100,000. You can revoke the original transfer and make a transfer of \$90,000 to Project X and issue an amended assessment for the 2008 year to reduce the TEE by \$10,000 to take account of the operation of subsection 45C(6).

Date issued 8 November 2017

Date of effect 8 November 2017

References

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| Legislative references | PRRTAA 1987 PRRTAA 1987 Sch 1 Pt 5 PRRTAA 1987 38(1) PRRTAA 1987 44(1)(j) PRRTAA 1987 45A PRRTAA 1987 45A(3) PRRTAA 1987 45A(3)(a) PRRTAA 1987 45A(4) PRRTAA 1987 45B PRRTAA 1987 45B(3) PRRTAA 1987 45B(3)(a) PRRTAA 1987 45C PRRTAA 1987 45C(2) PRRTAA 1987 45C(4) PRRTAA 1987 45C(6) PRRTAA 1987 62(3) PRRTAA 1987 62(4) PRRTAA 1987 former 64(7)(c) PRRTAA 1987 67 PRRTAA 1987 67(1) PRRTAA 1987 67(2)(a) PRRTAA 1987 67(2)(b) PRRTAA 1987 67(2)(c) PRRTAA 1987 67(2)(d) PRRTAA 1987 67(2)(e) PRRTAA 1987 70 PRRTAA 1987 71 |
| Other references | Explanatory Memorandum to the Petroleum Resource Rent Tax Assessment Amendment Bill 2006 |
| Related public rulings | TR 2014/9 |

ATO references

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| ISSN | 2651-9526 |
| File no | 1-AUT73F8 |
| ATOlaw topic | Petroleum resource rent tax ~~ Transfer of expenditure ~~ Transfer of expenditure – general Petroleum resource rent tax ~~ Transfer of expenditure ~~ Transfer of expenditure - groups Petroleum resource rent tax ~~ Transfer of expenditure ~~ Other |

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