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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (2012 MEASURES NO. 5) BILL 2012:
MISCELLANEOUS AMENDMENTS TO THE TAXATION LAWS

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Deputy Prime Minister and Treasurer, the Hon Wayne Swan MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
GST Act	<i>A New Tax System (Goods and Services Act 1999)</i>
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
MRRT	Minerals Resource Rent Tax
MRRTA 2012	<i>Minerals Resource Rent Tax Act 2012</i>
MRRT(CATP) 2012	<i>Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012</i>
PRRT	Petroleum Resource Rent Tax
PRRTAA 1987	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
TAA 1953	<i>Taxation Administration Act 1953</i>
TIOEPA 1983	<i>Taxation (Interest on Overpayments and Early Payments) Act 1983</i>

General outline and financial impact

Miscellaneous amendments to the taxation laws

Schedule # makes miscellaneous amendments to the taxation laws as part of the Government's commitment to uphold the integrity of the taxation system.

Date of effect: The amendments in Part 1 will commence on 1 July 2012, and the amendments in Part 2 will commence on Royal Assent. These commencement dates are outlined in Chapter 1 of this explanatory memorandum.

Proposal announced: These amendments were foreshadowed by release in draft form on the Treasury website on 14 August 2012.

Financial impact: These amendments will have a negligible impact on revenue over the forward estimates.

Human rights implications: This Schedule does not raise any human rights issue. See *Statement of Compatibility with Human Rights* — Chapter 2, paragraphs 2.1 to 2.4.

Compliance cost impact: Negligible.

Chapter 1

Miscellaneous amendments to the taxation laws

Outline of chapter

1.1 Schedule 1 to this Bill makes miscellaneous amendments to various taxation laws.

Context of amendments

1.2 Amendments to the taxation laws, such as these, are periodically made to correct technical or drafting defects, remove anomalies and correct unintended outcomes in the tax legislation. Progressing such amendments gives priority to the care and maintenance of the tax system, as supported by a 2008 recommendation from the Tax Design Review Panel.

Summary of new law

1.3 These miscellaneous amendments address minor technical deficiencies and legislative uncertainties within several taxation laws.

1.4 Most of these miscellaneous amendments attend to issues which have been identified in the legislation affecting the Minerals Resource Rent Tax (MRRT) and the Petroleum Resource Rent Tax (PRRT).

Detailed explanation of new law

Part 1 – Amendments relating to resource rent taxation

Minerals Resource Rent Tax

1.5 The *Minerals Resource Rent Tax Act 2012* (MRRTA 2012) received Royal Assent on 29 March 2012. A number of amendments are

needed to correct minor technical errors in the drafting of that Act and associated Acts or to ensure that the legislation applies to mining projects in the way intended when it was enacted.

1.6 All references to provisions in this part of the Explanatory Memorandum refer to the MRRTA 2012, unless otherwise indicated.

Resource marketing operations

1.7 In working out what part of the sale price of their taxable resources, or things they produced using taxable resources, is attributable to the form and location of the resources at their valuation point (and is therefore mining revenue), miners have to make a number of assumptions (see subsection 30-25(4)). One of those assumptions is that a distinct and separate entity carried on the miner's downstream mining operations, its transformative operations, and its resource marketing operations. That contributes to ensuring that miners ascribe a fair amount to the cost of their operations when working out their mining revenue.

1.8 'Resource marketing operations' is defined to be operations that involve marketing, selling, shipping or delivering the taxable resources. The definition does not mention operations in relation to things produced using the taxable resources even though the assumption about resource marketing operations must also be made in working out the sale price of those things.

1.9 The amendments therefore extend the definition of 'resource marketing operations' to include operations that involve marketing, selling, shipping or delivering things produced using the taxable resources. That ensures that miners ascribe fair values to their resource marketing operations for things produced using taxable resources as well as to those operations for the resources themselves. [*Schedule #, item 5, subsection 30-25(7)*]

Recoups of mining expenditure that has been adjusted

1.10 Mining revenue includes amounts that recoup or offset amounts of mining expenditure (section 30-40). The amount included is reduced to reflect the extent to which the original expenditure was included in mining expenditure. However, this does not take into account adjustments made under Division 160.

1.11 Under Division 160, if there is a change in the circumstances affecting the amount of a previous item of mining expenditure an adjustment may be made so that, in net terms, the correct result is achieved. The amendments ensure that the amount of mining expenditure considered under subsection 30-40(2) is an amount that takes into account

any adjustments that have been made under Division 160. [*Schedule #, item 48, subsection 160-15(5)*]

1.12 A note is also added to subsection 30-40(2) to explain its interaction with Division 160. [*Schedule #, item 6, subsection 30-40(2)*]

Treatment of revenue from supplies deemed not to be initial supplies

1.13 The MRRTA 2012 includes some amounts in mining revenue that do not relate to a particular mining revenue event (that is, to a particular supply, export or use of taxable resources). It does that so that amounts received under a ‘take or pay’ contract are included in mining revenue even though the supply to which they relate has not yet occurred (or, indeed, might never occur).

1.14 One case where there might not be a particular mining revenue event is where a supply is made by a miner to another miner in the course of a mining venture in which each has a mining project interest. Such supplies are treated as not being initial supplies (see paragraph 30-20(2)(a)) and therefore cannot be mining revenue events (see subsection 30-15(1)). This can mean that each of those miners might have to include an amount in their mining revenue for the same taxable resources. That would be inconsistent with the intention to account for the full value of the resources at their valuation point, but not more.

1.15 Accordingly, the amendments ensure that an amount is not included in a miner’s mining revenue if the reason the amount does not relate to a particular mining revenue event is that it is received for a supply that paragraph 30-20(2)(a) treats as not being an initial supply. [*Schedule #, items 7 and 8, subsection 30-20(2)*]

Example 1.1 Integration agreement

Brian has a coal mining lease adjacent to Anthony’s coal mining lease. Brian’s lease is estimated to contain about one and a half times the amount of coal that Anthony’s lease contains but, for commercial and geological reasons, it makes sense to mine the coal on Anthony’s lease first. Therefore, they enter into an agreement under which they agree to mine all the coal on both leases as a single mining venture under a single mine plan. Brian will take 60 per cent of the coal extracted in each year and meet 60 per cent of the costs; Anthony will get the other 40 per cent of the coal and meet the other 40 per cent of the costs.

To compensate Anthony for all the coal initially coming from Anthony’s lease, they agree that each will pay \$2 for each tonne extracted during the year from the other’s lease.

The amounts Brian pays Anthony in the early years of extracting coal from their project will not be mining expenditure because they are

private mining royalties (see subsections 35-40(1) and 35-45(2)). The amendments ensure that they are also not mining revenue for Anthony, even though they do not relate to a particular mining revenue event (because the supplies from Anthony to Brian are treated as not being initial supplies).

Amounts included in expenditure due to changed use of starting base assets

1.16 A miner's mining expenditure is the sum of all the amounts under the Act. While most amounts of mining expenditure will be covered by Subdivision 35-A, some amounts of mining expenditure will arise under other parts of the Act.

1.17 A note at subsection 35-5(1) alerts readers that amounts arising as a result of adjustments under Division 160, specifying that these amounts can also be mining expenditure. However, amounts arising as a result of the changed use of starting base assets may also be mining expenditure and will be taken into account when calculating the sum of all mining expenditure to arrive at the miner's mining expenditure for a mining project interest.

1.18 An amendment is made to the note at subsection 35-5(1) to include a reference to amounts of mining expenditure arising as a result of the changed use of starting base assets under section 165-55. [*Schedule #, item 9, subsection 35-5(1) note*]

1.19 Similarly, an amendment is made to the note at subsection 70-35(1) to include a reference to amounts of pre-mining expenditure arising as a result of the changed use of starting base assets under section 165-55. [*Schedule #, item 12, subsection 70-35(1) note*]

The low-profit offset formula

1.20 Miners are not liable to pay MRRT if their mining profit for a year is under \$75 million. This is achieved by way of an offset that reduces their liability to nil if their mining profit is under that amount (see section 45-10).

1.21 To avoid a miner's liability rising from nil to the full amount if its mining profit rises above \$75 million by as little as \$1, the offset phases-in its liability over the next \$50 million in mining profits.

1.22 The threshold was amended in Parliament to increase it from the originally proposed \$50 million to its current \$75 million. The phasing-in of the full liability is still achieved over the next \$50 million. To phase-in a liability on \$75 million in mining profits over a \$50 million range, the

Parliamentary amendments added a factor of 3/2 to the end of the formula that works out the offset.

1.23 The formula also reduces the offset to account for MRRT allowances for the year (for example, allowances for starting base and State royalties). That ensures that the offset amount does not exceed the liability the miner would have had after taking those allowances into account.

1.24 Including the 3/2 factor at the end of the formula means that, as well as increasing the phasing-in rate, it also increases how much the offset is reduced because of the miner's allowances. The miner's allowances are not themselves increased, so that increase in the reduction they produce means that the miner's offset can be too low.

1.25 The amendments correct that problem by moving the 3/2 factor so that it only modifies the phasing-in part of the formula, and not also the reduction for the miner's allowances. *[Schedule #, item 10, formula in subsection 45-10(1)]*

1.26 Consequential amendments are made to examples that rely on the formula. *[Schedule #, items 11 and 64 to 66, examples to subsections 45-10(2) and 190-20(2)]*

Starting base

Definition of 'starting base asset'

1.27 Currently, an asset can be a 'starting base asset' even if it is not held by a miner on 1 July 2012. However, an asset that starts to be held after 1 July 2012 will not have a value that can be depreciated for MRRT purposes, which is the intended outcome. An unintended consequence of this is that the disposal of such an asset could be subject to a starting base adjustment that inappropriately includes an amount in mining revenue.

1.28 Amendments are made to limit the meaning of starting base asset to assets held immediately before 1 July 2012. *[Schedule #, item 14, subparagraphs 80-25(3)(b)(i) to (iv)]*

1.29 Further amendments are made to ensure that this change does not inappropriately exclude those rights or interests in a mining project interest that starts to exist on or after 1 July 2012 but originates from a pre-mining project interest that existed before that time. In these cases, the mining project interest is taken to be a continuation of the pre-mining project interest. The effect of this deeming is to mean that the mining project interest is taken to have existed at the time the pre-mining project interest existed and that the rights and interests in the mining project interest are taken to have been held by the entity that held the equivalent

rights and interests in the pre-mining project interest. [*Schedule #, item 15, subparagraphs 80-25(3A)*]

Example 1.2 Mining project interest originating from a pre-mining project interest that existed before 1 July 2012

James holds a pre-mining project interest on 1 July 2012. On 1 July 2013, James starts to have a mining project interest that originates from that pre-mining project interest. Even though the rights and interests that constitute the mining project interest did not exist immediately before 1 July 2012, those rights and interests are taken to have existed for the time that the rights and interests in the pre-mining project interest existed and to have been held by James for the period that he held the rights and interests that constituted the pre-mining project interest.

1.30 Additionally, amendments are made to ensure that interim expenditure that is incurred in relation to a pre-mining project interest can be attributed to the mining project interest that originates from it. [*Schedule #, items 21 to 24, subsections 90-45(1), (1A), (2) and 90-55(5)*]

Starting base adjustments and recoupments need to take into account reductions in starting base losses

1.31 The amount of a starting base adjustment is reduced to the extent that the decline in value of the asset has been ignored in working out a starting base loss for the mining project interest for that MRRT year or an earlier year. The reduction is calculated using the ‘sum of reductions’ formula at 165-15(2). However, this formula fails to take account of some of the circumstances in which the decline in value has been ignored in working out a starting base loss.

1.32 Starting base losses are extinguished or prevented from arising in several situations. When a miner decides to combine their interests, they give up the opportunity to realise starting base losses. Similarly, if the miner elects to use the simplified MRRT method, starting base losses are extinguished. Finally, if the suspension day for the mining project interest happens, then starting base losses are also extinguished.

1.33 Amendments are made to the section 165-15 to recognise the range of situations where the miner has given up their opportunity or is prevented from realising their starting base losses. [*Schedule #, items 49 and 50, subsection 165-15(1) and (2)*]

1.34 Similar to starting base adjustments, if a miner receives an amount for a starting base asset that is not part of a starting base adjustment event then the base value of the asset is reduced to the extent that there is an economic recoupment of the asset’s base value (section 90-65).

1.35 For the same reason that amendments are necessary to the starting base adjustments to account for the declines in value that have been ignored in working out a starting base loss, amendments are made to subsection 90-65 to ensure that the starting base recoupment rules recognise that some of the starting base may not have been realised by the miner. *[Schedule #, item 25, subsection 90-65(5)]*

The uplift of starting base losses

1.36 In a later MRRT year, the starting base loss includes any unused starting base loss for the mining project interest for the previous year, increased by an uplift factor. Under the market value approach to valuing the starting base, the uplift factor is based on index numbers that relate to quarters of the MRRT year.

1.37 However, under Division 190, a miner can have an MRRT year that is different from a financial year. That is, the miner is allowed to use a substituted account period for MRRT purposes. A consequence of this is that miners can have different uplift factors depending on their MRRT year. This is contrary to the approach taken in the income tax law and may cause unintended compliance and administration costs.

1.38 Amendments are made to the definition of ‘uplift factor’ in section 80-45(1) to replace ‘MRRT year’ with ‘relevant financial year’. The relevant financial year is either the MRRT year, where the MRRT year is the financial year, or, where the relevant financial year is not the MRRT year, the financial year corresponding to the MRRT year. *[Schedule #, item 17, subsection 80-45(1), paragraph (b) of the definition of ‘uplift factor’]*

Choosing the look back method of valuing starting base assets

1.39 A miner can choose to value starting base assets using ‘look back’ method. Like other choices about the way to value the starting base, the choice to use the look back method may need to be made before the ‘start time’, which is the time at which assets begin to be recognised as ‘starting base assets’. While other choices provide for this possibility, amendments are required to ensure that the look back choice can apply to those assets that are not yet, but may become, starting base assets. *[Schedule #, item 55, subsection 180-5(1)]*

Pre-mining profits

1.40 A pre-mining project interest can be assessed on any profit it makes. This is achieved by deeming the pre-mining project interest to be a mining project interest for the purpose of working out a MRRT liability.

1.41 However, pre-mining losses are ordinarily only available to be applied in working out a pre-mining loss allowance if the mining project interest originates from the pre-mining project interest.

1.42 An amendment is made to ensure that the notional mining project interest is taken to originate from the pre-mining project interest, so that any pre-mining losses of the interest can be used to offset against its profit. [*Schedule #, item 38, paragraph 140-10(2)(c)*]

Transferred pre-mining losses and combined mining project interests

1.43 When a miner is seeking to transfer a pre-mining loss to or from a combined interest, the pre-mining loss cap may apply in relation to a constituent interest to limit that transfer.

1.44 Section 115-55 is intended to limit the transfer of a pre-mining loss to/from a combined interest where the transfer would be capped if the interests had not been combined. However, there is some potential uncertainty as to the interaction between this provision and the rule under which the pre-mining loss cap arises (section 95-25).

1.45 The intention is that section 115-55 should operate to limit the transfer of a pre-mining loss *to the extent* that such a loss would have been limited by a pre-mining loss cap in relation to the constituent interests, as if those constituent interests had not combined. However, currently section 115-55 operates on the basis of a pre-mining loss of the combined mining project interest being entirely non-transferable because of such a cap. However, a pre-mining loss cap can operate to prevent the transfer of a *part* of a loss.

1.46 Amendments are made to section 115-55 to limit the transfer of a pre-mining loss to or from a combined project interest *to the extent* that such a loss would have been limited in relation to the constituent interests, as if those constituent interests had not combined. Additionally, amendments are made to ensure that section 115-55 can apply to a pre-mining loss of a pre-mining project interest, in addition to that of a mining project interest. [*Schedule #, item 33, section 115-55*]

Transfers and splits

1.47 The effect of transferring a mining project interest is that the mining project interest in the hands of the new miner is taken to be a continuation of the original miner's interest. Amounts of mining revenue, mining expenditure, royalty credits and allowance components arising in earlier years are all taken to be amounts of the new miner and the new interest.

1.48 Consistent with this ‘continuation’ principle, an amendment is made to provide that where a mining project interest is taken to have been transferred because of the start of a mining venture (under section 120-25) the amount of the pre-mining loss cap (if any) for the original interest also transfers to the new miner and the new interest. *[Schedule #, items 34 and 35, subsection 120-10(4) and its note]*

1.49 Similarly, the effect of splitting a mining project interest is that each split interest is taken to be a continuation of part of the original interest (according to a split percentage). Where a split occurs, and the new miner is the same entity as the original miner, an amendment is made to ensure that the amount of the pre-mining loss cap (if any) for the original interest continues to apply to the split interest (to the extent of the split percentage). *[Schedule #, item 36, subsection 125-10(4)]*

1.50 If the new miner is not the same entity as the original miner, a new pre-mining loss cap arises for the new interest under section 95-30 (the pre-mining loss cap). A note is added to notify readers of this outcome. *[Schedule #, item 37, subsection 125-10(4) note]*

1.51 Equivalent amendments are also made to deal with the transfer and split of a pre-mining project interest. A note is also added to notify readers that when a mining project interest originates from a pre-mining project interest, the origination is taken to be a transfer of the interest. *[Schedule #, items 39, 40 and 43, subsections 145-15(2), 145-15(2) (note) and 150-15(2)]*

Additional areas under changed or renewed exploration rights

1.52 Exploration rights are sometimes adjusted or renewed, in the course of which the area of the right can be changed. The MRRTA 2012 provides that, if such changes add an additional area, the additional area is treated as the project area for a separate pre-mining project interest. This ensures that the project area of a pre-mining project interest, to which certain losses are attached, does not expand.

1.53 There is an exception for additional areas that are insignificant. This avoids the need to incur the compliance costs that can be involved in accounting for a separate pre-mining project interest when the addition does not make much difference.

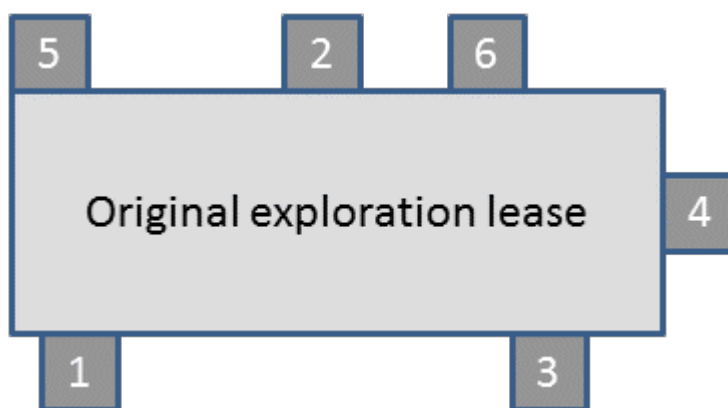
1.54 It is possible that an exploration right might be changed a number of times, each adding an insignificant area that, together, add up to a significant area. The MRRT deals with that by requiring that the significance of each additional area is judged taking into account all previously included insignificant additional areas.

1.55 However, the MRRT does not take into account any such already included area if it has previously prevented another additional area from being included. That produces unintended results because it allows the area of the exploration right to continue to grow even though the additional areas do add up to a significant addition.

1.56 The amendments correct that unintended result by removing the rule that prevents already added areas being taken into account in deciding whether another additional area is significant if they have already had that effect for an earlier additional area. [Schedule #, item 47, subsection 155-10(3)]

Example 1.3 Additional areas for an exploration right

Snakeoil Discoveries Pty Ltd is exploring for iron on an exploration lease. On six separate occasions, it sought and was granted minor extensions to the area of its exploration lease. Each of the additional areas is insignificant by itself but any three taken together would be significant.



Additional areas 1 and 2 are insignificant separately and together, so are added to the project area for the original pre-mining project interest. Additional area 3 is also insignificant on its own but, when taken together with areas 1 and 2, would be significant, so becomes the project area for a separate pre-mining project interest.

Additional areas 4 and 5 are again insignificant on their own, or taken together, but would be significant if taken together with already added areas 1 and 2. Under the current law, areas 1 and 2 could not be considered, so areas 4 and 5 would be added. Under the amendments, those areas are not added to the original project area.

Additional area 6 would be excluded under the current law because areas 4 and 5 would be taken into account in deciding that it is significant (even though areas 1 and 2 cannot be taken into account). The same result is achieved under the amendments because areas 1 and

2 are taken into account (areas 3, 4 and 5 are not because they were not added to the project area).

Combining mining project interests

1.57 Generally, a miner cannot combine mining project interests with starting bases unless it had each interest at all times from 2 May 2010 (section 115-35). This ensures that the starting base is not effectively transferrable between mining project interests.

1.58 However, a miner can choose to effectively extinguish its starting base assets in order to combine mining project interests. This is done by reducing the base value of all starting base assets to zero. However, this means that if a miner later sells such a starting base asset, the full sale proceeds will be included in mining revenue (under Division 165) even though the miner did not receive the full benefit of the starting base asset because its base value was reduced to zero. This is not the intended outcome.

1.59 Rather than reducing the base value of starting base assets, an amendment provides that the starting base *loss* of the combined interest for the relevant MRRT year or a later MRRT year will be reduced by the declines in value for the year of *any* starting base asset that does not comply with section 115-35. [*Schedule #, item 29, paragraph 115-15(2)(b)*]

1.60 Similarly, interests are only allowed to combine if their pre-mining losses comply with section 115-25. That is, combination can only occur if all the pre-mining losses of the constituent interests are fully transferable to each of the other integrated mining project interests. If the pre-mining losses are not available for transfer, the mining project interests can make the choice to cancel the pre-mining losses to enable combination. As noted above, a pre-mining loss cap may prevent the transfer of a *part* of a loss. Amendments are made to allow that part of a loss to be extinguished in order to combine mining project interests. [*Schedule #, items 30 to 32, subsection 115-15(3), paragraph 115-25(aa) and paragraph 115-25(b)*]

Counting the 10 million tonnes for the alternative valuation method

1.61 Miners can use a statutory method (the ‘alternative valuation method’) to work out what taxable resource value is to be included in their mining revenue if they and their associates produce under 10 million tonnes of taxable resources in the year.

1.62 The tonnes are measured when the resources have reached the form in which they are to be supplied or exported. However, resources that will be used up instead of being supplied or exported (for example,

coal that is burned to produce electricity or iron ore that is turned into steel) are not dealt with under the current law.

1.63 The amendments provide that taxable resources are also measured when they reach the form in which they are to be used to produce something else. The first of the relevant events to occur (supply, export or use) determines which form is appropriate for the particular taxable resources. [*Schedule #, item 54, paragraph 175-15(1)(b)*]

Accounting profit for the simplified MRRT method

1.64 The simplified MRRT method allows miners a simple way to work out if they are to be liable for MRRT instead of having to go through the more complex process of working out if they are under the \$75 million profit threshold where MRRT starts to be payable.

1.65 One of the tests asks whether the miner's accounting profit for the year (with certain adjustments) is under \$75 million. This test relies on the likelihood that someone with an accounting profit under \$75 million will have a mining profit well under \$75 million.

1.66 However, that reasoning need not be sound where the miner has acquired a mining project interest during the year. The MRRT uses an 'inherited history' approach under which the miner who holds the interest at the end of the year is liable to pay MRRT on the full year's mining profits from the interest. The accounting profits from that interest will however have accrued in some part to the previous holder of the interest. Accordingly, it would be possible for a miner to have accounting profits under \$75 million but mining profits well over \$75 million.

1.67 The reverse problem is also possible. A miner who transfers a mining project interest during a year will include some part of the profits from the interest in its accounting profit but none of the mining profit. Accordingly, that miner could be denied access to the simplified MRRT method even though its mining profits are well under \$75 million.

1.68 The amendments address these problems by adjusting the accounting profit of:

- a miner who *acquires* a mining project interest during a year (and still holds it at the end of the year) to include the profits it would have included had it held the interest for the whole year;
- a miner who *transfers* a mining project interest during a year (and still does not hold it at the end of the year) to remove the profits it included for the part of the year it held the interest.

The same approach is used for transfers and acquisitions of partial interests in a mining project interest through the splitting rules. [*Schedule #, item 67, subsection 200-15(1A)*]

1.69 In most cases, miners will have the information they need to perform these adjustments because miners who transfer mining project interests must provide the transferee with the information it needs to work out its MRRT liabilities (see Division 121 of Schedule 1 to the TAA 1953). If all that information is not available, it will be necessary to make an estimate of the appropriate adjustment based on the best information that is available.

Starting base returns and assessments

1.70 A miner's annual MRRT returns must contain the information the Commissioner requires, including the miner's mining profit and the MRRT it must pay. If the Commissioner is not satisfied with the return, he or she can require the miner to provide a further or fuller return (see section 117-15 of Schedule 1 to the TAA 1953).

1.71 A miner's starting base return must also contain the information the Commissioner requires, including the base values of each starting base asset and each asset expected to become a starting base asset. However, unlike the annual returns, the Commissioner has no power to require a further or fuller starting base return if he or she is dissatisfied with the original.

1.72 The amendments provide the Commissioner with the same power to require a further starting base return as he or she has in relation to annual MRRT returns. [*Schedule #, item 165, subsection 117-20(6) of Schedule 1 to the TAA 1953*]

1.73 The MRRT(CATP) 2012 amended the generic assessment provisions to apply them to annual MRRT assessments (see section 155-15 of Schedule 1 to the TAA 1953).

1.74 It did not directly amend those provisions to also apply them to MRRT starting base assessments, thus avoiding a permanent amendment to those provisions for what is only a one-off assessment. Instead, it applied them to starting base assessments in the same way that they apply to annual MRRT assessments. It did that by deeming the starting base value to be an assessable amount and the starting base return to be a relevant document.

1.75 However, it omitted to deem the Commissioner of Taxation to be the recipient for that document. The amendments correct that omission. [*Schedule #, item 72, paragraph 15(1)(c) of Schedule 4 to the MRRT(CATP) 2012*]

1.76 The values of starting base assets that are assessed by a starting base assessment are to be used to work out the starting base allowances for the whole life of those starting base assets. However, there is no explicit legislative connection between the values assessed in the starting base assessment and the asset values used to work out the allowances.

1.77 The amendments make that connection explicit. They do that by treating the starting base assessment (and therefore the asset values it assesses) as a part of each annual MRRT assessment. [*Schedule #, item 73, paragraph 15(3)(a) of Schedule 4 to the MRRT(CATP) 2012*]

1.78 An annual MRRT assessment cannot be objected to in respect of matters that relate to the starting base assessment. Such objections would instead have to be made to the starting base assessment. [*Schedule #, item 73, paragraph 15(3)(b) of Schedule 4 to the MRRT(CATP) 2012*]

1.79 An annual MRRT assessment can only be amended in relation to matters relating to the starting base assessment to give effect to amendments of the starting base assessment. An annual MRRT assessment can be amended to do that at any time. [*Schedule #, item 73, paragraph 15(3)(c) and subitem 15(4) of Schedule 4 to the MRRT(CATP) 2012*]

1.80 Together, these amendments ensure that the starting base assessment is the only source for the values of starting base assets used in working out a mining project interest's annual starting base allowances. Notes to this effect are added to the body of the MRRTA 2012 to help readers. [*Schedule #, items 19 and 20, notes to subsections 90-25(1) and 90-40(1)*]

MRRT instalments

1.81 A miner must pay a quarterly MRRT instalment towards its annual MRRT liability for MRRT if it has mining revenue or pre-mining revenue for the quarter.

1.82 However, the guide to the MRRT instalments Division only mentions mining revenue. The amendments alter the guide to include a reference to pre-mining revenue. [*Schedule #, item 164, section 115-1 of Schedule 1 to the TAA 1953*]

False or misleading statements about MRRT

1.83 Taxpayers are liable to a civil penalty for making statements to the Commissioner (and some others) about taxation laws that are materially false or misleading (see Division 284 of Schedule 1 to the TAA 1953). The *Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012* amended Division 284 to extend its scope to cover the MRRT.

1.84 To do that, it added references to the ‘MRRT law’, the ‘MRRT payable’ and the ‘MRRT return’. It omitted to add a reference to the ‘MRRT year’. The amendments correct that omission. [Schedule #, item 171, subsection 284-90(1) of Schedule 1 to the TAA 1953 (cell at table item 4, column headed “In this situation:”)]

1.85 The scope of the provisions relating to false or misleading statements is also extended to cover the PRRT, using the new definition of ‘petroleum resource rent tax law’. [Schedule #, items 166 to 170, paragraphs 284-75(2)(a) and (b) of Schedule 1 to the TAA 1953 and subsection 284-80(1) (tables items 3 and 4) of Schedule 1 to the TAA 1953]

Interest on overpayments of MRRT

1.86 The *Taxation (Interest on Overpayments and Early Payments) Act 1983* (TIOEPA 1983) provides for taxpayers to be paid interest on certain overpayments of tax. That Act was amended by the *Minerals Resource Rent Tax (Consequential Amendments and Transitional Provisions) Act 2012* to extend it to cover MRRT amounts.

1.87 It was extended to apply to ‘assessed MRRT’ but the meaning of that term was extended to include MRRT instalments and the general interest charge payable on MRRT and MRRT instalments. The extension to cover MRRT instalments was unnecessary because the interest is payable on the primary MRRT liability and factors in the payment of instalments in working out the amount of the interest (see subsections 9(2) and (3) of the TIOEPA 1983). Therefore, the amendments remove the specific inclusion of MRRT instalments. [Schedule #, item 173, subsection 3C(2) of the TIOEPA 1983]

1.88 The amendments also make clear that amending an assessment to reduce a liability for assessed MRRT is a decision to which the TIOEPA 1983 applies. That ensures that miners can be eligible for the interest on overpayments covered by Part III of that Act. [Schedule #, item 172, subsection 3(1) of the TIOEPA 1983, paragraph (d) of the definition of ‘decision to which this Act applies’]

1.89 The amendments extend the current application of the TIOEPA 1983 to ‘BAS provisions’ to include the MRRTA 2012, the PRRTAA 1987, and Division 115 of Schedule 1 to the TAA 1953 (which covers MRRT instalments). It does that by also applying it to ‘resource rent tax amounts’, which are defined to mean those debits and credit arising under the MRRT law or the PRRT law other than under BAS provisions. [Schedule #, items 3, 4, 156, 157 and 174 to 181, subsection 995-1(1) of the ITAA 1997 (definitions of ‘resource rent tax amount’ and ‘resource rent tax provisions’), paragraph 8AAZLG(1)(b) and subsection 8AAZLH(1) of the TAA 1953, and section 12AA (heading), paragraph 12AA(a), section 12AA (note), paragraph 12AB(a), section 12AB (note), paragraph 12AC(b), sections 12AC (note) and 12AF (definition of ‘resource rent tax amount’) of the TIOEPA 1983]

1.90 That extension means that interest can be payable to a miner on those MRRT amounts if they have been paid into an RBA (running balance account) of the miner and are refunded more than 14 days after the first opportunity for the refund (see Part IIIAA of the TIOEPA 1983).

1.91 It also means that the Commissioner is able to retain those MRRT amounts in an RBA (rather than refunding them) until the miner provides any required notification and nominates a financial institution account, if one is required (see sections 8AAZLG and 8AAZLH of the TAA 1953).

Substituted accounting periods

1.92 Only a miner can have a substituted accounting period under the MRRT. However, there are entities that have pre-mining project interests that may also be using substituted accounting periods.

1.93 Amendments are made to sections 190-1, 190-5, 190-10 and 190-15 to extend the use of substituted accounting periods to entities such as explorers. The words 'a miner' are omitted and replaced with 'entity or entities'. [*Schedule #, items 56 to 63 and 71, sections 190-1, 190-5, 190-10, 190-15 of the MRRTA 2012 and paragraph 10(a) of Schedule 4 to the MRRT(CATP) 2012*]

Clarifying ambiguities and correcting references

1.94 Some of the amendments remove ambiguities and referencing errors by making minor changes to the text of the MRRTA 2012:

- The first ensures that a starting base asset relates to the mining project interest on which it is used to carry on upstream mining operations rather than to some other mining project interest. [*Schedule #, item 13, subsection 80-25(1)*]
- The second clarifies that the declines in starting base asset values that are used to work out a starting base loss are the declines of the year the loss relates to, not the year in which the loss is worked out. [*Schedule #, item 16 subsection 80-40(1)*]
- Corrections to cross-references between provisions. [*Schedule #, items 68 and 69, subsections 255-20(1) and (2) and section 300-1 (definition of 'MRRT year')*]
- An amendment is made to paragraph 80-50(1)(b) to improve the clarity of the paragraph, specifying that the starting base losses for the mining project interest for the year, not in the year, are applied in the order specified in subsection (4). [*Schedule #, item 18, paragraph 80-50(1)(b)*]

- Section 95-20 refers to a miner having a mining project interest. This is inconsistent with the wider language of the Act. An amendment is made to substitute 'has' with 'holds'. *[Schedule #, item 26, subsection 95-20(2)(a)]*
- An amendment is made to improve the clarity of subsection 95-25(1). The words 'under that section' are inserted after 'cannot be applied'. The amendment ensures that it is clear that the section being referred to is section 95-20. *[Schedule #, item 27, subsection 95-25(1)]*
- 'Entity' is a defined term under the MRRTA 2012 and so should appear with an asterisk beside it. An amendment is made to include an asterisk in paragraphs 95-30(1)(a) and (2)(a). *[Schedule #, item 28, paragraphs 95-30(1)(a) and (2)(a)]*
- An amendment is made to correct an error at note 2 at subsection 150-30(2). 'Mining project transfer' is replaced with 'pre-mining project transfer'. *[Schedule #, item 46, subsection 150-30(2) (note 2)]*
- Where there is property transferred from one explorer to another as part of a pre-mining project transfer or split, special rules apply to ensure that no amount is included in the original explorer's pre-mining revenue or in the new explorer's pre-mining expenditure. Amendments are made to ensure that the deeming rules that achieve this outcome refer to all the relevant rules on which they rely. *[Schedule #, items 41, 42, 44 and 45, subsections 145-20(2) and 150-20(3)]*
- Starting base adjustments that arise when a starting base asset is sold or disposed of can be expressed as a negative amount. When a negative starting base adjustment is included in mining revenue it is included as a positive amount that increases mining revenue. Similarly, when a negative starting base adjustment reduces a starting base loss the amount of the loss is reduced by the absolute value of the adjustment. Amendments are made to remove any ambiguity about the relationship between these positive and negative amounts. *[Schedule #, items 51 to 53, subsections 165-25(3), 165-30(1), 165-30(2) and paragraph 165-30(2)(c)]*

Administration of the MRRT(CATP) 2012

1.95 The Commissioner is given the general administration of Schedule 4 to the MRRT(CATP) 2012. This Schedule has an ongoing operation in relation to starting base assessments and some other transitional rules. The amendments ensure that the Commissioner has the

necessary authority to administer those provisions in the same way that he or she administers other taxation provisions. The also ensure that the Schedule meets the definition of a 'taxation law' and so is subject to the normal administrative provisions that apply to those laws (such as the administrative penalties for misleading the Commissioner. [*Schedule #, item 70, item 1A of Schedule 4 to the MRRT(CATP) 2012*]

Petroleum Resource Rent Tax

1.96 All references to provisions in this part of the Explanatory Memorandum refer to the PRRTAA 1987, unless otherwise indicated.

Definition of 'acquisition'

1.97 The term 'acquisition' is used throughout the PRRTAA 1987 in relation to the acquisition of interests in petroleum projects or part acquisitions of interests (Schedule 2—Clauses 18, 19) and the acquisition companies. It is also used in the definition of 'market value' (Part II, Section 2).

1.98 Part II, Section 2 of the PRRTAA 1987 defines 'acquisition' to take its meaning as given by Section 195-1 of the *A New Tax System (Goods and Services Act 1999)* (the GST Act). The definition in the GST Act generally refers to the acquisition of goods, services and rights. This definition is different from the ordinary meaning of 'acquisition' which is more appropriate when referring to the acquisition or part acquisition of projects and companies.

1.99 The definition of 'acquisition' is amended to specify that in Clauses 18 and 19 of Schedule 2 to the PRRTAA 1987, the definition of 'acquisition' has the meaning given by subclauses 18(7) and 18(8) of that Schedule, and in all other instances it takes the meaning given by section 195-1 of the GST Act. [*Schedule #, item 74, section 2 (definition of 'acquisition')*]

Definition of 'created'

1.100 The term 'created' is used throughout the PRRTAA 1987 in relation to the creation of consolidated groups and MEC groups. The definition of created, depending on what type of group is being referred to, takes its meaning from various sections of the *Income Tax Assessment Act 1997* (ITAA 1997).

1.101 The references to sections 703-15 and 719-25 of the ITAA 1997 within the definition of 'created' are incorrect.

1.102 The definition of ‘created’ is amended to refer to the meaning given by subsection 995-1 of the ITAA 1997. [*Schedule #, item 75, section 2 (definition of ‘created’)*]

Relationships between licences and permits

Holding an interest

1.103 Part II, Section 4A of the PRRTAA 1987 is about holding an interest in relation to a petroleum project (section 4A(1)), including a combined project (section 4A(3)), the Bass Strait project or the North West Shelf project (section 4A(4)). It defines *when* a person holds an interest in a project.

1.104 In cases where the taxpayer has multiple projects that come into existence at different times, and wishes to combine these projects at subsequent points in time, the current provisions do not operate correctly where already combined projects are combined with other combined projects.

1.105 Sections 4A(3)(b) and 4A(3)(c) are amended to ensure that the particular time when the interests in the combined project were held, is the particular time when the earliest permit was granted. [*Schedule #, item 77, paragraphs 4A(3)(b) and (c)*]

Example 1.4 Holding an interest in a combined petroleum project

Exploration permits WA-1, WA-2 and WA-3 were granted to Morris Petroleum in January, June and December 2013 respectively. Production licences PL-A, PL-B and PL-C correspond to exploration permits WA-1, WA-1, and WA-3 respectively. PL-A came into existence in 2014, PL-B came into existence in 2016 and PL-C came into existence in 2018.

In 2016, Morris Petroleum applies to combine projects A and B into combined project AB. In 2018, Morris Petroleum applies to combine AB with project C to form combined project ABC.

Morris Petroleum holds an interest in Project ABC from January 2013 onwards—the time when the earliest exploration permit was granted.

1.106 Additionally, minor amendments are made to 4A(1), 4A(3), 4A(4), 4B and 4C for clarity. The words ‘in relation to’ are substituted with ‘in, or in relation to’ [*Schedule #, items 76, 78, and 80, subsections 4A(1) and (3), subsection 4A(4) and sections 4B and 4C*]

1.107 Also, subsection 4A(4) is amended with the words ‘any of’ inserted after the words ‘recovered from’. [*Schedule #, item 79, subsection 4A(4)*]

Translation of amounts into Australian currency

1.108 Part II, Section 10 of the PRRTAA 1987 is about the translation of amounts of expenditure into Australian currency. Subsection 10(4) deals with the translation of deductible expenditure.

1.109 Deductible expenditure is a derivation of 'eligible real expenditure'. Amendments are made to substitute the references to 'deductible expenditure' in subsection 10(4)'s heading and paragraph 10(4)(a) with 'eligible real expenditure'. [*Schedule #, items 81 and 82, subsection 10(4) (heading) and paragraph 10(4)(a)*]

Deductible expenditure

Resource tax expenditure

1.110 Part V, Division 3 of the PRRTAA 1987 is about different types of deductible expenditure. Section 35C is about resource tax expenditure. Resource tax expenditure is deductible against assessable receipts if it is incurred in relation to the petroleum project. The resource tax expenditure is converted to a deduction equivalent by virtue of subsection 35C(4). If any of the resource tax expenditure cannot be deducted against relevant assessable receipts it is 'uplifted' at the long term bond rate plus 5 per cent and carried forward.

1.111 Subsection 35C(5) outlines how the taxpayer should uplift resource tax expenditure that cannot be used in the income year, and in what order it should be deducted. Subsection 35C(5) makes reference to subsections 35C(1), 35C(2) and 35C(3), when only subsections 35C(1) and 35C(2) are relevant.

1.112 Subsection 35C(5) is amended to remove the reference to subsection 35C(3). [*Schedule #, item 83, subsection 35C(5)*]

Starting base expenditure

1.113 Part IV, Section 19 of the PRRTAA 1987 is about petroleum projects. It specifies that, for there to be a petroleum project, a production licence needs to be in existence. Section 19(1B) specifies that there is a single petroleum project for all production licences that are related to the North West Shelf project exploration permits, and that are in force from time to time. The North West Shelf project is defined in section 2.

1.114 The North West Shelf exploration permits themselves, or any retention leases derived from them, are not treated as part of the North West Shelf project (only the production licences are treated as part of the petroleum project). Therefore, each exploration permit or retention lease

that exists as at 1 May 2010 has its own starting base amount or eligible real expenditure of its own from 1 July 2012.

1.115 Clause 6 of Schedule 2 to the PRRTAA 1987 is about when a person *has* a starting base amount. Firstly, the person must have an onshore petroleum project or the North West Shelf project (Clause 6(a)) and hold an interest in that project (Clause 6(b)). The person must either have a production licence relating to the petroleum project as at 1 July 2012 or an exploration permit or retention lease. This means that an interest in an exploration permit or retention lease has a starting base amount attached to it. The starting base assets of an exploration permit or retention lease become those of the derived production licence. However, the starting base amount cannot be accessed until a production licence is granted—this is when the starting base amount ‘crystallises’. When the production licence is granted, the licence becomes a part of the North West Shelf project.

1.116 There is no provision to allow the starting base expenditure attached to the exploration permit or retention lease (that becomes a production licence) to be added to the starting base expenditure for the interest in the entire North West Shelf project. For a combined project, this similar ‘summing outcome’ is achieved by Part V, Division 3, paragraph 35E(2)(b).

1.117 Subsection 35E is amended to include a new subsection, subsection 35E(1A), to allow the starting base expenditure of a new production licence derived from the North West Shelf exploration permits to be added to the starting base expenditure of the North West Shelf project. That starting base expenditure is taken to be incurred on the first day of the starting base financial year. [*Schedule #, item 84, subsections 35E(1A) and (1B)*]

1.118 A minor amendment is also made to subsection 35E to correct a referencing error. [*Schedule #, item 85, subsection 35E(4)*]

Effect of procuring the carrying on of operations etc. by others

1.119 Part V, Division 3, Section 41 of the PRRTAA 1987 is about the effect of procuring the carrying on of operations etc. by others. It relates to situations where a person (the eligible person) is liable to pay another person (such as a contractor) to carry on or provide operations, facilities or other things of the petroleum project.

1.120 Where a liability to make such a payment is incurred, the expenditure is deemed to be incurred by the eligible person, rather than by the person providing the operations. However, this does not apply if the other person carries on or provides the operations as part of the processing

of internal petroleum in relation to the petroleum project or processing of external petroleum in relation to another project. In this situation, the expenditure is deductible under paragraph 37(1)(c) or 38(1)(d).

1.121 The reference to ‘a petroleum project other than the project to which the operations, facilities, or other things referred to in subsection (1) relate’ should only apply to external petroleum as there are two projects in that case. There can only be one project in relation to internal petroleum.

1.122 Amendments are made to clarify the operation of subsection 41(2). [*Schedule #, item 86, subsection 41(2)*]

Timing of incurred expenditure

1.123 Part V, Division 3, Section 45 of the PRRTAA 1987 is about the timing of incurring eligible real expenditure in relation to a petroleum project. Subsection 45(2) is about the timing of expenditure in relation to onshore petroleum projects.

1.124 For onshore petroleum projects, eligible real expenditure may be incurred at any time on or after the relevant starting base day (given by the table at subsection 45(5)) for the person’s interest in a project (including a time before the project commences or after the project ceases), if the project (or the exploration permit or retention lease from which it is derived) came into existence *before* 2 May 2010. (Paragraph 45(2)(a)).

1.125 For onshore petroleum projects, eligible real expenditure may be incurred at any time on or after 2 May 2010 (including a time before the project commence or after the project ceases) if the project (or the exploration permit or retention lease from which it is derived) came into existence anytime *on or after* 2 May 2010 (Paragraph 45(2)(b)).

1.126 However, there is ambiguity as to which paragraph applies, (either 45(2)(a) or 45(2)(b)) if a production licence is carved out of an exploration permit that existed prior to 2 May 2010, as both paragraphs could potentially apply.

1.127 Where paragraph 45(2)(a) can apply, it takes precedence over paragraph 45(2)(b). Paragraph 45(2)(b) is intended to provide relief only where the taxpayer cannot have a starting base amount because there is no relevant starting base asset. Paragraph 45(2)(b) allows the taxpayer to use the look-back approach.

1.128 Amendments are made to provide greater clarity about which paragraph applies. Paragraph 45(2)(b) is replaced with a new paragraph 45(2)(b) which states that if paragraph 45(2)(a) does not apply, then the

timing of incurring expenditure is at any time on or after 2 May 2010 (including a time before the project commences or after the project ceases). [*Schedule #, item 87, paragraph 45(2)(b)*]

1.129 A second issue with regards to the timing of incurring expenditure is also clarified. Where a person incurs eligible real expenditure in relation to a petroleum project during the look-back period, and then sells that interest or part of that interest to another person who chooses to use the look back method, that taxpayer is able to claim the eligible real expenditure incurred by the first person who held the interest in the permit. The operation of sections 45, 48 and 48A allows for this treatment. However, for the avoidance of doubt a new subsection, subsection 45(8) adds clarity.

1.130 Subsection 45(8) specifies that eligible real expenditure that a person may incur in relation to a petroleum project may include expenditure that a person is taken to have incurred in relation to the project, before or after the commencement of that section, because of section 48 and 48A. Subsection 45(9) specifies that if the expenditure is taken to be incurred before 1 July 2012, because of sections 48 or 48A, subsection 48(3) or 48A(11) does not apply in relation to the transaction, that is, the vendor does not have to provide written notice of the transaction in the approved form. [*Schedule #, item 88, subsections 45(8) and (9)*]

Effect of certain transactions

Transfer of entire entitlement to assessable receipts and transfer on or after 1 July 1993 of part of entitlement to assessable receipts

1.131 Part V, Division 5, Sections 48 and 48A of the PRRTAA 1987 are about the transfer of entire entitlements and part entitlements to assessable receipts. The sections outline what occurs when entitlements or part entitlements are passed between persons.

1.132 Subsections 48(1) and 48A(5) (where the transfer is only for part of an entitlement) specify that the purchaser of an entitlement shall be taken to have derived any assessable receipts, deductible expenditure and exploration expenditure incurred by the vendor in relation to the project.

1.133 Subparagraph 48(1)(a)(ib) specifies that if section 35E (starting base expenditure) does not apply in relation to the financial year in which the transaction is or was entered into (and the look-back approach is not the valuation approach used by the vendor), then the purchaser is taken to have incurred starting base expenditure of the starting base amount in relation to the vendor's interest. Similarly, subparagraph 48A(5)(ca) specifies the same for when the transfer is only for a part entitlement. These subparagraphs ensure that, where a person transfers an interest or

part interest in relation to which a starting base amount has been determined, starting base expenditure equal to the starting base amount will transfer with the interest.

1.134 However, where there is a change in the ownership of an interest in the same financial year as the year in which the production licence is granted, subparagraphs 48(1)(a)(ib) and 48A(5)(ca) do not operate correctly as section 35E (starting base expenditure) would apply to the interest in that year. Therefore the deeming function performed by these paragraphs cannot apply because they are only operative if section 35E does not apply.

Example 1.5 Problems with the transfer of starting base expenditure

WPS Exploration holds an exploration permit over an area in the Joseph Bonaparte Basin which is transferred Eel Petroleum in a financial year. Eel Petroleum is granted a production licence in the same financial year. Section 35E applies to the interest in that year.

Because section 35E applies to that interest in that year, the transfer provisions relating to starting base expenditure cannot apply for that year.

1.135 Amendments are made to subparagraphs 48(1)(a)(ib) and 48A(5)(ca)(i) to remove the reference to ‘the financial year in which the transaction was entered into’ and ‘in relation to the transfer year’ respectively. These references are replaced by a reference to ‘immediately before the transfer time’. [*Schedule #, items 89 and 90, subparagraph 48(1)(a)(ib) and subparagraph 48A(5)(ca)(i)*]

Anti-avoidance

Non arm’s length receipts

1.136 Part V, Division 6, Subdivision B, section 57 of the PRRTAA 1987 is about non-arm’s length receipts. The section *does not* apply to receipts that are determined under subparagraph 24(1)(d)(i).

1.137 Paragraph 24(1)(d) specifies that, where any sales gas produced from petroleum from the project that becomes or became an excluded commodity by virtue of being sold, the assessable receipt is the amount worked out in accordance with the regulations. The intention of the exemption is to carve out the situation where the PRRTA Regulations apply to a non-arm’s length sale. Therefore, all subparagraphs of paragraph 24(1)(d) are relevant, not just the first subparagraph.

1.138 Amendments are made to subsection 57(3). The reference to subparagraph 24(1)(d)(i) is replaced with a reference to 24(1)(d).
[Schedule #, item 91, subsection 57(3)]

Functional currency

Translation rule – deductible expenditure

1.139 Part V, Division 7 of the PRRTAA 1987 is about functional currency and allows taxpayers whose accounts are kept solely or predominantly in a particular currency to calculate their taxable profits and certain other amounts by reference to that functional currency. The Act provides a series of basic translation rules for situations where dealings occur that are not in the applicable functional currency.

1.140 Part V, Division 7, section 58F of the PRRTAA 1987 is about the translation rule for deductible expenditure. However, deductible expenditure is a derivation of ‘eligible real expenditure’. Amendments are made to substitute the references to ‘deductible expenditure’ with ‘eligible real expenditure’ in the heading of 58F’s and paragraph 58F(a).
[Schedule #, items 93 and 94, subsection 58F (heading) and paragraph 58F(a)]

Certain Expenditure incurred on the day when section 58B election takes effect

1.141 Section 58K and 58M specify categories of expenditure that should be converted to functional currency. These provisions also apply to the new categories of expenditure. That is, resource tax expenditure, acquired exploration expenditure, starting base expenditure and the starting base amount. These provisions are amended to include references to these new expenditure categories. *[Schedule #, items 101, 103, 104, 106, 108 and 109, subsection 58K(1)(heading), paragraph 58K(1)(b), subparagraphs 58K(1)(b)(iv), (v) and (vi), subsection 58M(1) (heading), paragraph 58M(1)(c) and subparagraphs 58M(1)(c)(iv), (v) and (vi)]*

1.142 Minor amendments are made to refer to a ‘financial year’ instead of a ‘year of tax’. This is because a taxpayer who holds an interest in exploration permits as well as production licences will have a year of tax for the latter but not for the former. *[Schedule #, items 92, 95 to 100, 102, 105, 107, 110 and 111, subsections 58B(1), (4), (5) and (6), subsections 58C(1) and (2), subsection 58D(1), subsections 58J(1) and (3), paragraphs 58J(4)(b) and (c), subsection 58J(4), paragraphs 58J(5)(b) and (c), subsection 58J(5), subsections 58J(6), (7), (8), (9), (10) and (11), paragraphs 58K(1)(a) and (b), subsection 58K(2), subsections 58L(1) and (4), paragraphs 58M(1)(a), (b), and (c) and subsections 58M(1) and (2)]*

Consolidated groups

Choice to consolidate

1.143 Part V, Division 8, Section 58N is about the choice to consolidate for PRRT purposes. Subsection 58N(2) specifies that Division 8 cannot apply if a notice has not been given to the Commissioner under section 703-58 or 719-76 of the ITAA 1997 in relation to the group.

1.144 Section 703-58 is about the notice of the choice to consolidate for consolidated groups. Section 719-76 is about the notice of the choice to consolidate for MEC groups.

1.145 Amendments are made to 58N(2) to replace the reference to section 719-76 with a reference to sections 719-76 or 719-78. The amendment allows a MEC group to consolidate for PRRT purposes as soon as the choice to form or convert to a MEC group is lodged with the Commissioner. The MEC group is then able to consolidate for PRRT purposes in the same year that it consolidates for income tax purposes. *[Schedule #, item 112, subsection 58N(2)]*

Single entity rule

1.146 Part V, Division 8, Section 58P is about consolidated groups and the single entity rule. Subsidiary members of a consolidated group, or MEC group, that have chosen to consolidate for PRRT purposes, are treated as being parts of the group's head company (rather than separate entities).

1.147 Subsection 58P(2) describes the purposes that the subsidiary member is treated as part of the head company for. They include working out interests in projects, working out assessable receipts, and working out PRRT payable. References in subsection 58P(2) are to the head company and the subsidiary member. This is appropriate when referring to consolidated groups. However, when referring to a MEC group, there is a need to also consider the provisional head company which may be the head company.

1.148 Amendments are made to subsection 58P(2) and its examples to include a reference to the 'provisional head company'. *[Schedule #, items 113, 115 and 116, paragraph 58P(2)(a) and subsection 58P(2) (paragraphs (a) and (b) of the example)]*

1.149 An additional amendment is made to paragraph (c) of the example at subsection 58P(2) to improve clarity. *[Schedule #, item 117, subsection 58P(2) (paragraph (c) of the example)]*

1.150 Additional amendments are also made to subsection 58P in relation to the single entity rule extending to the calculation of notional tax amounts for instalments in any year of tax. Part VIII, Division 2, Section 96 of the PRRTAA 1987 is about amounts of instalments of tax. The amount payable by a person as an instalment of tax is the notional tax amount in relation to the instalment period. Section 97 sets out how to calculate the notional tax amount.

1.151 Subsection 97(1A) specifies that the amount of an instalment is calculated by treating the instalment period as a year of tax. However, Division 2 cannot apply properly to consolidated groups because section 58P only refers to a year of tax, and not an instalment period in any such year of tax.

1.152 Section 58P(2) outlines the purposes that consolidated groups are treated as a single entity for. Amendments are made to section 58P to specifically refer to the payment of instalments of tax. The new paragraph 58P(2)(d) specifies that the single entity rule is used when working out the head company, provisional head company or subsidiary members' notional tax amount in relation to an instalment period in any such year of tax. *[Schedule #, item 114, paragraph 58P(2)(d)]*

Interests taken to be transferred to head company etc. on joining

1.153 When a group consolidates for PRRT purposes, all the onshore petroleum project interests of the group's subsidiary members are treated as having been transferred to the head company or provisional head company of the group. This is specified by Part V, Division 8, Section 58Q. This transfer is facilitated by the PRRT's existing transfer rules, described in Part V, Division 5, section 48.

1.154 Sections 48 requires certain conditions to be fulfilled for the transfer provisions to apply. They are:

- at the transfer time the vendor enters into a transaction in relation to a petroleum project interest that they hold;
- the transaction has the effect of transferring the vendor's entitlement to the purchaser and any property held in relation to the project, and, importantly;
- the purchaser *must give consideration* for the entitlement and the property.

1.155 The transfer provisions require consideration to be given by the purchaser, however, in the case of PRRT consolidation, there will be no consideration when the subsidiary members notionally transfer their

entitlements to the head company. Therefore, without the consideration condition being fulfilled, the transfer provisions cannot apply to initiate the notional transfer.

1.156 Amendments are made to section 58Q to deem the head company or provisional head company to have given the consideration required by paragraph 48(1A)(c) at the transfer time. *[Schedule #, item 118, section 58Q]*

Interests taken to be transferred to leaving entity on leaving

1.157 Similarly, requirements must be met when a subsidiary member leaves the PRRT consolidated group and the entitlement to assessable receipts is transferred from the head company or provisional head company back to the member. Subsection 58R(1) is amended to deem the subsidiary member to have given the consideration required by section 48(1A)(c) at the transfer time. Subsection 58R(2) is also amended to deem the subsidiary member to have given the consideration required by paragraph 48A(11)(b) at the transfer time if the transfer is a partial transfer. *[Schedule #, items 119 to 122, subsections 58R(1) and (2)]*

Interests taken to be transferred when combined with offshore interests

1.158 An onshore project is able to be combined with an offshore project so long as the combination criteria in Part IV, Section 20 are satisfied, and the onshore project did not exist prior to 1 July 2012. In this situation, the Resources Minister must be satisfied that the onshore and offshore projects are sufficiently related. If combination of an onshore and offshore project is approved, the combined project is treated as an offshore project.

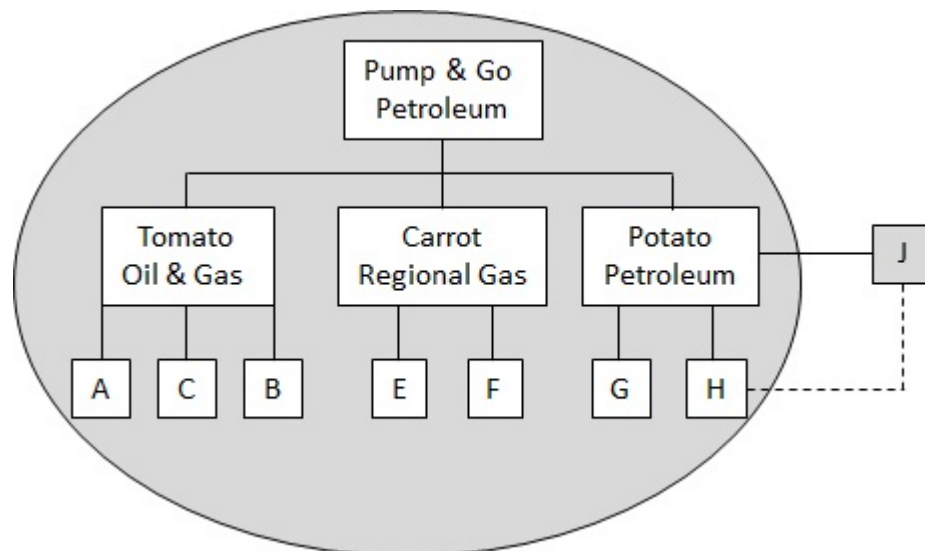
1.159 The consolidation regime within the PRRT is only able to be used in relation to onshore petroleum projects (Subsection 58P(2)(a)). When an onshore production licence is granted, any interest in the project derived from that licence that is held by a subsidiary member of a PRRT consolidated group is taken to be transferred to the head company or the provisional head company. Subsequently, if entities holding interests in that project choose to combine the onshore project with an offshore project, the combined project is treated as an offshore project. Consequently, the single entity rule cannot apply in relation to the onshore project interest held by the subsidiary member of the PRRT consolidated group, and the interest cannot be treated as being held by the head company or provisional head company.

1.160 While the interest in the onshore project that has been combined with the offshore project must not be treated as an interest held by the head company or the provisional head company, the subsidiary member does not leave the PRRT consolidated group. Section 58R specifies that

onshore petroleum project interests are taken to be transferred to the leaving entity. However, in this case, the subsidiary member is not leaving the PRRT consolidated group, only their project interest is no longer treated as held by the head company under the single entity rule, and so section 58R cannot apply to transfer the interest back to the member.

1.161 The subsidiary member continues to be a part of the PRRT consolidated group, but the interest in the onshore project that was combined with the offshore project will need to be accounted for by the subsidiary member and not the head company or provisional head company. Therefore, only the interest in the project needs to transfer from the head company or the provisional head company back to the subsidiary member.

Example 1.6 Interests taken to be transferred when combined with offshore interests



Pump & Go Petroleum is the head company of a consolidated group for PRRT purposes. Tomato Oil & Gas, Carrot Regional Gas and Potato Petroleum are subsidiary members of Pump & Go Petroleum.

Tomato Oil and Gas has an interest in onshore petroleum projects A, B and C. Carrot Regional Gas has an interest in onshore petroleum projects E and F. Potato Petroleum has an interest in onshore petroleum projects G and H. Project H did not exist prior to 1 July 2012.

On 16 March 2014, Potato Petroleum develops an offshore project, Project J. Potato Petroleum wishes to combine Project J and Project H. The Minister for Resources accepts Potato Petroleum’s combination

request because the company satisfies the relevant combination criteria. The interest in project H is no longer treated as an interest held by Pump & Go Petroleum, and Potato Petroleum must separately account for it as part of the combined (offshore) project. The interest in project G is still treated as being held by Pump & Go Petroleum due to the application of the single entity rule in section 58P.

1.162 Amendments are made to Part V, Division 8 of the PRRTAA 1987. A new section, section 58RA, is added. Section 58RA provides for the situation where a project interest is transferred back to the subsidiary member, but the member does not leave the PRRT consolidated. *[Schedule #, item 123, section 58RA]*

Effect of a change of head company or provisional head company of a MEC group

1.163 The PRRTAA 1987 does not use an asterisk for referencing defined terms. Instead, defined terms are referenced using bold type. Amendments are made to remove the asterisk before the term ‘MEC group’ in subparagraphs 58U(1)(a)(i) and 58U(1)(b)(i) and paragraph 58V(1)(a). *[Schedule #, items 124 to 126, subparagraphs 58U(1)(a)(i), 58U(1)(b)(i) and paragraph 58V(1)(a)]*

Effect of group conversions involving MEC groups

1.164 Part V, Division 8, section 58V of the PRRTAA 1987 is about the effect of group conversions involving MEC groups. There are some cases where a group technically ceases to exist because it is converted into a different sort of a group. This is the situation where a MEC group becomes a consolidated group or a consolidated group becomes a MEC group. A choice to consolidate for PRRT purposes, made before such a conversion, continues to have effect (despite the group technically ceasing to exist) because the head company of the group after the conversion inherits the history of things done by the head company or provisional head company of the MEC group before the conversion.

1.165 However, section 58V does not operate correctly for this transfer of history if there is a need for inheritance of the history from a consolidated group to a provisional head company of a MEC group.

1.166 Amendments are made to section 58V to remedy this situation. A new subsection 58V(3) is added, specifying that all references in paragraph 58V(2)(c) to the head company of the new group are taken to be a reference to the head company or provisional head company of the new group. *[Schedule #, item 127, subsection 58V(3)]*

Subsidiary members that are trusts

1.167 Part V, Division 8 of the PRRTAA 1987 is about consolidated groups. The use of the term ‘person’ does not cover a trust when it is a subsidiary member of a MEC group. This is problematic for the operation of the single entity rule in section 58P.

1.168 Amendments are made to Part V, Division 8 to include a new section, section 58W, to treat a subsidiary member of a MEC group that is a trust as if it were a person for the purposes of the Division. [*Schedule #, item 128, section 58W*]

Collection by instalments

Interpretation

1.169 Part VIII, Division 2 of the PRRTAA 1987 is about collection by instalments. Section 93 is about interpretation and specifies that in section 85 (unpaid tax and charges), section 92 (person in receipt or control of money of a non-resident) and section 109 (agents and trustees) the use of the term ‘tax’ includes an instalment of tax payable under the Division.

1.170 Part V, Division 8, Section 58P of the PRRTAA 1987 is about the single entity rule and subsection 58P(2) lists the purposes for which the single entity rule applies—it includes working out any tax payable. This would include any instalments of tax payable by the PRRT consolidated group.

1.171 Amendments are made to subsection 93(1) to include a reference to section 58P, ensuring that the collection by instalment provisions of Division 2 apply to the PRRT consolidated group’s tax payable. [*Schedule #, item 129, subsection 93(1)*]

Notional tax amount

1.172 Part VIII, Division 2, Section 97 of the PRRTAA 1987 is about notional tax amounts. Paragraph 97(1A)(b) ensures that when calculating an instalment of tax paid, relevant expenditures carried forward on the first day of the year of tax are only included in the calculation of the notional tax amount *to the extent of their instalment percentages*. The meaning of instalment percentage is defined in Part II, Section 2.

1.173 Paragraph 97(1A)(b) references the relevant sections that deal with expenditures. New categories of deductible expenditure were added to the PRRT from 1 July 2012, that is, resource tax expenditure, acquired exploration expenditure and starting base expenditure. These

expenditures also need to be taken into account in the calculation of the notional tax amount for an instalment of tax.

1.174 Amendments are made to paragraph 97(1A)(b) to include references to subsections 35C(5), 35D(3), 35D(4) and 35E(3). [*Schedule #, item 130, paragraph 97(1A)(b)*]

Notional tax amounts and sales gas

1.175 Subsection 97(1AA) of the PRRTAA 1987 is about the calculation of notional tax amounts where the assessable receipts were worked out under paragraph 24(1)(d) or paragraph 24(1)(e).

1.176 Paragraph 24(1)(d) specifies that, where any sales gas produced from petroleum from the project that becomes or became an excluded commodity by virtue of being sold, the assessable receipt is the amount worked out in accordance with the regulations (the special calculation provisions).

1.177 The intention of the exemption in 97(1AA) is to carve out the situation where the special calculation provisions are used from the general calculation of the current period liability and provide further special rules for the calculation of the notional tax amount. Therefore, all subparagraphs of paragraph 24(1)(d) are relevant, not just the first subparagraph.

1.178 Amendments are made to subsection 97(1AA) to extend the exclusion of the section to all subparagraphs in 24(1)(d). The reference to subparagraph 24(1)(d)(i) is replaced with a reference to paragraph 24(1)(d). [*Schedule #, item 131, subsection 97(1AA)*]

Miscellaneous

1.179 Part X, Section 109 of the PRRTAA 1987 is about agents and trustees. The section specifies that the agent (the trustee or 'representative') who derives assessable receipts in relation to a petroleum project is liable to pay the PRRT.

1.180 In addition to amendments that are made to ensure that a trust that is a subsidiary member of a PRRT consolidated group is treated as a person for the purposes of Part V, Division 8 (see paragraph 165), section 109 is amended to include a carve out for trustees of a trust that is a subsidiary member of a consolidated group or MEC group that has consolidated for PRRT purposes. [*Schedule #, item 132, subsection 109(5)*]

Amendments to Schedule 1 to the PRRTAA 1987 – provisions relating to incurring and transferring exploration expenditure on or after 1 July 1990

Clause 1—defined terms

1.181 Clause 1 of Schedule 1 to the PRRTAA 1987 sets out the defined terms of the Schedule. The definition of ‘relevant pre-commencement day’ specifies, depending on the petroleum project, the day that is to be taken as the relevant pre-commencement day of the petroleum project. This day is used to determine the augmented bond rate (ABR) expenditure year.

1.182 For petroleum projects that are *not* combined projects, *not* the Bass Strait project and *not* the North West Shelf project, the relevant pre-commencement day is the day occurring 5 years before the earlier of either the day specified on the production licence notice, or the day the production licence was issued.

1.183 For combined projects, the Bass Strait project or the North West Shelf project, the relevant pre-commencement day is the day occurring 5 years before the earlier of either the earliest day specified on the production licence notice in relation to the pre-combination project, or the earliest day the production licence notice was issued in relation to the pre-combination project. However, the Bass Strait project and the North West Shelf are *not* combined projects, so there would be no pre-combination project, and the relevant pre-commencement day cannot be determined.

1.184 Amendments are made to the definition of relevant pre-commencement day to accommodate the Bass Strait project and the North West Shelf project. For the Bass Strait project and the North West Shelf project, the relevant pre-commencement day is the day occurring 5 years before the earlier of either the earliest day specified in a production licence notice in relation to the project, or the earliest day a production licence notice was issued in relation to the project. [*Schedule #, items 133 and 134, Clause 1 of Schedule 1*]

Clause 22 rule—person must have held interest in relation to transferring entity and receiving project

1.185 Part 5 of Schedule 1 to the PRRTAA 1987 sets out the rules relating to the transfer of exploration expenditure. Clause 22 specifies that a person must have held an interest in relation to the transferring entity and the receiving project in order to transfer exploration expenditure. This clause, together with Clause 31, outlines the PRRT’s common ownership test.

1.186 In 2006, amendments were made to the PRRT to modify the rules around transfers of expenditure when there is a group restructure. The amendments allowed unused exploration expenditure to be available for transfer between projects within group companies where there is continuity of group ownership of the transferring and receiving projects. That is, both the loss interest and the receiving interest need to have been held by companies which are group companies in relation to each other (or are the same company) during the entire period between the expenditure being actually incurred and the expenditure being transferred to the other project and used. The amendments were designed to allow internal corporate restructuring of a wholly-owned group to occur without losing the ability to transfer unused exploration expenditure.

1.187 However, Clause 22 was not similarly amended, resulting in an anomaly whereby the Act gives rise to different outcomes based on the way in which group restructures are undertaken. In essence, where a company owns multiple petroleum projects and incurs transferable exploration expenditure on those projects, the transferability of expenditure between said projects will only be preserved in the event that the restructure results in each of those projects being held by separate legal entities within the wholly owned group. However, where the restructure results in two or more projects being held by a single company such projects cease to be able to transfer exploration amongst themselves. This then causes restrictions on companies seeking to rationalise their group structure or to aggregate relevant interests into a new company within the group for commercial reasons.

1.188 In the offshore context, company groups can sometimes circumvent the problem by having two interests in two separate entities. However, due to the application of the single entity rule for PRRT consolidated groups that have onshore projects, many of the transfers of exploration expenditure would rely upon Clause 22, not Clause 31.

1.189 The transferability of otherwise transferable exploration expenditure should not be prevented where there is a transfer of projects from one group company to another group company. Therefore, amendments are made to Clause 22 of Schedule 1 to the PRRTA 1987 to allow the transfer of exploration expenditure between projects of a company where companies that have held those projects from time to time at all times been group companies in relation to each other. [*Schedule #, item 135, Clause 22 of Schedule 1*]

Example 1.7 Group restructures and transferring exploration expenditure

Decay Resources is the head company of a consolidated group. Cobra Petroleum and Hero Oil are group companies of Decay Resources.

Both group companies have operations in the Carnarvon Basin. Cobra Petroleum owns an exploration permit, EXP-100, and a petroleum project, Newport. Hero Oil owns a petroleum project, Finger Twist.

In January 2014, Cobra Petroleum incurs \$6 million of exploration expenditure in EXP-100. Its Newport Project is making a loss and the exploration expenditure cannot be used by the project. In February 2014, Hero Oil and Cobra Petroleum merge and become a new entity within the Decay Resources group. The new entity is called Academy Petroleum.

Academy Petroleum is able to deduct the unused exploration expenditure from its EXP-100 permit against its profit making Finger Twist project.

General rules for transferring exploration expenditure between groups

1.190 In 2006, amendments were made to the PRRT to modify the rules around transfers of exploration expenditure when there is a company restructure. The amendments resulted in the repeal of former Clause 31 in its entirety.

1.191 Former Clause 31(2AB) allowed a company to transfer to other companies in the wholly-owned group, any unused exploration expenditures from a *relinquished* permit from which it had walked away. The new Clause 31 did not contain a similar provision to the old Clause 31(2AB), and consequently is not broad enough to accommodate the situation described. Without Clause 31(2AB) a company could not transfer to other companies the exploration expenditure associated with the relinquished permit because no company in the group will hold an interest in the transferring entity at the end of the common ownership period.

1.192 Amendments are made to allow a company that has relinquished an exploration permit to transfer that exploration expenditure to another company in the same group. [*Schedule #, item 136, subclause 31(2A) of Schedule 1*]

Amendments to Schedule 2 of the PRRTAA 1987 – starting base for onshore petroleum projects and the North West Shelf project

Choosing a valuation approach

1.193 Part 2 of Schedule 2 to the PRRTAA 1987 is about choosing a valuation approach for the starting base for onshore petroleum projects and the North West Shelf project. A person may choose a valuation approach for interests that the person may hold in the future if the petroleum project does not exist at the time the person makes the choice, and when the project comes into existence it was derived from an

exploration permit or retention lease in which the person held an interest at the time.

1.194 Amendments are made to Paragraph 3(1)(b) of Schedule 2 to align the referencing used in this section with the terminology used in Part II, Section 4 of the PRRTAA 1987. The amendments replace references to ‘projects’ and ‘interests in projects’ being derived from an exploration permit or retention lease, and instead reference the production licence. *[Schedule #, item 137, Paragraph 3(1)(b) of Schedule 2]*

1.195 Similar amendments are also made to align the terminology in paragraphs 5(b), 7(3)(b), 10(1)(a)(ii) and 15(5)(b). *[Schedule #, items 138, 139, 141 and 145, paragraphs 5(b) and 7(3)(b), subparagraphs 10(1)(a)(ii) and 15(5)(b) of Schedule 2]*

The amount of the starting base amount

1.196 Part 3, Division 1 of Schedule 2 to the PRRTAA 1987 is about starting base amounts. Clause 7 of Schedule 2 is about the amount of the starting base amount.

1.197 An amendment is made to correct a referencing error in the note to Subclause 7(3). The reference to the ‘subsection’ is replaced with ‘subclause’. *[Schedule #, item 140, subclause 7(3) of Schedule 2 (note)]*

Meaning of starting base asset

1.198 Part 3, Division 2 of Schedule 2 to the PRRTAA 1987 is about starting base assets. Clause 10 of Schedule 2 is about the meaning of starting base asset.

1.199 A starting base asset is an asset in relation to a production licence, retention lease or exploration permit from which a production licence is derived, and that existed just before 2 May 2010. Starting base assets are any kind of property, or legal or equitable right related to the interest in the petroleum project (or an exploration permit or a retention lease from which a petroleum project will be derived).

1.200 Subclause 10(4) makes clear that starting base assets related to a person’s interest in the retention lease or exploration permit become those of the derived production licence, and they cannot also be starting base assets of another project derived from the remaining area of the permit or lease in the future. For example, where a production licence is carved out of an exploration permit and the permit continues to exist, the starting base assets are assigned to the first production licence.

1.201 However, there is ambiguity about where the starting base assets are assigned if a retention lease is carved out of an exploration permit and

the exploration permit continues to exist. That is, do the starting base assets become attached to the retention lease, or do they remain with the exploration permit until such time that a production licence is granted? Clarity on where the starting base assets are assigned in this situation is important if there is a transfer of the exploration permit (from which a retention lease was carved out) to another person, as both the vendor and the purchaser will be interested in securing the starting base. In this case the starting base amount is assigned to the retention lease.

1.202 These provisions only apply where there is a right at 2 May 2010, but more than one right at 30 June 2012.

Example 1.8 Assignment of starting base amounts

In August 2006, Bunting Petroleum is granted an exploration permit over an area in the Gippsland Basin.

On 2 May 2010, Bunting Petroleum has several assets associated with the exploration permit area.

In October 2010, Bunting Petroleum takes out a retention lease over a smaller area within the exploration permit area. These starting base assets of the exploration permit area are transferred to the retention lease.

In February 2011, Bunting Petroleum sells the exploration permit to Tepper Resources. No starting base assets transfer with the exploration permit.

1.203 Amendments are made to Subclause 10(4) to give greater clarity to the assignment of starting base assets. [*Schedule #, item 144, subclauses 10(4) and 10(4A) of Schedule 2*]

1.204 Amendments are also made to correct a referencing error in Clause 10. References to ‘section’ and ‘subsection’ are replaced with ‘clause’ and ‘subclause’ respectively. [*Schedule #, items 142 and 143, subparagraph 10(2)(b)(i) and subclause 10(3) of Schedule 2*]

Expenditure incurred in acquiring interests in petroleum projects

1.205 Part 4 of Schedule 2 to the PRRTAA 1987 is about the look-back approach to starting base. Part 4 works in conjunction with Section 45 of the PRRTAA 1987 which deals with the timing of expenditure.

1.206 In cases where a person has acquired an interest in a petroleum project after 1 July 2007, but sold a part of that interest before 1 May 2010 and the look-back approach is chosen, the person is only entitled to take

into account the *remaining* interest, not the full amount of the original consideration or acquisition expenditure.

Example 1.9 Interests acquired and partially sold during the look back period

Fuller Resources acquires a 30 per cent interest in the Carpentaria Project in July 2007 for \$30 million. In January 2010, Fuller Resources sells a 10 per cent interest in the project to County Electricity for \$15 million.

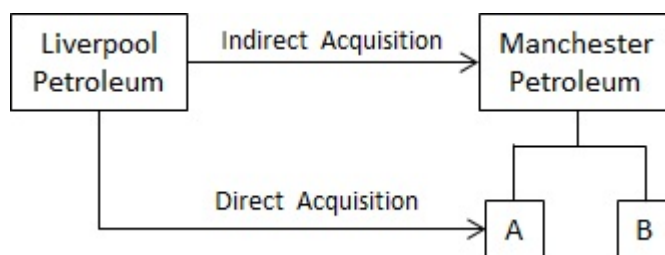
Fuller Resources is entitled to \$20 million under the look-back approach (two thirds of the original consideration).

1.207 Amendments are made to Clause 18 to provide greater clarity that the person is only permitted to take into account the proportion of the consideration that relates to the interest that they hold at 2 May 2010. [Schedule #, item 146, subclause 18(5A) of Schedule 2]

1.208 In addition, subclause 18(7) is also amended to better align with Subclause 18(8) to ensure that where a person acquires an interest directly, the person is able to take into account in its acquisition expenditure (in relation to the interest that they hold at 2 May 2010), the *total* cost (including all incremental acquisitions) incurred in acquiring their entire interest in the project, and not just the cost of the first acquisition.

1.209 Subclause 18(7) is about acquisition of project interests (direct acquisition). Subclause 18(8) is about the acquisition of companies holding project interests (direct acquisition). These acquisitions are illustrated below.

Example 1.10 Incremental acquisitions



Liverpool Petroleum wishes to acquire a stake in project A and project B. Projects A and B are currently owned by Manchester Petroleum. Liverpool Petroleum can choose to acquire Manchester Petroleum and indirectly acquire the projects as a result, or it can directly acquire the projects from Manchester Petroleum.

Liverpool Petroleum decides that it will acquire its stake in the projects directly, rather than acquiring them via the acquisition of Manchester Petroleum.

In July 2007, Liverpool Petroleum pays \$5 million for a 10 per cent stake in projects A and B. In January 2010, Liverpool acquires a further 30 per cent in projects A and B for \$15 million.

Assuming that the acquisition expenditure was wholly for assets that reflect project activities, Liverpool Petroleum's total acquisition expenditure is \$20 million.

1.210 Amendments are made to subclause 18(7) to ensure that where a direct acquisition of a petroleum project occurs incrementally, the person is able to take into account the total cost of acquisition [*Schedule #, item 149, subclause 18(7) of Schedule 2*]

1.211 A similar amendment is made to subclause 18(8) to ensure that where an indirect acquisition of a petroleum project occurs incrementally, the person is able to take into account the total cost of acquisition. [*Schedule #, item 151, paragraph 18(8)(c) of Schedule 2*]

1.212 Subparagraph 18(8)(b)(i) is also amended to improve clarity. The amendment removes the reference to 'first entered into' and includes the addition of the word 'company' after the word 'first'. [*Schedule #, item 150, subparagraph 18(8)(b)(i) of Schedule 2*]

1.213 Minor amendments are made to subclause 18(6) of Schedule 2 to the PRRTAA 1987 to correct a date error. '20 June 2007' is replaced with '1 July 2007'. [*Schedule #, items 147 and 148, subclause 18(6) (heading) and paragraphs 18(6)(a) and (b) of Schedule 2*]

Acquired exploration expenditure amounts

1.214 Part 4 of Schedule 2 to the PRRTAA 1987 is about the look back approach to starting base. Clause 19 is about acquired exploration expenditure amounts.

1.215 Where there is an indirect acquisition of a project interest, the acquisition date is taken to occur when the transaction (that when complete) that had the effect of the first company becoming a subsidiary of the other company, was first entered into; or, when an agreement to enter into the transaction; was first entered into (subparagraphs 18(8)(b)(i) and (ii)).

1.216 When the indirect acquisition is not completed in the same financial year, the financial report that relates to the acquisition date may not recognise the acquisition. This is because the acquisition is generally only recognised for accounting purposes when control passes to the

acquirer. Generally, this occurs when the transaction is complete, not when the transaction was first entered into or an agreement to enter into the transaction was first entered into. This mismatch gives rise to anomalous results as the amount of acquired exploration expenditure that will transfer to the new owner is dependent upon the financial report that recognises the acquisition when the transaction is complete.

1.217 An amendment is made to paragraph 19(2)(c) to replace ‘the day of acquisition’ with ‘the day the acquisition of the interest, or the acquisition of the company, was recognised in accordance with accounting standards’. [*Schedule #, item 152, paragraph 19(2)(c) of Schedule 2*]

Assessable property receipts

1.218 The new Clause 21A of Part 4 of Schedule 2 to the PRRTAA 1987 is about assessable property receipts.

1.219 Exploration permits and retention leases that existed at 2 May 2010 receive a starting base amount recognising the existing investment in the petroleum project. When a production licence is granted, this starting base amount ‘crystallises’ and becomes eligible real expenditure in the form of starting base expenditure.

1.220 Where an asset included in the starting base amount relating to an exploration permit or retention lease is sold after 1 July 2012, the amount is not removed from the starting base amount. Instead, the receipt from its sale is recognised as an assessable property receipt. The property receipt cannot be captured by Part V, Division 2 of the PRRTAA 1987 because paragraph 27(1)(a) requires that eligible real expenditure of a capital nature should have been incurred in relation to the asset. This requirement will not have been met in relation to starting base amount because the market value or book value of the asset will not have yet ‘crystallised’ and the expenditure will not be eligible real expenditure.

1.221 Amendments are made to Part 4 of Schedule 2 to the PRRTAA 1987 to include a new clause, Clause 21A. Without limiting Section 27, Clause 21A is triggered on the disposal, loss or destruction of the asset after 1 July 2012, and deems eligible real expenditure of a capital nature to have been incurred by the person to the extent the asset was used in carrying on the project activities. From there, the Section 27 provisions take over. [*Schedule #, item 153, clause 21A of Schedule 2*]

Example 1.11 Disposals of starting base assets

On 2 May 2010, Brokenshire Resources has an interest in an onshore petroleum exploration permit in the Surat Basin. Brokenshire Resources has a starting base amount for the interest in the project.

In October 2012, Brokenshire Resources makes a valid starting base election, selecting 'market value' as their starting base valuation method.

In March 2013, Brokenshire Resources sells two drill rigs used in the exploration of the permit area that were included in the starting base amount. As no production licence has yet been granted, eligible real expenditure is deemed to have been incurred through section 21A.

The property receipt is then assessable under section 27.

Starting base assessments

1.222 Part 5 of Schedule 2 to the PRRTAA 1987 is about starting base returns and assessments. Clause 23 is about starting base assessments. Paragraph 23(4)(b) deems the starting base assessment to be an assessment for the purposes of Part VI, Division 2, Section 66 of the PRRTAA 1987. Section 66 is about objections to assessments.

1.223 Subsection 66(1) allows a person who is dissatisfied with an assessment to make an objection in the manner set out in Part IVC of the *Taxation Administration Act 1953* (TAA 1953). Taxpayers will be able to object to their starting base assessment if they are dissatisfied.

1.224 Subsection 66(2) specifies that 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 their tax liability. In the case of the starting base assessment, there is no tax payable, only an amount that is submitted to be the person's starting base amount. Therefore, it would not meet the objection criteria outlined in Subsection 66(2).

1.225 Amendments are made to Paragraph 23(4)(b) to remove the reference to section 66 and to replace it with a reference to subsection 66(1). [*Schedule #, item 154, paragraph 23(4)(b) of Schedule 2*]

1.226 In addition, amendments are also made to subclause 23(5) to ensure that where a transfer in ownership occurs, future owners have rights relating to the starting base.

1.227 Subclause 23(5) provides protection to the taxpayer against amendment to a general assessment. However, an objection made against a general assessment in future years cannot relate to matters to which the starting base assessment relates.

1.228 Where a person transfers an interest in full or in part after they have received a starting base assessment, the right to request an amendment to an assessment, object against an assessment or the right to

protection against amendment to a general assessment should transfer from the vendor to the purchaser from the date of purchase of the interest.

1.229 Amendments are made to Subclause 23, with the addition of a new section 25(5A), to specify that the purchaser inherits the assessment rights provided for under Subclause 25(4) and (5). [*Schedule #, item 155, subclauses 23(5A) and (5B) of Schedule 2*]

PRRT consequential amendments

Liability for payment of tax where head company fails to pay on time

1.230 Division 721 of the ITAA 1997 is about the payment of certain liabilities of the head company of a consolidated group where the head company fails to meet all of those liabilities by the time they become due and payable.

1.231 The table at subsection 721-10(2) lists tax related liabilities of the head company and the period to which they relate. Subsection 721-10(5) specifies that the members of a consolidated group or MEC group only become jointly and severally liable for PRRT liabilities that are listed at items 95, 100, 105 and 100 of the table if the group has chosen to consolidate for PRRT purposes. Companies are also jointly and severally liable to pay the general interest charge at Item 40 of the table.

1.232 An amendment is made to subsection 721-10(5) to specify that where a consolidation choice has been made under section 58N of the PRRTAA 1987, all the members of the consolidated group are jointly and severally liable for those PRRT liabilities listed. If there is a provisional head company, subsection 721-10(5) also applies to the tax related liabilities of the provisional head company. Similar amendments are made to subsection 721-10(4). [*Schedule #, item 1, subsections 721-10(4), (5) and (6) of the ITAA 1997*]

995-1 Definitions

1.233 An amendment is made to subsection 995-1(1) to insert a definition for 'petroleum resource rent tax law'. The new definition is included to facilitate changes made to the TAA 1953 to allow for electronic payments. [*Schedule #, item 2, subsection 995-1(1) of the ITAA 1997 (definition of 'petroleum resource rent tax law')*]

1.234 The definition of petroleum resource rent tax law means the PRRTAA 1987 and any of its imposition Acts, the TAA 1953 so far as it relates to any Act covered by the PRRTAA 1987 or its imposition Acts, any other Act so far as it relates to the PRRTAA 1987 or its imposition Acts, and any regulations under those Acts.

Objections, reviews and appeals

General interpretation provisions

1.235 Part IVC of the TAA 1953 is about taxation objections, reviews and appeals.

1.236 An amendment is made to section 14ZQ to insert a definition for 'starting base assessment' into the general interpretive provisions. This addition facilitates other amendments to ensure that a person can make an objection against their starting base assessment. *[Schedule #, item 158, section 14ZQ of the TAA 1953 (definition of 'starting base assessment')]*

Grounds of objection and burden of proof

1.237 Sections 14ZZK and 14ZZO of the TAA 1953 place the burden of proof on the taxpayer that an assessment is excessive. However, the starting base assessment does not establish the liability to pay an amount of tax payable.

1.238 Amendment are made to subparagraphs 14ZZK(b)(i), 14ZZK(b)(ii), 14ZZO(b)(i) and 14ZZO(b)(ii) to align the burden of proof against a starting base assessment being 'incorrect' and not 'excessive'. This is similar to the treatment of franking assessments. *[Schedule #, item 159, subparagraphs 14ZZK(b)(i) and (ii) and 14ZZO(b)(i) and (ii) of the TAA 1953]*

Collection and recovery of income tax and other liabilities

1.239 Amendments are made to Schedule 1 to the TAA 1953 to align the treatment of withholding tax related to withholding from natural resource payments with that of the Minerals Resource Rent Tax.

Withholding from natural resource payments

1.240 Entities that are foreign residents may have PRRT withheld from natural resource payments—that is, payments that are of a nature described in section 12-325 of the TAA 1953. *[Schedule #, item 161, paragraphs 12-330(1)(b) and 12-335(2)(a) of Schedule 1 to the TAA 1953]*

Crediting withheld amounts

1.241 If an entity receives a natural resource payment from which an amount has been withheld for PRRT purposes, then the recipient of the natural resource payment is entitled to a credit equal to the amount withheld. *[Schedule #, items 162 and 163, subsection 18-10(3) (note) and section 18-55 of Schedule 1 to the TAA 1953]*

1.242 Consequential amendments are made to the object of the PAYG withholding provisions dealing with the crediting of withheld amounts. *[Schedule #, item 160, section 11-1 of Schedule 1 to the TAA 1953]*

Part 2 — Other amendments to the taxation laws

Records to be kept and preserved

Table 1.1: Amendments of the *Fringe Benefits Tax Assessment Act 1986*

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Fringe Benefits Tax Assessment Act 1986</i> 132(1) 132(2) 132(3) 132(5) (notes) 132(6) [Schedule #, items 182 to 186]	Makes the failure to keep certain records a strict liability offence, which aligns with like provisions in other Acts. Only such offences committed after the commencement of this amending Act can be considered strict liability offences.

Meaning of affiliate

Table 1.2: Amendments of the *Income Tax Assessment Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i> 328-130(2) (example) [Schedule #, item 187]	Fixes a technical error in the Example, as a trustee cannot be an affiliate of another entity.

Farm management deposit scheme

Table 1.3: Amendments of the *Income Tax Assessment Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i> 393-40(1) [Schedule #, item 188]	Ensures that a deposit is still taken to be a Farm Management Deposit even if it is repaid on the last day of the 12 month period (i.e. on the one year anniversary date of the deposit). The amendments apply, and are taken to have applied, in relation to withdrawals that occur, or have occurred, at any time after the start of the 2010-11 income year.

Urban water tax offset

Table 1.4: Amendments of the *Income Tax Assessment Act 1997*

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Income Tax Assessment Act 1997</i>	Repeals subdivision 402-W prior to its sunset

<p><i>Act 1997</i> Subdivision 402-W <i>[Schedule #, item 189]</i></p>	<p>date (of 1 July 2014) because it is not being utilised; the Water Minister has advised that legislative guidelines (about the issuing and revoking of tax offset certificates) will not be prescribed.</p>
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Account based pensions

Table 1.5: Amendments of the Retirement Savings Accounts Regulations 1997 and the Superannuation Industry (Supervision) Regulations 1994

<i>Regulation being amended</i>	<i>What the amendment does</i>
<p>Retirement Savings Accounts Regulations 1997 4A.04(1)(b) 4A.05(6A)(b) 4A.08(1)(b) 4A.15(1)(b)(ii) 4A.18(1)(b) 4A.27(1)(b) 4A.28(1)(b) <i>[Schedule #, items 190 to 196]</i></p> <p>Superannuation Industry (Supervision) Regulations 1994 7A.03A(1)(b) 7A.03B(6A)(b) 7A.03E(b)(i) 7A.04(1)(b)(ii) 7A.07(1)(b) 7A.16(1)(b) 7A.16(4) 7A.17(1)(b) 7A.18(1)(b) <i>[Schedule #, items 197 to 205]</i></p>	<p>Ensures that account based pensions are also subject to the superannuation splitting provisions, and are to be considered as such since 1 July 2007.</p>

Correcting a reference

Table 1.6: Amendments of the Taxation Administration Act 1953

<i>Provision being amended</i>	<i>What the amendment does</i>
<i>Taxation Administration</i>	Corrects a reference which should be 'income

<p>Act 1953 45-630 of Schedule 1 (note 1) <i>[Schedule #, item 206]</i></p>	<p>tax law’.</p>
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Correcting a reference

Table 1.7: Amendments of the *Taxation Administration Act 1953*

<i>Provision being amended</i>	<i>What the amendment does</i>
<p><i>Taxation Administration Act 1953</i> 355-70(1) of Schedule 1 (table item 3) <i>[Schedule #, item 207]</i></p>	<p>Following the Government’s decision to extend Project Wickenby until 30 June 2015, this amendment extends the period in which a record or disclosure can be made to a Project Wickenby officer or a court or tribunal, to before 1 July 2015.</p>

Commencement and application arrangements

1.243 The amendments in Part 1 of Schedule # commence on 1 July 2012, immediately after the commencement of the MRRTA 2012. They commence at this time to ensure the PRRT and MRRT laws will operate as intended from 1 July 2012, which is when the PRRT came into effect. Given that these amendments are technical and machinery in nature, they will have no adverse impact on taxpayers.

1.244 Although the amendments in Part 2 of Schedule # all commence on Royal Assent, some have individual application provisions.

1.245 The amendments made by Item 186 apply in relation to offences committed on or after Royal Assent. *[Schedule #, subitem 208(1)]*

1.246 The amendments made by item 188 apply, and are taken to have applied, in relation to withdrawals that occur at any time after the start of the 2010-2011 income year. In addition, former subsection 393-37(1) of Schedule 2G to the ITAA 1936 applies, and is taken to have applied, in relation to withdrawals that occurred during the period between just after 1 pm (in the Australian Capital Territory) on 11 November 1999 and just before the time item 188 commences. This ensures that past deposits are taken to be Farm Management Deposits even if they were repaid on the one year anniversary date of the deposit. *[Schedule #, subitems 208(2), (3) and (4)]*

1.247 The amendments made by Items 190 to 205 apply, and are taken to have applied, from 1 July 2007. This ensures that account based

pensions are to be treated as having always been subject to the superannuation splitting provisions. *[Schedule #, subitem 208(5)]*

1.248 The amendments made by Item 207 apply to records and disclosures of information made on or after 1 July 2013, irrespective of when the information was acquired. *[Schedule #, subitem 208(6)]*

Chapter 2

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Miscellaneous amendments to the taxation laws

2.1 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.2 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Human rights implications

2.3 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

2.4 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, the Hon David Bradbury

