

EXPOSURE DRAFT

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Inserts for

Petroleum Resource Rent Tax Assessment Regulations 2023: Tolling arrangements

Petroleum Resource Rent Tax Assessment Regulation 2015

1 Section 5 (definition of *actual mass of project natural gas*)

Omit “an integrated”, substitute “a relevant”.

2 Section 5 (definition of *actual volume of project natural gas*)

Omit “an integrated”, substitute “a relevant”.

3 Section 5

Insert:

commercial tolling fee: see section 18A.

commercial tolling phase: see section 9A.

4 Section 5 (paragraphs (a) and (b) of the definition of *downstream stage*)

Omit “an integrated”, substitute “a relevant”.

5 Section 5 (definition of *estimated average annual mass of project natural gas*)

Omit “an integrated”, substitute “a relevant”.

6 Section 5 (definition of *estimated average annual volume of project natural gas*)

Omit “an integrated”, substitute “a relevant”.

7 Section 5 (definition of *expected operating life*)

Omit “an integrated”, substitute “a relevant”.

8 Section 5

Repeal the following definitions:

(a) definition of *integrated GTE operation*;

(b) definition of *integrated GTL operation*;

(c) definition of *integrated operation*.

9 Section 5 (definition of *mass coefficient*)

Omit “an integrated”, substitute “a relevant”.

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10 Section 5 (paragraphs (a) and (b) of the definition of *MPC production year*)

Omit “an integrated”, substitute “a relevant”.

11 Section 5 (definition of *operating life*)

Repeal the definition, substitute:

operating life has the meaning given by:

- (a) for a relevant GTL operation—subsection 6(8) (subject to subsection 6A(3)); and
- (b) for a relevant GTE operation—subsection 7(8) (subject to subsection 7A(2)).

12 Section 5 (definition of *participant*)

Omit “an integrated”, substitute “a relevant”.

13 Section 5 (definition of *phase*)

Omit “an integrated”, substitute “a relevant”.

14 Section 5 (at the end of the definition of *phase*)

Add “, subject to section 9A”.

15 Section 5 (definition of *phase cost*)

Omit “an integrated”, substitute “a relevant”.

16 Section 5 (paragraphs (a) and (b) of the definition of *production date*)

Omit “an integrated”, substitute “a relevant”.

17 Section 5 (definition of *production year*)

Repeal the definition, substitute:

production year has the meaning given by:

- (a) for a relevant GTL operation—subsection 6(6) (subject to subsection 6A(2)); and
- (b) for a relevant GTE operation—subsection 7(6).

18 Section 5 (definition of *project electricity*)

Omit “an integrated”, substitute “a relevant”.

19 Section 5 (definition of *project liquid*)

Omit “an integrated”, substitute “a relevant”.

20 Section 5 (paragraphs (a) and (b) of the definition of *project natural gas*)

Omit “an integrated”, substitute “a relevant”.

21 Section 5 (paragraphs (a) and (b) of the definition of *project product*)

Omit “an integrated”, substitute “a relevant”.

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22 Section 5 (paragraphs (a) and (b) of the definition of *project sales gas*)

Omit “an integrated”, substitute “a relevant”.

23 Section 5

Insert:

relevant GTE operation has the meaning given by subsection 7(1).

relevant GTL operation has the meaning given by subsection 6(1).

relevant operation means a relevant GTE operation or a relevant GTL operation.

24 Section 5 (definition of *RPM price*)

Omit “an integrated”, substitute “a relevant”.

25 Section 5

Insert:

source project, in relation to a relevant operation, means the petroleum project from which petroleum is, or will be, recovered in the relevant operation.

26 Section 5 (definition of *start date*)

Omit “an integrated”, substitute “a relevant”.

27 Section 5 (definition of *taxpayer*)

Repeal the definition, substitute:

taxpayer, in relation to a relevant operation, means a person:

- (a) who holds an interest in the operation that entitles the person, at the end of at least one phase, to:
 - (i) petroleum product of the operation, other than petroleum product that is destroyed, used as fuel or otherwise consumed in the operation; or
 - (ii) electricity produced in the operation; and
- (b) whose assessable petroleum receipts in relation to sales gas from the operation are to be worked out under this instrument because of section 19 or 20.

28 Section 5 (definition of *volume coefficient*)

Omit “an integrated”, substitute “a relevant”.

29 Section 6 (heading)

Omit “an integrated”, substitute “a relevant”.

30 Subsection 6(1)

Omit “An *integrated*”, substitute “A *relevant*”.

31 Subsections 6(2) to (9)

Omit “the integrated” (wherever occurring), substitute “the relevant”.

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32 After section 6

Insert:

6A Relevant GTL operation where there is a tolling arrangement without a commercial tolling fee

- (1) This section applies to a relevant GTL operation if:
 - (a) there is an arrangement (the *tolling arrangement*) under which a fee is, or will be, paid in consideration of a person or persons carrying out one or more of the actions mentioned in subsection 8(1) or (2); and
 - (b) the fee is not a commercial tolling fee.
- (2) Despite subsection 6(6), the *production year* for the relevant GTL operation is:
 - (a) if an election has been made in relation to the relevant GTL operation under section 50—the 2012-13 year of tax; or
 - (b) otherwise—the year of tax in which sales gas of the source project is first processed into liquefied product.
- (3) Despite subsection 6(8), the *operating life* of the relevant GTL operation is the period beginning with the production year and ending with the latest of the following:
 - (a) the end of the expected operating life of the operation;
 - (b) in a case where a person mentioned in paragraph (1)(a) of this section also carries out an action mentioned in subsection 8(1) or (2) in relation to petroleum recovered from the source project for another relevant GTL operation in which the person is a participant—the last year of tax for any such person in which the petroleum was, or is intended to be, processed into liquefied product;
 - (c) the last year of tax in which the tolling arrangement is in effect.
- (4) Subsections (2) and (3) continue to apply to the relevant GTL operation even if subsection (1) ceases to apply to the relevant GTL operation.

33 Section 7 (heading)

Omit “*an integrated*”, substitute “*a relevant*”.

34 Subsection 7(1)

Omit “*An integrated*”, substitute “*A relevant*”.

35 Subsections 7(2) to (9)

Omit “*the integrated*” (wherever occurring), substitute “*the relevant*”.

36 After section 7

Insert:

7A Relevant GTE operation where there is a tolling arrangement without a commercial tolling fee

- (1) This section applies to a relevant GTE operation if:

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- (a) there is an arrangement (the *tolling arrangement*) under which a fee is, or will be, paid in consideration of a person or persons carrying out one or more of the actions mentioned in subsection 8(1) or (3); and
 - (b) the fee is not a commercial tolling fee.
- (2) Despite subsection 7(8), the *operating life* of the relevant GTE operation is the period beginning with the production year and ending with the latest of the following:
- (a) the end of the expected operating life of the operation;
 - (b) in a case where a person mentioned in paragraph (1)(a) of this section also carries out an action mentioned in subsection 8(1) or (3) in relation to petroleum recovered from the source project for another relevant GTE operation in which the person is a participant—the last year of tax for any such person in which the petroleum was, or is intended to be, consumed in the production of electricity;
 - (c) the last year of tax in which the tolling arrangement is in effect.
- (3) Subsection (2) continues to apply to the relevant GTE operation even if subsection (1) ceases to apply to the relevant GTE operation.

37 Section 8 (heading)

Omit “**integrated**”, substitute “**relevant**”.

38 Subsection 8(1)

Omit “an integrated”, substitute “a relevant”.

39 Subsection 8(2)

Omit “an integrated GTL operation”, substitute “a relevant GTL operation”.

40 Subsection 8(3)

Omit “an integrated GTE operation”, substitute “a relevant GTE operation”.

41 Subsection 8(3) (note 2)

Omit “an integrated”, substitute “a relevant”.

42 Section 9 (heading)

Omit “**integrated**”, substitute “**relevant**”.

43 Subsection 9(1)

Omit “The *phase points* of an integrated operation”, substitute “Subject to section 9A, the *phase points* of a relevant operation”.

44 After paragraph 9(1)(b)

Insert:

- ; and (c) any point in the flow of project product through the operation at which:
- (i) there is a change in the person or persons who are in possession of the project product; and
 - (ii) at least one of the persons who starts to possess, or stops possessing, the project product is a participant in the relevant operation who possesses or possessed the petroleum product in the person’s capacity as a participant in that operation; and
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- (iii) the change occurs for the purpose of carrying out one or more of the actions mentioned in section 8 (including for the purpose of returning petroleum product to participants in the operation after one or more such actions are carried out).

45 Subsection 9(1) (note 1)

Omit “the integrated”, substitute “the relevant”.

46 Subsection 9(1) (note 2)

Omit “This procedure assumes that the same phase points apply over the life of the project.”.

47 Subsection 9(1) (example 1)

Omit “An integrated”, substitute “A relevant”.

48 Subsection 9(1) (examples 2 and 3)

Omit “an integrated”, substitute “a relevant”.

49 Subsection 9(2)

Omit “paragraph (1)(b) does not apply to an integrated”, substitute “paragraphs (1)(b) and (c) do not apply to a relevant”.

50 Subsection 9(4)

Omit “The integrated”, substitute “The relevant”.

51 Subsections 9(5) to (7)

Omit “the integrated operation”, substitute “the relevant operation”.

52 After section 9

Insert:

9A Commercial tolling phases

- (1) This section applies to a relevant operation if:
 - (a) the relevant operation has a phase point (the *start point*) mentioned in paragraph 9(1)(c), that is not for the purpose of returning project product to participants in the relevant operation; and
 - (b) the relevant operation also has a phase point (the *end point*) mentioned in paragraph 9(1)(c) for the purpose of returning project product to participants in the relevant operation; and
 - (c) one or more actions mentioned in section 8 are carried out between the start point and the end point; and
 - (d) a commercial tolling fee is paid in consideration for that action or all of those actions (as the case requires); and
 - (e) no election under section 50 has been made for the relevant operation.

Phases that occur between the start point and the end point

- (2) No phase points, other than a phase point mentioned in paragraph 9(1)(a), are taken to occur between the start point and the end point.

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Note: Paragraph 9(1)(a) provides for a phase point at the point where the upstream stage ends and the downstream stage begins.

- (3) If, after applying subsection (2), there are no phase points between the start point and the end point, then:
 - (a) there is a single phase between the start point and the end point; and
 - (b) that phase is a *commercial tolling phase*.
- (4) If, after applying subsection (2), there is a phase point mentioned in paragraph 9(1)(a) (the *stream change point*) between the start point and the end point, then:
 - (a) there is a single phase between the start point and the stream change point; and
 - (b) there is a single phase between the stream change point and the end point; and
 - (c) the phases mentioned in paragraphs (a) and (b) of this subsection are *commercial tolling phases*.

53 Section 10

Omit “the integrated” (wherever occurring), substitute “the relevant”.

54 Section 11 (heading)

Omit “an integrated”, substitute “a relevant”.

55 Section 11

Omit “an integrated”, substitute “a relevant”.

56 Subsection 13(1)

Omit “an integrated”, substitute “a relevant”.

57 Subsection 13(8)

Omit “the integrated”, substitute “the relevant”.

58 Sections 14 to 17

Omit “an integrated” (wherever occurring), substitute “a relevant”.

59 At the end of Division 2 of Part 1

Add:

18A Commercial tolling fee

A fee in consideration of the carrying out of one or more actions mentioned in section 8 in relation to petroleum recovered from the source project of a relevant operation is a *commercial tolling fee* if:

- (a) the fee is paid or payable under an arrangement (a *tolling arrangement*) where the parties to the tolling arrangement are the participants in the relevant operation and one or more people:
 - (i) who are not participants in the relevant operation; or
 - (ii) who are parties to the arrangement both in their capacity as participants in the relevant operation and in another capacity (such as in the capacity of participants in another relevant operation, where the

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facilities of the other relevant operation are used to carry out the action or actions under the arrangement); and

- (b) the fee is a reasonable arm's length price having regard to the entire commercial context of the tolling arrangement, including the following:
 - (i) the functions performed, assets used and risks borne by the parties;
 - (ii) the characteristics of the services provided;
 - (iii) the terms of any relevant contracts between the parties;
 - (iv) the economic circumstances;
 - (v) the business strategies of the parties.

60 Section 19 (heading)

Omit “**integrated**”, substitute “**relevant**”.

61 Paragraph 19(1)(a)

Omit “an integrated”, substitute “a relevant”.

62 Paragraph 19(3)(c)

Omit “the integrated”, substitute “the relevant”.

63 Subparagraph 19(5)(b)(ii)

Omit “the integrated”, substitute “the relevant”.

64 Section 20 (heading)

Omit “**integrated**”, substitute “**relevant**”.

65 Subsection 20(1)

Omit “an integrated”, substitute “a relevant”.

66 Paragraph 20(3)(c)

Omit “the integrated”, substitute “the relevant”.

67 Subparagraph 20(5)(b)(ii)

Omit “the integrated”, substitute “the relevant”.

68 Subsection 22(1)

Omit “an integrated”, substitute “a relevant”.

69 Paragraph 25(3)(b)

Omit “the integrated”, substitute “the relevant”.

70 Subsection 25(4) (examples 1 and 2)

Omit “the integrated”, substitute “the relevant”.

71 Subsection 25(4) (example 3)

Omit “an integrated”, substitute “a relevant”.

72 Sections 26 and 27

Omit “an integrated” (wherever occurring), substitute “a relevant”.

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73 Section 29

Omit “the relevant integrated operation”, substitute “the relevant operation”.

74 At the end of section 29

Add:

Note 5: If the participants in the operation pay a commercial tolling fee in consideration of the carrying out of one or more actions mentioned in section 8, then:

- (a) costs incurred in carrying out the action or actions are not treated as costs associated with the relevant operation (see subsections 31(3A) and (3B)); and
- (b) because of this, a cost-plus price and netback price (and the related RPM price) may be able to be calculated by applying the residual pricing method whether or not information about the costs incurred in carrying out the action or actions is available.

75 Section 30

Omit “an integrated”, substitute “a relevant”.

76 Section 30 (method statement, steps 1, 3 and 7)

Omit “the integrated”, substitute “the relevant”.

77 Section 31 (heading)

Omit “**integrated**”, substitute “**relevant**”.

78 Subsection 31(1)

Omit “an integrated”, substitute “a relevant”.

79 Subsection 31(3)

Omit “the integrated operation”, substitute “the relevant operation, unless it is a commercial tolling fee”.

80 After subsection 31(3)

Insert:

Tolling arrangements

- (3A) Apply subsection (3B) or (3C) if:
- (a) a cost (the *tolled cost*) is incurred in carrying out one or more actions mentioned in section 8 in relation to petroleum recovered from the source project of the relevant operation; and
 - (b) a payment or allowance is paid by or on behalf of one or more participants in the relevant operation in consideration of the action or actions; and
 - (c) information about the tolled cost is not available to the taxpayer.
- (3B) If the payment or allowance mentioned in paragraph (3A)(b) is a commercial tolling fee, then, for the purposes of applying the residual pricing method to the relevant operation:
- (a) the tolled cost is not a cost associated with the relevant operation; and
 - (b) the commercial tolling fee is a cost associated with the relevant operation.
- (3C) If the payment or allowance mentioned in paragraph (3A)(b) is not a commercial tolling fee, then, for the purposes of applying the residual pricing method to the relevant operation:
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- (a) the payment or allowance is not a cost associated with the relevant operation; and
- (b) the tolled cost is to be treated as a cost:
 - (i) associated with the relevant operation; and
 - (ii) incurred by the participants in the relevant operation.

Costs partly attributable to the relevant operation

81 Paragraph 31(4)(a)

Omit “the integrated”, substitute “the relevant”.

82 Subsection 31(5)

Omit “the integrated”, substitute “the relevant”.

83 Section 32 (heading)

Omit “**integrated**”, substitute “**relevant**”.

84 Section 32

Before “For”, insert “(1)”.

85 Section 32

Omit “the integrated”, substitute “the relevant”.

86 Paragraph 32(c)

Omit “an integrated”, substitute “a relevant”.

87 At the end of section 32

Add:

- (2) Also, exclude a cost associated with the relevant operation to the extent that including the cost would result in the cost being attributed to both:
 - (a) the relevant operation; and
 - (b) any other relevant operation where the cost is used in the residual pricing method for any taxpayer who is a participant in that relevant operation.

88 Subsection 33(1)

Omit “the integrated”, substitute “the relevant”.

89 Section 35

Omit “an integrated”, substitute “a relevant”.

90 Section 35 (note)

Omit “the integrated”, substitute “the relevant”.

91 Subsections 36(1) and (3)

Omit “an integrated”, substitute “a relevant”.

92 Paragraph 37(1)(a)

Omit “an integrated”, substitute “a relevant”.

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93 Subsection 38(1)

Omit “the operation”, substitute “the relevant operation”.

94 Subsections 38(2) to (4)

Omit “the integrated”, substitute “the relevant”.

95 Section 43

Before “For”, insert “(1)”.

96 Section 43 (definition of *total phase energy*)

After “petroleum product”, insert “, from any operation,”.

97 At the end of section 43

Add:

(2) This section does not apply to a phase cost of a commercial tolling phase.

98 Sections 45 and 46

Omit “an integrated” (wherever occurring), substitute “a relevant”.

99 Section 50 (heading)

Omit “**integrated**”, substitute “**relevant**”.

100 Subsection 50(1)

Omit “an integrated”, substitute “a relevant”.

101 Subsection 50(3)

Omit “the integrated” (wherever occurring), substitute “the relevant”.

102 Section 52

Omit “an integrated” (wherever occurring), substitute “a relevant”.