



# **Petroleum Resource Rent Tax Assessment Act 1987**

**No. 142 of 1987**

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# **Petroleum Resource Rent Tax Assessment Act 1987**

**No. 142 of 1987**

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**An Act relating to the assessment and collection of the tax  
imposed by the *Petroleum Resource Rent Tax Act 1987*,  
and for related purposes**

*[Assented to 18 December 1987]*

*[Date of commencement 15 January 1988]*

**BE IT ENACTED** by the Queen, and the Senate and the House of  
Representatives of the Commonwealth of Australia, as follows:

## **PART I—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Petroleum Resource Rent Tax Assessment Act 1987*.

## **PART II—INTERPRETATION**

### **Defined terms**

**2.** In this Act, unless the contrary intention appears—  
“access authority” means an access authority under Part III of the  
*Petroleum (Submerged Lands) Act 1967*;

**“agent” includes—**

- (a) a person who, for and on behalf of a person out of Australia, has the management or control in Australia of the whole or a part of a business of the second-mentioned person; and
- (b) a person declared by the Commissioner, by notice in writing served on the person, to be an agent or the sole agent of a person for the purposes of this Act;

**“assessment” means—**

- (a) the ascertainment of the amount of the taxable profit of a person of a year of tax in relation to a petroleum project and of the tax payable on that amount; or
- (b) the ascertainment of the additional tax payable under a provision of Part IX;

**“Australia”, when used in a geographical sense, includes the external Territories;**

**“block” has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*;**

**“certifying Minister” means the Minister for the time being administering the *Petroleum (Submerged Lands) Act 1967*;**

**“combined project” means a petroleum project to which sub-section 19 (2) applies;**

**“Commissioner” means the Commissioner of Taxation;**

**“condensate” means a mixture that includes pentane and hexane, where the pentane and hexane comprise more than 50% by weight of the mixture;**

**“Deputy Commissioner” means a Deputy Commissioner of Taxation;**

**“eligible production licence” means a production licence other than a production licence that is related to an excluded exploration permit;**

**“eligible real expenditure” means exploration expenditure, general project expenditure or closing-down expenditure;**

**“employee amenities” means housing, health, educational, recreational, welfare or other similar facilities and services for, or facilities and services involved in the supply of meals to, employees or dependants of employees, not being facilities and services conducted for the purpose of profit-making;**

**“excluded commodity” means a marketable petroleum commodity that:**

- (a) has been sold;
- (b) after being produced, has been further processed or treated;
- (c) has been moved away from the place of its production other than to a storage site adjacent to that place; or
- (d) has been moved away from a storage site adjacent to the place of its production;

- “excluded exploration permit”** means an exploration permit to which a production licence in force on or before 1 July 1984 was related;
- “excluded fee”** means an amount of a kind referred to in paragraph 22B (5) (b), 24 (1) (b), 26 (1) (b), 48 (1) (b) or 50 (b) of the *Petroleum (Submerged Lands) Act 1967*;
- “exploration permit”** means an exploration permit for petroleum under Part III of the *Petroleum (Submerged Lands) Act 1967*;
- “exploration permit area”** means a permit area within the meaning of the *Petroleum (Submerged Lands) Act 1967*;
- “facilities”** means land, buildings, plant, equipment and other facilities;
- “financial year”** means any financial year that commenced or commences on or after 1 July 1979;
- “holder of a registered interest”**, in relation to a production licence, means a person holding an interest in the production licence, being an interest created by a dealing in relation to which an entry has been made under sub-section 81 (12) of the *Petroleum (Submerged Lands) Act 1967*;
- “ineligible project”**, in relation to a financial year, means a petroleum project that is a pre-combination project by virtue of the issue of a project combination certificate during the financial year;
- “instalment of tax”** means an instalment of tax payable under Division 2 of Part VIII;
- “instalment percentage”**, in relation to an instalment period in a year of tax, means—
- (a) in the case of the first instalment period in the year of tax—25%;
  - (b) in the case of the second instalment period in the year of tax—50%; and
  - (c) in the case of the third instalment period in the year of tax—75%;
- “instalment period”**, in relation to an instalment of tax in a year of tax, means the period commencing at the beginning of the year of tax and ending at the end of the month preceding that in which the instalment is due and payable;
- “lease derived production licence”** means a production licence that is related to a retention lease;
- “liquefied petroleum gas”** means a mixture that includes propane and butane, where the propane and butane comprise more than 50% by weight of the mixture;
- “long-term bond rate”** means—
- (a) in relation to the financial year commencing on 1 July 1979—0.1066;
  - (b) in relation to the financial year commencing on 1 July 1980—0.1258;

- (c) in relation to the financial year commencing on 1 July 1981—0.1548;
- (d) in relation to the financial year commencing on 1 July 1982—0.1443;
- (e) in relation to the financial year commencing on 1 July 1983—0.1272;
- (f) in relation to the financial year commencing on 1 July 1984—0.1341;
- (g) in relation to the financial year commencing on 1 July 1985—0.1365; and
- (h) in relation to any subsequent financial year—the average, expressed as a decimal fraction, of the assessed secondary market yields in respect of 10-year non-rebate Treasury bonds published by the Reserve Bank during that year or, if no assessed secondary market yield in respect of bonds of that kind was published by the Reserve Bank during the year, the decimal fraction determined by the Treasurer by notice in writing published in the *Gazette* for the purposes of this definition in relation to the financial year;

“marketable petroleum commodity” means any of the following products produced from petroleum:

- (a) stabilised crude oil;
- (b) sales gas;
- (c) condensate;
- (d) liquefied petroleum gas;
- (e) ethane;
- (f) any other product declared by the regulations to be a marketable petroleum commodity,

not being a product produced from another product of a kind referred to in paragraphs (a) to (f) (inclusive);

“offence against this Act” includes an offence against—

- (a) the *Crimes Act 1914*; or
- (b) the *Taxation Administration Act 1953*,

relating to this Act;

“officer” means an officer or employee of the Australian Public Service;

“permit derived production licence” means a production licence that is related to an exploration permit by virtue of sub-paragraph 4 (a) (i);

“petroleum” has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*;

“petroleum project” or “project” means a petroleum project within the meaning of sub-section 19 (1) or (2);

“pipeline licence” means a licence under Part III of the *Petroleum (Submerged Lands) Act 1967* to construct and operate a pipeline;



- “pre-combination project”, in relation to a combined project, means—
- (a) any petroleum project that, immediately before the project combination certificate that gave rise to the combined project came into force, was a petroleum project in relation to any one or more of the eligible production licences specified in the certificate; and
  - (b) any petroleum project that is a pre-combination project in relation to another petroleum project that is a pre-combination project in relation to the combined project under paragraph (a) or this paragraph;
- “production licence” means a production licence for petroleum under Part III of the *Petroleum (Submerged Lands) Act 1967*;
- “production licence area” means a licence area within the meaning of the *Petroleum (Submerged Lands) Act 1967*;
- “project combination certificate” means a certificate under section 20;
- “registered holder” has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*;
- “re-inject”, in relation to a marketable petroleum commodity produced from petroleum recovered from the eligible exploration or recovery area in relation to a petroleum project, means return the commodity to a natural reservoir in:
- (a) where the return takes place before any production licence in relation to the project comes into force—any area from which the recovery of petroleum would, at the time of the return, constitute recovery of petroleum from the eligible exploration or recovery area in relation to the project; and
  - (b) in any other case—the production licence area or any of the production licence areas in relation to the project;
- “retention lease” means a retention lease under Part III of the *Petroleum (Submerged Lands) Act 1967*;
- “retention lease area” means a lease area within the meaning of the *Petroleum (Submerged Lands) Act 1967*;
- “sales gas” means a mixture that includes methane, where the methane comprises more than 50% by weight of the mixture;
- “Second Commissioner” means a Second Commissioner of Taxation;
- “services” means water, light, power, access, communications or other services;
- “tax” means tax imposed by the *Petroleum Resource Rent Tax Act 1987*;
- “this Act” includes the regulations;
- “Tribunal” means the Administrative Appeals Tribunal;
- “trustee” includes—
- (a) a person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law;
  - (b) an executor, administrator or other personal representative of a deceased person;

- (c) a guardian or committee;
- (d) a receiver or receiver and manager;
- (e) an official manager or liquidator of a company; or
- (f) a person—
  - (i) having or taking upon himself or herself the administration or control of any real or personal property affected by any express or implied trust;
  - (ii) acting in any fiduciary capacity; or
  - (iii) having the possession, control or management of any real or personal property of a person under any legal or other disability;

“unincorporated association” does not include a joint venture;

“year of tax”, in relation to a person in relation to a petroleum project, means a financial year commencing on or after 1 July 1986, being—

- (a) except in a case to which paragraph (b) applies—the first financial year in which assessable petroleum receipts are derived by the person in relation to the project or a subsequent financial year; or
- (b) if the project is a combined project and the person has, in a financial year before the financial year in which the project combination certificate in relation to the project comes into force, derived assessable petroleum receipts in relation to any of the pre-combination projects in relation to the combined project—the financial year in which the project combination certificate comes into force or a subsequent financial year.

### **Petroleum pools**

3. Where, for the purposes of the *Petroleum (Submerged Lands) Act 1967*, petroleum recovered from a petroleum pool, within the meaning of that Act, is taken by section 6A of that Act to have been recovered from a particular area or from particular areas in particular proportions, the petroleum shall be taken for the purposes of this Act to have been recovered from that area, or from those areas in those proportions, as the case may be.

### **Relationship between licences, permits and leases, &c.**

4. For the purposes of this Act—

- (a) a production licence shall be taken to be related to an exploration permit if—
  - (i) because of the grant of the production licence, the exploration permit ceased to be in force in respect of the block or blocks in respect of which the production licence was granted; or
  - (ii) because of the grant of the production licence, a retention lease that was related to the exploration permit ceased to be in force in respect of the block or blocks in respect of which the production licence was granted;

- (b) a retention lease shall be taken to be related to an exploration permit if, because of the grant of the retention lease, the exploration permit ceased to be in force in respect of the block or blocks in respect of which the retention lease was granted;
- (c) a production licence shall be taken to be related to a retention lease if, because of the grant of the production licence, the retention lease ceased to be in force in respect of the block or blocks in respect of which the production licence was granted; and
- (d) where an exploration permit, retention lease or production licence (which permit, lease or licence is in this paragraph referred to as the "original authority") is or was renewed, the renewed permit, lease or licence shall be taken to be a continuation of the original authority notwithstanding that the renewal may not have been granted in respect of all of the blocks in respect of which the original authority was granted.

**Petroleum exploration and recovery in relation to certain areas**

**5. (1)** For the purposes of this Act (including this section) a reference to exploration for petroleum in, or recovery of petroleum from, a production licence area, an exploration permit area or a retention lease area is a reference to exploration for petroleum in, or recovery of petroleum from, the production licence area, the exploration permit area or the retention lease area while the production licence, exploration permit or retention lease concerned is or was in force.

**(2)** For the purposes of this Act, a reference to exploration for petroleum in, or recovery of petroleum from, the eligible exploration or recovery area in relation to a petroleum project is a reference to exploration for petroleum in, or recovery of petroleum from—

- (a) where the production licence or any production licence in relation to the project is a permit derived production licence—the exploration permit area in relation to the exploration permit to which the production licence is related (being exploration or recovery occurring either before or after the production licence came into force but not after marketable petroleum commodities cease, otherwise than temporarily, to be produced in relation to the project);
- (b) where the production licence or any production licence in relation to the project is a lease derived production licence—the retention lease area in relation to the retention lease to which the production licence is related (being exploration or recovery occurring either before or after the production licence came into force but not after marketable petroleum commodities cease, otherwise than temporarily, to be produced in relation to the project); and
- (c) the production licence area of the production licence, or the production licence areas of the production licences, in respect of the project.

(3) For the purposes of sub-sections (1) and (2), where, at a time when no permit derived production licence in relation to an exploration permit is in force, a retention lease that is related to the exploration permit comes into force, any exploration for, or recovery of, petroleum that occurred while the exploration permit was in force in the block or blocks in respect of which the retention lease was granted and during the period—

- (a) where paragraph (b) does not apply—before the retention lease came into force; or
- (b) where, before the retention lease came into force, a permit derived production licence, or permit derived production licences, in relation to the exploration permit were in force—after that production licence or all of those production licences, as the case may be, ceased to be in force and before the retention lease came into force,

shall be taken to have occurred in the retention lease area and not in the exploration permit area notwithstanding that the retention lease was not in force at that time.

(4) For the purposes of sub-section (2), where, but for this sub-section, the same exploration for petroleum or recovery of petroleum would be exploration for petroleum in, or recovery of petroleum from, the exploration permit area or the retention lease area in relation to 2 or more production licences, the exploration or recovery shall be taken to relate only to the production licence that first came into force.

#### **Termination of use of property in relation to a petroleum project**

6. For the purposes of this Act—

- (a) a termination of the use of all property in relation to a petroleum project shall be taken to occur where the production licence or all of the production licences in relation to the project cease to be in force; and
- (b) no termination of the use of property in relation to a petroleum project shall be taken to occur by reason of the specifying of the production licence or production licences in relation to the project in a project combination certificate.

#### **Property installed ready for use**

7. Where property is installed ready for use for a purpose and held in reserve, the property shall, for the purposes of this Act, be taken to be being used for that purpose.

#### **Consideration not in cash**

8. For the purposes of this Act, where, upon any transaction, any consideration is liable to be given by way of the provision of property (other than money), the money value of that consideration shall be deemed to have been liable to be given.

**Amounts credited, reinvested, etc., to be taken to be receivable**

9. An amount shall be taken to have been receivable by a person although it is not actually to be paid over to the person but is to be reinvested, accumulated, capitalised, carried to any reserve, sinking fund or insurance fund however designated, or otherwise dealt with on behalf of the person or as the person directs.

**Amounts to be expressed in Australian currency**

10. For the purposes of this Act, all amounts and values shall be expressed in terms of Australian currency.

**Residence**

11. (1) For the purposes of this Act, a person shall be taken to have been a non-resident at a particular time if the person was not a resident of Australia at that time.

(2) For the purposes of this Act, a person shall be taken to have been a resident of Australia at a particular time if—

(a) in the case of a natural person—

- (i) the person resided in Australia at that time; or
- (ii) except in a case where the Commissioner is satisfied that that person's permanent place of residence at that time was outside Australia—the person was domiciled in Australia at that time;

(b) in the case of a body corporate—

- (i) the body was incorporated in Australia at that time; or
- (ii) at that time the body corporate carried on business in Australia and—
  - (A) had its central management and control in Australia; or
  - (B) had its voting power controlled by shareholders who were residents of Australia; or

(c) in the case of a partnership or an unincorporated association—any member of the partnership or association was a resident of Australia at that time by virtue of paragraph (a) or (b).

**Partnerships**

12. (1) Subject to this section, this Act applies to a partnership as if the partnership were a person.

(2) Where, but for this sub-section, an obligation would be imposed on a partnership by virtue of the operation of sub-section (1), the obligation is imposed on each partner, but may be discharged by any of the partners.

(3) Where, by virtue of the operation of sub-section (1), an amount is payable under this Act by a partnership, the partners are jointly and severally liable to pay that amount.

(4) Where, by virtue of the operation of sub-section (1), an offence against this Act is deemed to have been committed by a partnership, that offence shall be deemed to have been committed by each of the partners.

(5) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person—

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is deemed to have been committed.

(6) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act.

### **Unincorporated associations**

13. (1) Subject to this section, this Act applies to an unincorporated association as if the association were a person.

(2) Where, but for this sub-section, an obligation would be imposed on an unincorporated association by virtue of the operation of sub-section (1), the obligation is imposed on each member of the committee of management of the association, but may be discharged by any of those members.

(3) Where, by virtue of the operation of sub-section (1), an offence against this Act is deemed to have been committed by an unincorporated association, that offence shall be deemed to have been committed by each member of the committee of management of the association.

(4) In a prosecution of a person for an offence by virtue of this section, it is a defence if the person proves that the person—

- (a) did not aid, abet, counsel or procure the act or omission by virtue of which the offence is deemed to have been committed; and
- (b) was not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission by virtue of which the offence is deemed to have been committed.

(5) A reference in this section to this Act includes a reference to Part III of the *Taxation Administration Act 1953* to the extent to which that Part of that Act relates to this Act.

### **Application of Act**

14. (1) This Act extends to every external Territory and, except so far as the contrary intention appears, to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

(2) Except where otherwise expressly provided, this Act extends to matters and things whether occurring before or after the commencement of this Act.

(3) In sub-section (1), a reference to this Act includes a reference to the *Taxation Administration Act 1953* to the extent to which that Act relates to this Act.

### **PART III—ADMINISTRATION**

#### **General administration of Act**

15. The Commissioner has the general administration of this Act.

#### **Annual report**

16. (1) The Commissioner shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the working of this Act, including any breaches or evasions of this Act of which the Commissioner has notice.

(2) The Minister shall cause a copy of a report furnished under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(3) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that is required by sub-section (1) to be furnished as soon as practicable after 30 June in a year shall be taken to be a periodic report relating to the working of this Act during the year ending on that 30 June.

#### **Secrecy**

17. (1) In this section, “officer” means a person—

- (a) who is or has been appointed or employed by the Commonwealth; or
- (b) to whom powers or functions have been delegated by the Commissioner,

and who, by reason of the appointment or employment or in the course of the employment, or by reason of, or in the course of the exercise of powers or the performance of functions under, the delegation, as the case may be, may acquire or has acquired information with respect to the affairs of any other person disclosed or obtained under or for the purposes of this Act.

(2) For the purposes of this section, a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth shall be taken to be employed by the Commonwealth.

(3) Subject to sub-section (5), a person who is or has been an officer shall not, except for the purposes of this Act or otherwise than in the performance of the person’s duties as an officer, directly or indirectly—

- (a) make a record of any information with respect to the affairs of a second person; or
- (b) divulge or communicate to a second person any information with respect to the affairs of a third person,

being information disclosed or obtained under or for the purposes of this Act and acquired by the first-mentioned person by reason of that person's appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to that person of powers or functions by the Commissioner, or in the course of the exercise of such powers or performance of such functions, as the case may be.

Penalty: \$5,000 or imprisonment for 12 months, or both.

(4) Except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act, a person who is or has been an officer shall not be required—

- (a) to produce in court any document made or given under or for the purposes of this Act; or
- (b) to divulge or communicate to a court a matter or thing with respect to information disclosed or obtained under or for the purposes of this Act,

being a document or information acquired by the person by reason of the person's appointment or employment by the Commonwealth or in the course of such employment, or by reason of the delegation to the person of powers or functions by the Commissioner, or in the course of the exercise of such powers or the performance of such functions, as the case may be.

(5) Nothing in sub-section (3) shall be taken to prohibit the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner from communicating any information to—

- (a) the Tribunal in connection with proceedings under an Act of which the Commissioner has the general administration; or
- (b) a person performing, as an officer, duties arising under an Act of which the Commissioner has the general administration, or regulations under such an Act, for the purpose of enabling the person to perform those duties.

(6) For the purposes of sub-section (3), an officer shall be deemed to have communicated information to another person in contravention of that sub-section if the officer communicates the information to any Minister.

(7) An officer shall, if and when required by the Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in a manner and form specified by the Commissioner in writing, to maintain secrecy in conformity with the provisions of this section.

#### **Application of Part in relation to section 20**

18. (1) Subject to this section, this Part applies as if section 20 did not form part of this Act.

(2) Nothing in sub-section 17 (3) shall be taken to prohibit the Commissioner, a Deputy Commissioner or a person authorised by the Commissioner or a Deputy Commissioner from communicating, for the



purposes of section 20, any information to the certifying Minister or an officer of the Department of Primary Industries and Energy authorised by the certifying Minister.

(3) Where information is communicated under sub-section (2) to an officer authorised by the certifying Minister, that officer and any other officer of that Department shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under sub-sections 17 (3) and (4) as if the officer were an officer within the meaning of those sub-sections and the information were information to which those sub-sections applied.

#### **PART IV—PETROLEUM PROJECTS**

##### **Petroleum project**

19. (1) For the purposes of this Act, where an eligible production licence is in force and is not specified in a project combination certificate that is in force, there shall be taken to be a petroleum project in relation to the eligible production licence.

(2) For the purposes of this Act, where 2 or more eligible production licences are specified in a project combination certificate that is in force, there shall be taken to be a petroleum project in relation to such of the eligible production licences as are in force.

(3) For the purposes of this Act, where any one or more, but not all, of the eligible production licences specified in a project combination certificate that is in force ceases to be in force, the combined project shall be taken to continue to exist in relation to the eligible production licence or eligible production licences that remain in force.

(4) For the purposes of this Act, a reference to the operations, facilities and other things comprising a petroleum project is a reference to—

- (a) operations and facilities for the recovery of petroleum from the production licence area or production licence areas in relation to the project; and
- (b) such of the following as are carried on or provided:
  - (i) operations and facilities involved in moving petroleum so recovered between any storage or processing facilities prior to the production of any marketable petroleum commodity from the petroleum;
  - (ii) operations and facilities involved in the storage, processing or treatment of petroleum so recovered to produce any marketable petroleum commodity from the petroleum;
  - (iii) operations and facilities involved in the moving or storage of any such marketable petroleum commodity before it becomes an excluded commodity;

- (iv) services, or facilities for the provision of services, in connection with the operations, facilities, amenities and services referred to in this section;
- (v) employee amenities in connection with the operations, facilities and services referred to in this section.

### **Combining of petroleum projects**

**20. (1)** Subject to this section, where within the qualifying period in relation to an eligible production licence, the certifying Minister, whether on application, request or otherwise, having regard to—

- (a) the respective operations, facilities and other things that comprise, have comprised or will comprise the petroleum project in relation to the eligible production licence and any other petroleum project or projects existing at the time at which the eligible production licence came into force;
- (b) the persons by whom or on whose behalf the operations, facilities and other things referred to in paragraph (a) are being, have been or are proposed to be carried on or provided; and
- (c) the geological, geophysical and geochemical and other features of the production licence areas in relation to the projects,

considers that the projects are sufficiently related to be treated for the purposes of this Act as a single petroleum project, the certifying Minister shall issue a certificate under this sub-section specifying the eligible production licence or eligible production licences in relation to each of the projects.

**(2)** For the purposes of sub-section (1), the qualifying period in relation to an eligible production licence is—

- (a) the period of 90 days after the licence comes into force or the commencement of this Act, whichever is the later; or
- (b) where, within the period referred to in paragraph (a), the certifying Minister receives any information, application or request relevant to the exercise of the powers of the certifying Minister under sub-section (1) in relation to the eligible production licence, such longer period (if any) as is necessary to enable the certifying Minister adequately to consider that information, application or request.

**(3)** For the purposes of paragraph (1) (a)—

- (a) a reference to operations, facilities and other things that have comprised a petroleum project includes, in the case of a combined project, a reference to operations, facilities and other things that have comprised the pre-combination projects in relation to the project; and
- (b) a reference to operations, facilities and other things that will comprise a petroleum project is a reference to operations, facilities and other things that are proposed, by the registered holders of, and the holders of registered interests in, the production licence or licences in relation to the project, to comprise the project.

(4) The Minister shall not accept or comply with any application or request (other than from an officer in the performance of his or her duties) for the issue of a certificate under subsection (1) in respect of petroleum projects unless the application or request is from a person who is, or from persons who together are, entitled to receive at least half of the receipts from the sale of marketable petroleum commodities produced in relation to each of the projects.

(5) A certificate under sub-section (1) shall not be repealed, rescinded, revoked, amended or varied otherwise than—

- (a) under sub-section (8);
- (b) pursuant to a decision of the Tribunal or an order of a court; or
- (c) to correct an error in the certificate.

(6) A certificate under sub-section (1) shall come into force on the issue of the certificate and continue in force until the issue of a subsequent certificate under that sub-section specifying eligible production licences that include such of the eligible production licences specified in the first-mentioned certificate as are in force at the time when the subsequent certificate is issued.

(7) Where, in deciding whether or not to issue a certificate under sub-section (1) specifying 2 or more eligible production licences, the certifying Minister has reasonable grounds to believe that an operation, facility or other thing is being, has been or is proposed to be carried on or provided, or is being, has been or is proposed to be carried on or provided in a particular manner or by particular persons, for the sole or dominant purpose of obtaining the issue of the certificate, the certifying Minister shall disregard the carrying on or provision of the operation, facility or thing.

(8) Where, after the issue of a certificate under sub-section (1), it appears to the certifying Minister that, having regard to information that was not available to the certifying Minister at the time of issue of the certificate, the certificate would not, by reason of the application of sub-section (7), have been issued if the certifying Minister had been aware of the information at the time of issue of the certificate, the certifying Minister shall cancel the certificate and upon the cancellation the certificate shall be deemed never to have been issued.

(9) The certifying Minister shall—

- (a) within 30 days after the issue of a certificate under sub-section (1) or the cancellation under sub-section (8) of such a certificate, arrange for notice in writing of the issue or cancellation—
  - (i) to be sent to the holder or holders of the production licences concerned and to the Commissioner; and
  - (ii) to be published in the *Gazette*; and
- (b) within 30 days after making a decision to refuse an application or request for the issue of a certificate under sub-section (1), arrange

for notice in writing of the decision to be sent to the person or persons making the application or request.

(10) A notice under sub-section (9) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Tribunal for review of the decision to issue or cancel the certificate, or to refuse the application or request, as the case may be, by or on behalf of the person or persons whose interests are affected by the decision.

(11) Any failure to comply with the requirement of sub-section (10) in relation to a decision does not affect the validity of the decision.

(12) Application may be made to the Tribunal for a review of—

- (a) a decision of the certifying Minister to issue a certificate under sub-section (1);
- (b) a decision of the certifying Minister refusing an application or request to issue such a certificate; or
- (c) a decision of the certifying Minister under sub-section (8) to cancel such a certificate.

## **PART V—LIABILITY TO TAXATION**

### ***Division 1—Liability to tax on taxable profit***

#### **Liability to pay tax**

21. Subject to this Act, tax imposed in respect of the taxable profit of a person of a year of tax in relation to a petroleum project is payable by the person.

#### **Taxable profit**

22. Where, in relation to a petroleum project, the assessable receipts derived by a person in a year of tax exceed the deductible expenditure incurred by the person in the year of tax, the person shall be taken for the purposes of this Act to have a taxable profit in relation to the project in relation to the year of tax of an amount equal to the excess.

### ***Division 2—Assessable receipts***

#### **Assessable receipts**

23. (1) For the purposes of this Act, but subject to sub-section (2), a reference to the assessable receipts derived by a person in a financial year in relation to a petroleum project (not being an ineligible project in relation to the financial year) is a reference to the total receipts of the following kinds, whether of a capital or revenue nature, derived by the person in the financial year in relation to the project:

- (a) assessable petroleum receipts;
- (b) assessable exploration recovery receipts;

- (c) assessable property receipts;
- (d) assessable miscellaneous compensation receipts;
- (e) assessable employee amenities receipts.

(2) For the purposes of this Act, the assessable receipts derived by a person in a financial year in relation to a combined project (not being an ineligible project in relation to the financial year) shall include any amounts of a kind referred to in paragraphs (1) (a) to (e) (inclusive) derived by the person during the financial year in relation to the pre-combination projects in relation to the combined project.

#### **Assessable petroleum receipts**

**24.** For the purposes of this Act, a reference to assessable petroleum receipts derived by a person in relation to a petroleum project is a reference to:

- (a) where any petroleum, or a constituent of petroleum, recovered from the production licence area or areas in relation to the project is or was sold, whether processed or unprocessed, before any marketable petroleum commodity is or was produced from it—the consideration receivable, less any expenses payable, by the person in relation to the sale;
- (b) where any marketable petroleum commodity produced from petroleum recovered from the area or areas to which paragraph (a) applies becomes or became an excluded commodity by virtue of being sold—the consideration receivable, less any expenses payable, by the person in relation to the sale; and
- (c) where any marketable petroleum commodity produced from petroleum recovered from the area or areas to which paragraph (a) applies becomes or became an excluded commodity otherwise than by virtue of being:
  - (i) sold; or
  - (ii) treated or processed, or moved, for re-injection or destruction or for use in carrying on or providing operations, facilities or other things of a kind referred to in section 37, 38 or 39 in relation to the petroleum project;

so much of the market value of the commodity immediately before it becomes or became an excluded commodity, or, where there is insufficient evidence of that market value, of such amount as, in the opinion of the Commissioner, is fair and reasonable, as is taken by section 26 to be derived by the person.

#### **Assessable exploration recovery receipts**

**25.** For the purposes of this Act, a reference to assessable exploration recovery receipts derived by a person in relation to a petroleum project is a reference to:

- (a) where any petroleum, or a constituent of petroleum, recovered from the eligible exploration or recovery area (other than any production

licence area) in relation to the project is or was sold, whether processed or unprocessed, before any marketable petroleum commodity is or was produced from it—the consideration receivable, less any expenses payable, by the person in relation to the sale;

- (b) where any marketable petroleum commodity produced from petroleum recovered from the area to which paragraph (a) applies becomes or became an excluded commodity by virtue of being sold—the consideration receivable, less any expenses payable, by the person in relation to the sale; and
- (c) where any marketable petroleum commodity produced from petroleum recovered from the area to which paragraph (a) applies becomes or became an excluded commodity otherwise than by virtue of being:
  - (i) sold; or
  - (ii) treated or processed, or moved, for re-injection or destruction or for use in carrying on or providing operations, facilities or other things of a kind referred to in section 37, 38 or 39 in relation to the petroleum project;

so much of the market value of the commodity immediately before it becomes or became an excluded commodity, or, where there is insufficient evidence of that market value, of such amount as, in the opinion of the Commissioner, is fair and reasonable, as is taken by section 26 to be derived by the person.

**Amounts notionally derived where no sale of petroleum etc.**

26. Where paragraph 24 (c) or 25 (c) applies in relation to any marketable petroleum commodity, the market value or other amount referred to in that paragraph in relation to the marketable petroleum commodity shall, for the purposes of this Act, be taken to have been derived by the person or persons entitled to receive receipts from the sale of marketable petroleum commodities produced in relation to the project and, where there are 2 or more such persons, in the same respective shares as those persons are or were entitled to receive those receipts.

**Assessable property receipts**

27. (1) For the purposes of this Act, a reference to assessable property receipts derived by a person in relation to a petroleum project is a reference to—

- (a) the consideration receivable by the person in respect of the disposal, loss or destruction of property in respect of which capital expenditure being eligible real expenditure in relation to the project (including in the case of a combined project any pre-combination project in relation to the project) was incurred by the person;
- (b) the value of property in respect of which capital expenditure of a kind referred to in paragraph (a) was incurred by the person, as at

the date of any other termination of the use of the property in relation to the project;

- (c) the amount or value receivable by the person under a policy of insurance or otherwise in respect of damage to property in respect of which capital expenditure of a kind referred to in paragraph (a) was incurred by the person;
- (d) any amount receivable by the person from the hiring or leasing out of, or the granting of rights to use, property that is or was also being used in relation to the project, being property in respect of which capital expenditure of a kind referred to in paragraph (a) was incurred by the person; or
- (e) any amount receivable by the person from the provision of information obtained—
  - (i) from any survey, appraisal or study in respect of which eligible real expenditure in relation to the project (including in the case of a combined project any pre-combination project in relation to the project) was incurred by the person; or
  - (ii) otherwise as a result of the incurring by the person of such expenditure.

(2) In paragraph (1) (a), a reference to the consideration in respect of the disposal, loss or destruction of property is a reference to—

- (a) where the property is or was sold (whether with or without other property) for a specified price—the sale price of the property, less the expenses of the sale of the property, or less such part of the expenses of the sale of the property together with the other property as the Commissioner determines;
- (b) where the property is or was sold with other property and a specified price is or was not allocated to the property—such part of the total sale price, less the expenses of the sale, as the Commissioner determines;
- (c) where the property is or was disposed of otherwise than by sale—the value of the property at the date of disposal; or
- (d) where the property is or was lost or destroyed—the amount or value receivable under a policy of insurance or otherwise in respect of the loss or destruction.

#### **Assessable miscellaneous compensation receipts**

**28.** For the purposes of this Act, a reference to assessable miscellaneous compensation receipts derived by a person in relation to a petroleum project is a reference to amounts of the following kinds:

- (a) amounts receivable by the person by way of insurance, compensation or indemnity in respect of—
  - (i) the loss or destruction, or the loss of any profit caused by the loss or destruction, of any petroleum, or constituent of petroleum, recovered or recoverable from the eligible

- exploration or recovery area in relation to the project (including in the case of a combined project any pre-combination project in relation to the project), being a loss or destruction that occurred before a marketable petroleum commodity had been produced from the petroleum;
- (ii) the loss or destruction, or the loss of any profit caused by the loss or destruction, of any marketable petroleum commodity produced from petroleum recovered from the area referred to in subparagraph (i), being a loss or destruction that occurred before the commodity became an excluded commodity; or
  - (iii) the loss of any amount that would otherwise have been an assessable receipt derived by the person in relation to the project;
- (b) amounts receivable by the person in respect of eligible real expenditure incurred by the person in relation to the project (including in the case of a combined project any pre-combination project in relation to the project), being amounts by way of—
- (i) indemnity or compensation for the incurring of the expenditure;
  - (ii) refund of the expenditure; or
  - (iii) rebate, discount or commission in respect of the expenditure.

#### **Assessable employee amenities receipts**

**29.** For the purposes of this Act, a reference to assessable employee amenities receipts derived by a person in relation to a petroleum project is a reference to amounts receivable by the person for or in respect of the provision of employee amenities in respect of which eligible real expenditure in relation to the project (including in the case of a combined project any pre-combination project in relation to the project) was incurred by the person.

#### **Reduction of amount of assessable property, &c., receipts**

##### **30.** Where—

- (a) but for this section, a person would, in relation to a petroleum project, derive for the purposes of this Act an amount (in this section referred to as the “assessable amount”) of assessable property receipts, assessable miscellaneous compensation receipts or assessable employee amenities receipts in relation to property in respect of which eligible real expenditure was incurred by the person in relation to the project; and
- (b) the Commissioner considers that, because section 42 applied in relation to the eligible real expenditure or for any other reason, a proportion only of the assessable amount is attributable to the eligible real expenditure,



the person shall be taken for the purposes of this Act to have derived only that proportion of the assessable amount.

**Time of derivation of receipts**

**31.** For the purposes of this Act—

- (a) assessable petroleum receipts;
- (b) assessable exploration recovery receipts;
- (c) assessable property receipts;
- (d) assessable miscellaneous compensation receipts; or
- (e) assessable employee amenities receipts,

may be derived by a person in relation to a petroleum project—

- (f) before the project commenced or after the project ceased; or
- (g) before the commencement of this Act.

***Division 3—Deductible expenditure***

**Deductible expenditure**

**32.** For the purposes of this Act, a reference to the deductible expenditure incurred by a person in a financial year in relation to a petroleum project (not being an ineligible project in relation to the financial year) is a reference to the total expenditure of the following kinds incurred by the person in the financial year in relation to the project:

- (a) augmented bond rate general expenditure;
- (b) augmented bond rate exploration expenditure;
- (c) GDP factor expenditure;
- (d) closing-down expenditure.

**Augmented bond rate general expenditure**

**33. (1)** For the purposes of this Act, a reference to the augmented bond rate general expenditure incurred by a person in a financial year in relation to a petroleum project (not being a combined project) is a reference to the sum of—

- (a) any amount of general project expenditure actually incurred by the person in relation to the project in the financial year, not being expenditure incurred more than 5 years before the production licence in relation to the project came into force; and
- (b) any amount that is taken by sub-section (3) or Division 5 to be augmented bond rate general expenditure incurred by the person in relation to the project in the financial year.

**(2)** For the purposes of this Act, a reference to the augmented bond rate general expenditure incurred by a person in a financial year in relation to a combined project is a reference to the sum of—

- (a) any amount of general project expenditure actually incurred by the person in relation to the project in the financial year (not being

expenditure incurred before the project combination certificate in relation to the project came into force);

- (b) any amount that is taken by sub-section (3) or Division 5 to be augmented bond rate general expenditure incurred by the person in relation to the project in the financial year; and
- (c) where the financial year is the year in which the project combination certificate in relation to the project came into force—any amount of general project expenditure, or any amount that is taken by sub-section (3) or Division 5 to be augmented bond rate general expenditure, incurred by the person in relation to the pre-combination projects in relation to the project in the financial year.

(3) For the purposes of sub-section (1) or (2), where the augmented bond rate general expenditure incurred by a person in a financial year in relation to a petroleum project exceeds the assessable receipts derived by the person in the financial year in relation to the project, an amount ascertained in accordance with the formula  $A (1.15 + B)$ , where—

**A** is the amount of the excess; and

**B** is the long-term bond rate in relation to the financial year, shall be taken to be augmented bond rate general expenditure incurred by the person in relation to the project on the first day of the next succeeding financial year.

#### **Augmented bond rate exploration expenditure**

**34. (1)** For the purposes of this Act, a reference to the augmented bond rate exploration expenditure incurred by a person in a financial year in relation to a petroleum project (not being a combined project) is a reference to the sum of—

- (a) any amount of exploration expenditure actually incurred by the person in relation to the project in the financial year, not being expenditure incurred more than 5 years before the production licence in relation to the project came into force; and
- (b) any amount that is taken by sub-section (3), sub-section 36 (1) or Division 5 to be augmented bond rate exploration expenditure incurred by the person in relation to the project in the financial year.

(2) For the purposes of this Act, a reference to the augmented bond rate exploration expenditure incurred by a person in a financial year in relation to a combined project is a reference to the sum of—

- (a) any amount of exploration expenditure actually incurred by the person in relation to the project in the financial year (not being expenditure incurred before the project combination certificate in relation to the project came into force);
- (b) any amount that is taken by sub-section (3), sub-section 36 (1) or Division 5 to be augmented bond rate exploration expenditure

incurred by the person in relation to the project in the financial year; and

- (c) where the financial year is the year in which the project combination certificate in relation to the project came into force—any amount of exploration expenditure, or any amount that is taken by sub-section (3), paragraph 36 (1) (b) or Division 5 to be augmented bond rate exploration expenditure, incurred by the person in relation to the pre-combination projects in relation to the project in the financial year.

(3) For the purposes of sub-section (1) or (2), where the sum of the augmented bond rate general expenditure and the augmented bond rate exploration expenditure incurred by a person in a financial year in relation to a petroleum project exceeds the assessable receipts derived by the person in the financial year in relation to the project, an amount ascertained in accordance with the formula  $A (1.15 + B)$ , where—

**A** is so much of the excess as does not exceed the amount of the augmented bond rate exploration expenditure; and

**B** is the long-term bond rate in relation to the financial year, shall be taken to be augmented bond rate exploration expenditure incurred by the person in relation to the project on the first day of the next succeeding financial year.

### **GDP factor expenditure**

**35. (1)** For the purposes of this Act, a reference to the GDP factor expenditure incurred by a person in a financial year in relation to a petroleum project (not being a combined project) is a reference to the sum of—

- (a) any amount of exploration expenditure or general project expenditure actually incurred by the person in relation to the project more than 5 years before the production licence in relation to the project came into force; and
- (b) any amount that is taken by sub-section (3), sub-section 36 (1) or Division 5 to be GDP factor expenditure incurred by the person in relation to the project in the financial year.

(2) For the purposes of this Act, a reference to the GDP factor expenditure incurred by a person in a financial year in relation to a combined project is a reference to the sum of—

- (a) any amount that is taken by sub-section (3), sub-section 36 (1) or Division 5 to be GDP factor expenditure incurred by the person in relation to the project in the financial year; and
- (b) where the financial year is the year in which the project combination certificate in relation to the project came into force—any amount that is taken by sub-section (3), paragraph 36 (1) (b) or Division 5 to be GDP factor expenditure incurred by the person in relation to

the pre-combination projects in relation to the combined project in the financial year.

(3) For the purposes of sub-section (1) or (2), where the sum of the augmented bond rate general expenditure, the augmented bond rate exploration expenditure and the GDP factor expenditure incurred by a person in a financial year in relation to a petroleum project exceeds the assessable receipts derived by the person in the financial year in relation to the project, an amount ascertained in accordance with the formula **AB**, where—

**A** is so much of the excess as does not exceed the amount of the GDP factor expenditure; and

**B** is the GDP factor in relation to the financial year,

shall be taken to be GDP factor expenditure incurred by the person in relation to the project on the first day of the next succeeding financial year.

(4) For the purposes of sub-section (3), the GDP factor in relation to a financial year is the number (calculated to 3 decimal places) ascertained by dividing the GDP deflator in relation to the financial year by the GDP deflator in relation to the immediately preceding financial year.

(5) For the purposes of sub-section (4), the GDP deflator in relation to a financial year is the Implicit Price Deflator for Expenditure on Gross Domestic Product first published by the Australian Statistician in respect of the financial year.

(6) If at any time, whether before or after the commencement of this Act, the Australian Statistician has changed or changes the reference base for the GDP deflator, then, for the purposes of the application of sub-section (4) after the change took place or takes place, regard shall be had only to the GDP deflator in terms of the new reference base.

(7) Where the GDP factor ascertained in accordance with sub-section (4) in relation to a financial year would, if it were calculated to 4 decimal places, end with a number greater than 4, the GDP factor ascertained in accordance with that sub-section in relation to that financial year shall be taken to be the GDP factor calculated to 3 decimal places in accordance with that sub-section and increased by 0.001.

**Augmented bond rate exploration and GDP factor expenditures in relation to project groups**

36. (1) Where there is a project group in relation to a person in relation to a year of tax, the following provisions have effect:

- (a) in relation to any petroleum project in the group other than the last occurring project—where there is a carry forward expenditure amount of the person in relation to the project in relation to the year of tax, that amount shall be taken to be augmented bond rate exploration expenditure or GDP factor expenditure, as the case requires, incurred by the person in the year of tax in relation to the

next occurring project and the person shall not be taken by sub-section 34 (3) to have incurred augmented bond rate exploration expenditure, or by sub-section 35 (3) to have incurred GDP factor expenditure, in relation to the first-mentioned project on the first day of the next succeeding year of tax;

- (b) in relation to the last occurring petroleum project in the group—where, but for this paragraph, the person would be taken by sub-section 34 (3) to have incurred an amount of augmented bond rate exploration expenditure, or by sub-section 35 (3) to have incurred an amount of GDP factor expenditure, in relation to the project on the first day of the next succeeding year of tax, that expenditure shall be taken to have been incurred instead by the person on that day in relation to the first occurring of such of the projects in the group as are petroleum projects on that day.

(2) Where 2 or more project groups, in relation to a person in relation to a financial year, are related project groups in relation to each other, sub-section (1) applies as if the petroleum projects in the groups were projects in a single project group in relation to the person in relation to the financial year.

(3) For the purposes of this section—

(a) where—

- (i) a financial year is a year of tax in relation to a person in relation to 2 or more petroleum projects (not including any ineligible project in relation to the financial year); and
- (ii) the production licence, or at least one of the production licences, in relation to each of the projects is related to the same exploration permit,

the projects shall be taken to be in a project group in relation to the person in relation to the year of tax;

(b) a reference to the relevant production licence in relation to a petroleum project is a reference to—

- (i) in the case of a combined project—the production licence in relation to the project that first came into force; and
- (ii) in any other case—the production licence in relation to the project;

(c) petroleum projects in a project group in relation to a person in relation to a year of tax shall be taken to occur in the order in which the relevant production licences in relation to the projects came into force; and

(d) a project group, in relation to a person in relation to a financial year, shall be taken to be a related project group in relation to another project group, in relation to the person in relation to the financial year, if—

- (i) one or more of the petroleum projects in the first-mentioned group is a project in the second-mentioned group; or

- (ii) one or more of the petroleum projects in the first-mentioned group is a project in another project group that is a related project group in relation to the second-mentioned project group under sub-paragraph (i) or this sub-paragraph.

(4) Where, by reason of the application of sub-section 34 (3) or 35 (3) in relation to a person in relation to a petroleum project in relation to a year of tax (in this sub-section referred to as the "relevant year of tax"), an amount of augmented bond rate exploration expenditure or GDP factor expenditure, as the case may be, would, if sub-section (1) did not provide otherwise, be taken to be incurred by the person on the first day of the next succeeding year of tax, there shall, for the purposes of this section, be taken to be a carry forward expenditure amount in relation to the person in relation to the project in relation to the relevant year of tax equal to the amount that would so be taken to be incurred if—

- (a) in the case of an amount of augmented bond rate exploration expenditure—the formula in sub-section 34 (3) in its application in relation to the relevant year of tax consisted only of component A; and
- (b) in the case of an amount of GDP factor expenditure—the formula in sub-section 35 (3) in its application in relation to the relevant year of tax consisted only of component A.

#### **Exploration expenditure**

**37. (1)** For the purposes of this Act, a reference to exploration expenditure incurred by a person in relation to a petroleum project is a reference to payments (not being excluded expenditure), whether of a capital or revenue nature, liable to be made by the person in carrying on or providing—

- (a) operations and facilities involved in or in connection with exploration for petroleum in the eligible exploration or recovery area in relation to the project; and
- (b) such of the following as are or have been carried on or provided:
  - (i) operations and facilities involved in the recovery of any petroleum from the eligible exploration or recovery area (other than any production licence area) in relation to the project;
  - (ii) operations and facilities involved in moving any petroleum so recovered to or between any storage or processing facilities prior to the production of any marketable petroleum commodity from the petroleum;
  - (iii) operations and facilities involved in the storage, processing or treating of any petroleum so recovered to produce any marketable petroleum commodity from the petroleum;
  - (iv) operations and facilities involved in the moving or storage of any such marketable petroleum commodity before it becomes an excluded commodity;

- (v) services, or facilities for the provision of services, in connection with the operations, facilities, amenities and services referred to in this section;
- (vi) employee amenities in connection with the operations, facilities and services referred to in this section,

and includes any exploration permit, retention lease or other fee (not being an excluded fee) liable to be paid by the person in relation to the carrying on or providing of any operations, facilities or other things referred to in this section.

(2) Where, by reason of the application of sub-section 5 (3), exploration for petroleum during a period is taken to occur in a retention lease area or areas in relation to a retention lease or leases related to an exploration permit, any liability incurred during that period to pay an exploration permit fee shall, for the purposes of sub-section (1), be taken to relate proportionally to the carrying on of operations involved in exploration for petroleum in the retention lease area or areas and in the remainder of the exploration permit area in relation to the exploration permit, according to the respective sizes of those areas.

#### **General project expenditure**

38. For the purposes of this Act, a reference to general project expenditure incurred by a person in relation to a petroleum project is a reference to payments (not being excluded expenditure, exploration expenditure or closing-down expenditure), whether of a capital or revenue nature, liable to be made by the person—

- (a) in carrying on or providing operations and facilities preparatory to the activities referred to in paragraph (b), including in carrying out any feasibility or environmental study; and
- (b) in carrying on or providing the operations, facilities and other things comprising the project,

and includes any production licence or other fee (not being an excluded fee) liable to be paid by the person in relation to the carrying on or providing of any operations, facilities or other things referred to in this section.

#### **Closing-down expenditure**

39. For the purposes of this Act, a reference to closing-down expenditure incurred by a person in relation to a petroleum project is a reference to payments (not being excluded expenditure), whether of a capital or revenue nature, liable to be made by the person in carrying on operations involved in closing down the project, including in any environmental restoration as a consequence of closing down the project.

#### **Bad debts**

40. (1) Where:

- (a) a debt is a bad debt and is written off as such by a person during a financial year; and

- (b) the debt has been brought to account by the person as a receipt of a kind referred to in section 24, 25, 27, 28 or 29 derived by the person in any financial year in relation to a petroleum project,
- then, at the time at which the debt is written off and in relation to:
- (c) the petroleum project; or
  - (d) if, at that time, there is a combined project in relation to which the petroleum project is a pre-combination project—the combined project,

the person shall be taken for the purposes of this Act to have incurred an amount of:

- (e) where at or before the time at which the debt is written off the person has not incurred any general project expenditure or closing-down expenditure in relation to the petroleum project or the combined project (including any pre-combination project in relation to the project)—exploration expenditure;
- (f) where at or before the time at which the debt is written off the person has incurred general project expenditure, but has not incurred any closing-down expenditure, in relation to the petroleum project or the combined project (including any pre-combination project in relation to the project)—general project expenditure; or
- (g) where at or before the time at which the debt is written off the person has incurred closing-down expenditure in relation to the petroleum project or the combined project—closing-down expenditure;

equal to the amount of the debt.

(2) If a debtor, after incurring a debt that has been brought to account as mentioned in paragraph (1) (b), becomes bankrupt or executes a deed of assignment or arrangement for the benefit of creditors;

- (a) where, in the opinion of the Commissioner, no amount will be paid on account of the debt—the debt; or
- (b) where, in the opinion of the Commissioner, an amount less than the amount of the debt will be paid on account of the debt—so much of the debt as exceeds the amount that, in the opinion of the Commissioner, will be so paid;

shall be deemed to be a bad debt.

(3) Where a person receives an amount in respect of a debt to which sub-section (1) applies, that amount shall for the purposes of this Act be taken to be a receipt of the kind referred to in paragraph (1) (b) derived by the person in relation to:

- (a) the petroleum project referred to in that paragraph; or
- (b) if, at the time at which the amount is received, there is a combined project in relation to which the petroleum project referred to in that paragraph is a pre-combination project—the combined project.



**Effect of procuring the carrying on of operations, &c., by others**

41. Where a person (in this section referred to as the “eligible person”) incurs or incurred a liability to make a payment to procure the carrying on or providing of operations, facilities or other things of a kind referred to in section 37, 38 or 39 by another person, then, for the purposes of this Act—

- (a) the operations, facilities or other things shall be taken to have been carried on or provided by the eligible person and not by the other person; and
- (b) the liability shall be taken to have been incurred by the eligible person in carrying on or providing the operations, facilities or other things.

**Expenditure on property for partial project use**

42. Where—

- (a) a person incurs or incurred eligible real expenditure in relation to a petroleum project; and
- (b) the eligible real expenditure is or was capital expenditure in respect of property for use only proportionally (the proportion of use of which is in this section referred to as the “eligible proportion”) in carrying on or providing the operations, facilities or other things by reason of which the capital expenditure is eligible real expenditure of the person in relation to the project,

the eligible proportion only of the eligible real expenditure shall be taken for the purposes of this Act to be the eligible real expenditure.

**Deferred use of property on project, &c.**

43. (1) Where—

- (a) a person incurs or incurred capital expenditure in relation to property, being eligible real expenditure in relation to a petroleum project or petroleum projects;
- (b) the person terminates or terminated the use of the property in relation to the project or all of the projects otherwise than by sale or other disposal; and
- (c) immediately after the termination of the use of the property the person is or was using the property, or at a later time the person commences or commenced to use the property, in carrying on or providing operations, facilities or other things of a kind referred to in section 37, 38 or 39 in relation to a petroleum project or petroleum projects,

then, for the purposes of this Act (including this section)—

- (d) the person shall be taken to have incurred capital expenditure immediately after the termination or at the later time referred to in paragraph (c), as the case may be, in carrying on or providing the operations, facilities or other things, referred to in paragraph (c) in relation to the project or projects referred to in that paragraph; and

- (e) the amount of the expenditure shall be taken to be equal to so much of the value of the property at the time at which the person is so taken to have incurred the expenditure as, in the opinion of the Commissioner, is attributable to the expenditure referred to in paragraph (a).

**(2) Where—**

- (a) a person incurs or incurred capital expenditure in relation to property that is not or was not for use in carrying on or providing operations, facilities or other things of a kind referred to in section 37, 38 or 39 in relation to any petroleum project; and
- (b) the person commences or commenced to use the property at a later time in carrying on or providing such operations, facilities or other things in relation to a petroleum project or projects,

the person shall, for the purposes of this Act, be taken to have incurred expenditure, at that later time, in carrying on or providing the operations, facilities or other things in relation to the project or projects of an amount equal to so much of the value of the property at that later time as, in the opinion of the Commissioner, is attributable to the expenditure referred to in paragraph (a).

**Excluded expenditure**

**44.** For the purposes of this Act, a reference to excluded expenditure is a reference to—

- (a) payments of principal or interest on a loan or other borrowing costs;
- (b) interest components of hire-purchase payments;
- (c) payments of dividends or the cost of issuing shares;
- (d) the repayment of equity capital;
- (e) payments of a kind known as private override royalty payments;
- (f) payments to acquire, or to acquire an interest in, an exploration permit, retention lease, production licence, pipeline licence or access authority, otherwise than in respect of the grant of the permit, lease, licence or authority;
- (g) payments to acquire interests in petroleum project profits, receipts or expenditures;
- (h) payments of tax under the *Income Tax Assessment Act 1936* or the *Fringe Benefits Tax Assessment Act 1986*;
- (j) payments of administrative or accounting costs, or of wages, salary or other work costs, incurred indirectly in carrying on or providing operations, facilities or other things of a kind referred to in sections 37, 38 and 39; or
- (k) payments in respect of land or buildings for use in connection with administrative or accounting activities in respect of the carrying on or provision of other operations, facilities or things of a kind referred to in sections 37, 38 and 39, not being land or buildings located at

or adjacent to the site or sites at which those other operations, facilities or things are carried on or provided.

**Time of incurring of expenditure**

45. For the purposes of this Act, eligible real expenditure may be incurred by a person in relation to a petroleum project—

- (a) before the project commenced or after the project ceased; or
- (b) before the commencement of this Act.

***Division 4—Tax credits***

**Credits in respect of closing-down expenditure**

46. Where, in relation to a petroleum project, the sum of any closing-down expenditure and any other deductible expenditure incurred by a person in a year of tax exceeds the assessable receipts derived by the person in the year of tax, the person is entitled to a credit of the lesser of the following amounts:

- (a) an amount equal to 40% of so much of the excess as does not exceed the amount of the closing-down expenditure;
- (b) the total amount of any tax in respect of the project (including in the case of a combined project any pre-combination project in relation to the project) paid or payable by the person in relation to previous years of tax, reduced by the total amount of any credits allowed or allowable to the person under this section in relation to the project in relation to any previous years of tax.

**Application of credits**

47. (1) Subject to this section, the amount of a credit to which a person is entitled by virtue of this Division is a debt due and payable to the person by the Commissioner on behalf of the Commonwealth.

(2) The Commissioner may apply the whole or a part of the credit in total or partial discharge of any liability to the Commonwealth of the person entitled to the credit arising under or by virtue of this Act or any other Act of which the Commissioner has the general administration.

(3) Where, under sub-section (2), the Commissioner has applied an amount of a credit in discharge of a liability of a person to the Commonwealth, the person shall be deemed to have paid the amount so applied for the purpose for which, and at the time at which, it has been so applied.

(4) Where the amount, or the sum of the amounts, applied or paid by the Commissioner as a credit to which a person is entitled under this Division exceeds the amount of the credit to which the person is entitled, the Commissioner may recover the amount of the excess as if it were tax due and payable by the person.

***Division 5—Effect of certain transactions***

**Transfer of entire entitlement to assessable receipts**

**48.** Where, in relation to a petroleum project, a person (in this section referred to as the “vendor”) at any time (in this section referred to as the “transfer time”), including a time before the first year of tax of the vendor in relation to the project and a time before the commencement of this Act, enters or entered into a transaction that has or had the effect of transferring the whole of the entitlement of the vendor to derive, after the transfer, assessable receipts in relation to the project, and any property held by the vendor that is or was being used in relation to the project, to another person or persons (which person or each of which persons is in this section referred to as a “purchaser”) then, for the purposes of this Act (including this section)—

- (a) the purchaser, or each of the purchasers in proportion to his or her acquired entitlement to those receipts, shall be taken—
  - (i) to have derived any assessable receipts, and to have incurred any deductible expenditure, in relation to the project that, if the financial year in which the transaction is or was entered into had ended immediately before the transfer time, would have been assessable receipts derived, or deductible expenditure incurred, by the vendor in relation to the project in that financial year; and
  - (ii) to have incurred any liability of the vendor, and to have paid any amounts paid by the vendor, in respect of instalments of tax in relation to the project during the part of the financial year in which the transaction is or was entered into occurring before the transfer time;
- (b) the vendor shall be taken not to have derived those receipts, incurred that expenditure or that liability or paid those amounts, as the case may be;
- (c) the vendor shall be taken not to have derived any assessable property receipts in relation to the transaction by reason of the transfer of any property held by the vendor that was being used in relation to the project at the transfer time;
- (d) the purchaser or purchasers shall be taken not to have incurred any eligible real expenditure in relation to the transaction by reason of the transfer of any such property;
- (e) in any application of section 27, 28 or 29 after the transfer time, the purchaser shall be taken to have incurred any eligible real expenditure incurred by the vendor in relation to the project (including in the case of a combined project any pre-combination project in relation to the project); and
- (f) in any application of section 40 after the transfer time, the purchaser shall be taken to have brought to account as a receipt of a kind referred to in section 24, 25, 27, 28 or 29 in relation to the project

(including any pre-combination project in relation to the project) any debt so brought to account by the vendor.

**Transfer before 1 July 1984 of partial entitlement to assessable receipts**

**49.** Where, in relation to a petroleum project—

- (a) a person (in this section referred to as the “vendor”) entered into a transaction before 1 July 1984 that had the effect of transferring part only of the entitlement of the person to receive, after the transfer, assessable receipts in relation to the project to another person or persons (which person or each of which persons is in this section referred to as a “purchaser”);
- (b) at or before the time at which the transaction was entered into, the vendor and purchaser or purchasers entered into an agreement in writing in connection with the transaction to the effect that the whole or a part of the exploration expenditure incurred by the vendor in relation to the project before the time of the transfer should be taken to have been incurred by the purchaser or purchasers in accordance with the agreement; and
- (c) within 30 days after the day on which this Act comes into operation, the purchaser or a purchaser gives a copy of the agreement to the Commissioner,

then, for the purposes of this Act (including this section)—

- (d) the whole or the part of the exploration expenditure of the vendor incurred before the transfer shall be taken to have been incurred instead by the purchaser, or by the purchasers in accordance with the agreement; and
- (e) where any of the exploration expenditure was expenditure in relation to property transferred to the purchaser or purchasers under the transaction referred to in paragraph (a), the vendor shall be taken not to have derived any assessable property receipts in relation to the property by reason of the transfer and the purchaser or purchasers shall be taken not to have incurred any exploration expenditure in relation to the property by reason of the transfer.

***Division 6—Anti-avoidance***

***Subdivision A—Arrangements to obtain tax benefits***

**Arrangements**

**50. (1)** In this Subdivision, “arrangement” means—

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

(2) A reference in this Subdivision to the carrying out of an arrangement by a person shall be read as including a reference to the carrying out of an arrangement by a person together with another person or other persons.

**Tax benefits**

**51.** A reference in this Subdivision to the obtaining by a person of a tax benefit in connection with an arrangement is a reference to—

- (a) an amount of assessable receipts not being derived by the person in a financial year in relation to a petroleum project where that amount would have been derived, or might reasonably be expected to have been derived, by the person in the financial year in relation to the project if the arrangement had not been entered into or carried out; or
- (b) an amount of deductible expenditure being incurred by the person in a financial year in relation to a petroleum project where that amount would not have been incurred, or might reasonably be expected not to have been incurred, by the person in the financial year in relation to the project if the arrangement had not been entered into or carried out,

and, for the purposes of this Subdivision, the amount of the tax benefit shall be taken to be equal to the amount referred to in paragraph (a) or (b), as the case requires.

**Arrangements to which Subdivision applies**

**52.** This Subdivision applies to any arrangement that has been or is entered into on or after 1 July 1984, and to any arrangement that has been or is carried out or commenced to be carried out on or after that date (other than an arrangement that was entered into before that date), where—

- (a) a person (in this section referred to as the “eligible person”) has obtained, or would but for section 53 obtain, a tax benefit in connection with the arrangement; and
- (b) having regard to—
  - (i) the manner in which the arrangement was entered into or carried out;
  - (ii) the form and substance of the arrangement;
  - (iii) the time at which the arrangement was entered into and the length of the period during which the arrangement was carried out;
  - (iv) the result in relation to the operation of this Act that, but for this Subdivision, would be achieved by the arrangement;
  - (v) any change in the financial position of the eligible person that has resulted, will result, or may reasonably be expected to result, from the arrangement;
  - (vi) any change in the financial position of any person who has, or has had, any connection (whether of a business, family or other nature) with the eligible person, being a change that

has resulted, will result or may reasonably be expected to result, from the arrangement;

- (vii) any other consequence for the eligible person, or for any person referred to in sub-paragraph (vi), of the arrangement having been entered into or carried out; and
- (viii) the nature of any connection (whether of a business, family, or other nature) between the eligible person and any person referred to in sub-paragraph (vi),

it would be concluded that the person, or one of the persons, who entered into or carried out the arrangement or any part of the arrangement did so for the sole or dominant purpose of enabling the eligible person to obtain a tax benefit or tax benefits in connection with the arrangement or of enabling the eligible person and another person or other persons each to obtain a tax benefit or tax benefits in connection with the arrangement (whether or not that person who entered into or carried out the arrangement or any part of the arrangement is the eligible person or is the other person or one of the other persons).

**Cancellation of tax benefits, &c.**

**53. (1)** Where a tax benefit has been obtained, or would but for this section be obtained, by a person in connection with an arrangement to which this Subdivision applies, the Commissioner may—

- (a) in the case of a tax benefit that is referable to an amount of assessable receipts not being derived by the person in a financial year in relation to a petroleum project—determine that the whole or a part of the amount shall be assessable receipts derived by the person in the financial year in relation to the project;
- (b) in the case of a tax benefit that is referable to an amount of deductible expenditure being incurred by the person in a financial year in relation to a petroleum project—determine that the whole or a part of the amount shall not be deductible expenditure incurred by the person in the financial year in relation to the project; and
- (c) in any case—determine that appropriate adjustments (if any) be made to the assessable receipts derived, or deductible expenditure incurred, by—
  - (i) the person in respect of the project in relation to any other financial year or in respect of any other project in relation to any financial year; or
  - (ii) any other person in respect of the project or any other project in relation to any financial year,

and any such determination has effect accordingly.

**(2)** Where, at any time, a person considers that the Commissioner should make a determination under paragraph (1) (c) in relation to the person in relation to a petroleum project or projects in relation to a financial year or financial years, the person may post to or lodge with the Commissioner a

request in writing for the making by the Commissioner of a determination under that paragraph.

(3) The Commissioner shall consider the request and serve on the person a written notice of the Commissioner's decision on the request.

(4) If the person is dissatisfied with the Commissioner's decision on the request, the person may, within 60 days after service on the person of notice of the decision of the Commissioner, lodge with the Commissioner an objection in writing against the decision stating fully and in detail the grounds on which the person relies.

(5) The provisions of Part VII (other than sub-sections 71 (1), (4) and (5)) apply in relation to an objection made under sub-section (4) in like manner as those provisions apply in relation to an objection against an assessment.

#### **Amendment of assessments**

54. (1) Nothing in section 64 prevents the amendment of an assessment at any time before the end of 6 years after the date on which tax became due and payable under the assessment if the amendment is for the purpose of giving effect to sub-section 53 (1) as that sub-section applies by virtue of paragraph 53 (1) (a) or (b).

(2) Nothing in section 64 prevents the amendment of an assessment at any time if the amendment is for the purpose of giving effect to sub-section 53 (1) as that subsection applies by virtue of paragraph 53 (1) (c).

#### **Operation of Subdivision**

55. Nothing in the provisions of this Act other than this Subdivision or in the *Income Tax (International Agreements) Act 1953* shall be taken to limit the operation of this Subdivision.

#### ***Subdivision B—Non-arm's length transactions***

##### **Arm's length transaction**

56. In this Subdivision, "arm's length transaction" means a transaction where the parties to the transaction are dealing with each other at arm's length in relation to the transaction.

##### **Non-arm's length receipts**

57. (1) Where—

- (a) under a transaction, a person has derived receipts of a kind referred to in section 24, 25, 27, 28 or 29 in relation to a petroleum project;
- (b) the Commissioner, having regard to any connection between the parties to the transaction or to any other relevant circumstances, is satisfied that the transaction is not an arm's length transaction;
- (c) the amount of the receipts is less than the amount (in this subsection referred to as the "increased receipts") that could reasonably



have been expected to have been the amount of those receipts if the transaction had been an arm's length transaction; and

- (d) the Commissioner determines that this sub-section should apply in relation to the person in relation to the transaction,

then, for the purposes of the application of this Act in relation to the person in relation to the transaction, the amount of the receipts derived by the person shall be taken to be equal to the increased receipts.

**(2) Where—**

- (a) under a transaction, a person has not derived receipts of a kind referred to in section 24, 25, 27, 28 or 29 in relation to a petroleum project;
- (b) the Commissioner, having regard to any connection between the parties to the transaction or to any other relevant circumstances, is satisfied that the transaction is not an arm's length transaction;
- (c) it could reasonably have been expected that if the transaction had been an arm's length transaction the person would have derived an amount (in this sub-section referred to as the "notional receipts") of receipts of such a kind in relation to the petroleum project; and
- (d) the Commissioner determines that this sub-section should apply in relation to the person in relation to the transaction,

then, for the purposes of the application of this Act in relation to the person in relation to the transaction, the person shall be taken to have derived under the transaction receipts of the kind referred to in paragraph (c) in relation to the project of an amount equal to the notional receipts.

**Non-arm's length expenditure**

**58. Where—**

- (a) under a transaction, a person has incurred eligible real expenditure in relation to a petroleum project;
- (b) the Commissioner, having regard to any connection between the parties to the transaction or to any other relevant circumstances is satisfied that the transaction was not an arm's length transaction;
- (c) the amount of the expenditure referred to in paragraph (a) was more than the amount (in this section referred to as the "reduced expenditure") that could reasonably have been expected to have been the amount of that expenditure if the transaction were an arm's length transaction; and
- (d) the Commissioner determines that this section should apply in relation to the person in relation to the transaction,

then, for the purposes of the application of this Act in relation to the person in relation to the transaction, the amount of the expenditure referred to in paragraph (a) shall be taken to be equal to the reduced expenditure.

**PART VI—RETURNS AND ASSESSMENTS**

***Division 1—Returns***

**Annual returns**

**59. (1)** Where a person derives assessable receipts in a year of tax in relation to a petroleum project, the person shall, unless the person has furnished a return or returns under section 60 in relation to the project in relation to the year of tax, furnish to the Commissioner a return in relation to the project in relation to the year of tax not later than 21 days after the end of the year of tax or such later date as the Commissioner allows.

**(2)** A return under sub-section (1) shall—

- (a)** be in the form provided or authorised by the Commissioner for the purposes of this section;
- (b)** be furnished in accordance with the regulations;
- (c)** be signed by or on behalf of the person furnishing the return;
- (d)** specify, in relation to the petroleum project and the year of tax concerned, the assessable receipts and deductible expenditure of the person; and
- (e)** contain such other information as is required for the due completion of the form of return.

**Other returns**

**60. (1)** Where the Commissioner, by notice in writing served on a person, requires the person to furnish to the Commissioner a return in relation to a petroleum project in relation to a year of tax, the person shall furnish the return to the Commissioner, whether or not the person has furnished, or was required to furnish, a return under section 59 or this section in relation to the project in relation to the year of tax.

**(2)** A return under sub-section (1) shall—

- (a)** be furnished in the manner and within the time required by the Commissioner in the notice;
- (b)** specify, in relation to the petroleum project and the year of tax concerned, the assessable receipts and deductible expenditure of the person; and
- (c)** contain such other information as is required in the notice.

**Certificate of sources of information**

**61. (1)** A person who charges directly or indirectly any fee for preparing or assisting in the preparation of a return under this Act shall sign a certificate in the prescribed form to be endorsed on or annexed to the return setting out such information as to the sources available for the compilation of the return as is prescribed.

Penalty: \$1,000.

(2) A person who does not furnish with his or her return a certificate under sub-section (1) shall furnish information to the Commissioner in the prescribed form, endorsed on or annexed to the return, setting out such particulars as to the sources available for the compilation of the return as are prescribed.

### ***Division 2—Assessments***

#### **Assessments**

62. The Commissioner shall, from the returns, and from any other information in the possession of the Commissioner, make an assessment of the amount of the taxable profit of any person in relation to a petroleum project, and of the tax payable on that amount.

#### **Default assessments**

63. Where—

- (a) a person makes default in furnishing a return;
- (b) the Commissioner is not satisfied with the return made by a person; or
- (c) the Commissioner has reason to believe that a person who has not furnished a return is liable to pay tax,

the Commissioner may make an assessment of the taxable profit upon which, in the opinion of the Commissioner, tax is payable by that person, and of the amount of that tax.

#### **Amendment of assessments**

64. (1) The Commissioner may, at any time within 3 years from the date on which tax became due and payable under an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(2) Subject to this section, the Commissioner may, after the end of 3 years from the date on which tax became due and payable under an assessment, amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(3) Where—

- (a) a person does not make a full and true disclosure of all the material facts necessary for an assessment of the tax payable by the person;
- (b) the Commissioner makes an assessment; and
- (c) there is an avoidance of tax,

the Commissioner may—

- (d) where the Commissioner is of the opinion that the avoidance of tax is due to fraud or evasion—at any time; and
- (e) in any other case—within 6 years from the date on which tax became due and payable under the assessment,

amend the assessment by making such alterations or additions to it as the Commissioner thinks necessary.

(4) No amendment effecting a reduction in the liability of a person under an assessment shall be made after the end of 3 years from the date on which tax became due and payable under the assessment.

(5) Where an assessment has been amended under this section in any particular, the Commissioner may, within 3 years from the date on which tax became due and payable under the amended assessment, make, in or in respect of that particular, such further amendment of the assessment as, in the Commissioner's opinion, is necessary to effect such reduction in the liability of the person liable to pay tax under the assessment as is just.

(6) Where a person—

- (a) applies, within 3 years from the date on which tax became due and payable under an assessment, for an amendment of the assessment; and
- (b) supplies to the Commissioner within that period all information needed by the Commissioner for the purposes of determining the application,

the Commissioner may amend the assessment, notwithstanding that that period has expired.

(7) Nothing in this section prevents the amendment of an assessment—

- (a) in order to give effect to a decision on a review or appeal;
- (b) by way of reduction in any particular pursuant to an objection made under this Act or pending a review or appeal; or
- (c) in order to give effect to the provisions of section 5 or 20.

(8) The Commissioner may, at any time, amend an assessment of additional tax under Part IX.

#### **Payment of interest where assessment amended**

65. (1) Subject to this section, where an amendment of an assessment increasing the liability of a person to tax is made, the person is liable to pay interest to the Commissioner, calculated in accordance with sub-section (4), on the amount (in this section referred to as the "principal amount") by which the tax payable by the person under the amended assessment exceeds the tax payable by the person under the assessment that was amended.

(2) Where—

- (a) but for this sub-section, interest would be payable by a person under sub-section (1) in respect of the principal amount; and
- (b) the person is liable to pay, or would, but for sub-section 8ZE (1) of the *Taxation Administration Act 1953* or sub-section 104 (3) of this Act, be liable to pay, additional tax under Part IX (other than section 101) of this Act in respect of the matter to which the principal amount, or part of the principal amount, relates,

interest is not payable by the person under sub-section (1) in respect of the principal amount or the part of the principal amount, as the case may be.

(3) Where—

- (a) a person is liable to pay, or would, but for sub-section (11), be liable to pay, interest under sub-section (1) on an amount (in this sub-section referred to as the “base amount”), being the whole or a part of the principal amount; and
- (b) as a result of the amendment by virtue of which the interest became payable, an amendment of an assessment is made increasing the liability of the person to additional tax under Part IX,

the person is liable to pay interest to the Commissioner, calculated in accordance with sub-section (4), on the amount ascertained in accordance with the formula  $\frac{AB}{C}$ , where—

- A** is so much of the additional tax payable by the person under the amended assessment as is attributable to the amendment by virtue of which the interest referred to in paragraph (a) became payable;
- B** is the number of whole dollars in the base amount; and
- C** is the number of whole dollars in the principal amount.

(4) Interest payable by a person under sub-section (1) or (3) in relation to an amended assessment (in this sub-section referred to as the “current amended assessment”) in relation to a petroleum project in respect of a year of tax shall be calculated—

- (a) in respect of the period commencing on—
  - (i) in a case to which sub-section (1) applies—the day on which tax became due and payable by the person under the first assessment in relation to the petroleum project in respect of the year of tax; or
  - (ii) in a case to which sub-section (3) applies—the day on which additional tax under Part IX became due and payable by the person under the assessment referred to in paragraph (3) (b) or, if that assessment was previously amended on one or more occasions, under that assessment before any amendment, and ending on the day on which the current amended assessment is made; and
- (b) at such rate of interest as is, or such rates of interest as are, applicable under regulations made for the purposes of paragraph 10 (1) (b) of the *Taxation (Interest on Overpayments) Act 1983*.

(5) Where, under section 84, the Commissioner—

- (a) has granted an extension of time for payment of tax or of additional tax under Part IX; or
- (b) has permitted payment of tax, or additional tax under Part IX, to be made by instalments,

that tax or additional tax shall be deemed, for the purposes of this section, to have become due and payable on such date as the Commissioner determines, not being a date before the date on which the tax or additional tax was originally due and payable.

(6) Where—

- (a) the Commissioner has served notice in respect of a person to the effect that the taxable profit of the person in relation to a petroleum project in respect of a year of tax is nil; and
- (b) the Commissioner subsequently makes an assessment of the taxable profit of the person in relation to the petroleum project in respect of the year of tax and of the tax payable on that taxable profit,

the following provisions have effect for the purposes of this section:

- (c) the notice referred to in paragraph (a) shall be deemed to be an assessment (in this sub-section referred to as the “notional assessment”) on which a nil amount of tax became due and payable at the end of 21 days after the date of service of the notice; and
- (d) the assessment referred to in paragraph (b) shall be deemed to be an amendment of the notional assessment.

(7) Until regulations are made for the purposes of paragraph 10 (1) (b) of the *Taxation (Interest on Overpayments) Act 1983*, interest payable by a person under this section shall be calculated at the rate of 14.026% per annum.

(8) Where, but for this sub-section, the amount of interest that would be payable under sub-section (1) or (3) by a person is less than 50 cents, interest is not payable by the person under that sub-section.

(9) Where a person is liable to pay to the Commissioner an amount of interest under this section, the Commissioner shall serve on the person notice in writing specifying—

- (a) the period in respect of which the person is liable to pay the interest;
- (b) the amount of the interest; and
- (c) a date, being a date not less than 21 days after the day of service of the notice, as the due date for payment of the interest,

and the amount is due and payable on that date.

(10) A notice for the purposes of sub-section (9) may be incorporated in a notice of assessment.

(11) The Commissioner may, in his or her discretion, remit the whole or any part of the interest payable by a person under this section.

(12) Unless the contrary intention appears, in sections 66, 81, 83, 84, 86, 87, 88, 89, 92, 109, 110 and 111, but not in any other section of this Act, “tax” includes interest payable under this section.

(13) The ascertainment of an amount of interest under this section shall be deemed not to be an assessment within the meaning of any of the provisions of this Act.

**Refund of amounts overpaid**

66. (1) Where, by reason of an amendment of an assessment, a person's liability to tax is reduced—

- (a) the amount by which the tax is so reduced shall be taken, for the purposes of sections 65 and 85 never to have been payable; and
- (b) the Commissioner shall—
  - (i) refund the amount of any tax overpaid; or
  - (ii) apply the amount of any tax overpaid against any liability to the Commonwealth of the person arising under or by virtue of this Act or any other Act of which the Commissioner has the general administration and refund any part of the amount that is not so applied.

(2) In sub-section (1), unless the contrary intention appears, "tax" includes additional tax under section 85 or Part IX.

**Amended assessment to be an assessment**

67. Except as otherwise provided, an amended assessment is an assessment for all the purposes of this Act.

**Notice of assessment**

68. As soon as practicable after an assessment is made, the Commissioner shall serve notice of the assessment in writing on the person liable to pay the tax.

**Validity of assessment**

69. The validity of any assessment is not affected by reason that any provision of this Act has not been complied with.

**PART VII—OBJECTIONS, REVIEWS AND APPEALS**

**Interpretation**

70. In this Part, "Federal Court" means the Federal Court of Australia.

**Objections**

71. (1) A person who is dissatisfied with an assessment may, within 60 days after service of the notice of that assessment, lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which the person relies.

(2) The Commissioner shall consider the objection, and may either disallow it or allow it wholly or in part.

(3) The Commissioner shall cause notice in writing of the Commissioner's decision on the objection to be served on the person.

(4) Where an assessment has been amended in any particular, the right of a person to object against the amended assessment is limited to a right to object against alterations or additions in respect of, or matters relating to, that particular.

(5) Where a notice of assessment of tax incorporates notice of one or more assessments of additional tax, the assessments shall, for the purposes of this Part, be regarded as one assessment.

#### **Request for reference**

**72.** A person who is dissatisfied with a decision under section 71 on an objection by the person may, within 60 days after service on the person of notice of the decision, lodge with the Commissioner, in writing, either—

- (a) a request to refer the decision to the Tribunal; or
- (b) a request to refer the decision to the Federal Court.

#### **Applications for extension of time**

**73. (1)** Where the period for the lodgment by a person of an objection against an assessment has ended, the person may, notwithstanding that the period has ended, send the objection to the Commissioner together with an application in writing requesting the Commissioner to treat the objection as having been duly lodged.

(2) Where the period for the lodgment by a person of a request under section 72 has ended, the person may, notwithstanding that the period has ended, send the request to the Commissioner together with an application in writing asking that the request be treated as having been duly lodged.

(3) An application under sub-section (1) or (2) shall state fully and in detail the circumstances concerning, and the reasons for, the failure by the person to lodge the objection or request as required by this Act.

#### **Consideration of applications for extension of time for lodging objections**

**74. (1)** The Commissioner shall consider each application made under sub-section 73 (1) and may grant or refuse the application.

(2) The Commissioner shall give to the person who made the application notice in writing of the decision on the application.

(3) A person who is dissatisfied with a decision under sub-section (1) in respect of an application made by the person may apply to the Tribunal for review of the decision.

(4) Where an application under sub-section 73 (1) has been granted, the person who made the application shall, for the purposes of this Part, be treated as having duly lodged the objection to which the application relates.



**Consideration of applications for extension of time for lodging requests for reference**

**75. (1)** Where the Commissioner receives an application from a person (in this section referred to as the “applicant”) under sub-section 73 (2), the Commissioner shall, as soon as practicable—

- (a) if the application relates to a request to refer a decision to the Tribunal—send the application to the Tribunal; or
- (b) if the application relates to a request to refer a decision to the Federal Court—send the application to that Court.

(2) The sending of an application to the Tribunal under paragraph (1) (a) shall, for the purposes of the *Administrative Appeals Tribunal Act 1975*, be deemed to constitute the making by the applicant of an application to the Tribunal to extend the time within which the request may be lodged with the Commissioner.

(3) The sending of an application to the Federal Court under paragraph (1) (b) constitutes the making by the applicant of an application to that Court to extend the time within which the request may be lodged with the Commissioner.

(4) The Tribunal or the Federal Court, as the case may be, may grant or refuse the application.

(5) Where an application under sub-section 73 (2) has been granted, the applicant shall, for the purposes of this Part, be treated as having duly lodged the request to which the application relates.

**Reference to Tribunal or Court**

**76. (1)** Where a person (in this section referred to as the “applicant”) duly lodges, or is to be treated as having duly lodged, a request under section 72, the Commissioner shall comply with the request.

(2) The referral of a decision on an objection to the Tribunal shall, for the purposes of the *Administrative Appeals Tribunal Act 1975*, be deemed to constitute the making by the applicant of an application to the Tribunal for review of the decision.

(3) The referral of a decision on an objection to the Federal Court constitutes the instituting by the applicant of an appeal against the decision.

**Notice to refer**

**77. (1)** Subject to sub-sections (2) and (3), if, within 60 days after receiving a request under section 72 in relation to a decision on an objection, the Commissioner does not comply with the request, the person making the request may give notice in writing to the Commissioner requiring the Commissioner to do so and the Commissioner shall, within 60 days after receiving the notice, comply with the request.

(2) Where an application under section 73 in relation to a request has been granted, the person making the application is not entitled to give notice

under sub-section (1) of this section in relation to the request before the expiration of 60 days after the day on which the application was granted.

(3) If, within 60 days after receiving a request under section 72 in relation to a decision on an objection or, in a case to which sub-section (2) of this section applies, within 60 days after an application under section 73 in relation to a request has been granted, the Commissioner, by notice in writing served on the person making the request or application, requires the person to give information relating to the objection, the Commissioner is not required to comply with the request until the expiration of 60 days after the receipt by the Commissioner of that information.

#### **Procedure on review or appeal**

**78.** In proceedings under this Part on a review before the Tribunal or on appeal to a court—

- (a) the person making the application for review or instituting the appeal is, unless the Tribunal or court otherwise orders, limited to the grounds stated in the objection; and
- (b) the burden of proving that an assessment is excessive lies on that person.

#### **Powers of Federal Court on appeal**

**79.** Where the Federal Court hears an appeal under this Part, the Court may make such order in relation to the decision to which the appeal relates as it thinks fit, including an order confirming or varying the decision.

#### **Implementation of decisions**

**80. (1)** When a decision of the Tribunal or of a court under this Part becomes final, the Commissioner shall, not later than 60 days after that decision becomes final, take such action, including amending the assessment concerned, as may be necessary to give effect to the decision.

**(2)** For the purposes of determining when a decision of the Tribunal or of the Federal Court becomes final—

- (a) if that decision is a decision of the Tribunal, or of the Federal Court constituted by a single Judge, and no appeal is lodged within the period for lodging an appeal—that decision becomes final at the end of that period; or
- (b) if that decision is a decision of the Full Court of the Federal Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—that decision becomes final at the end of that period.

**(3)** In this section, “decision”, in relation to a court, includes the making of an order under section 79.

**Pending review or appeal not to affect assessment**

81. The fact that a review or appeal is pending in relation to an assessment does not, in the meantime, interfere with, or affect, the assessment, and tax, or additional tax under section 85 or Part IX, may be recovered as if no review or appeal were pending.

**PART VIII—COLLECTION AND RECOVERY OF TAX**

***Division 1—General***

**When tax payable**

82. (1) Subject to this Part, tax assessed in respect of a year of tax becomes due and payable on the date specified in the notice of assessment as the date upon which tax is due and payable, not being less than 21 days after the service of the notice or, if no date is specified, on the twenty-first day after the service of the notice.

(2) In sub-section (1), "tax" includes additional tax under Part IX.

**Persons leaving Australia**

83. (1) Where the Commissioner has reason to believe that a person liable to pay tax may leave Australia before the date on which the tax would, but for this section, be due and payable, the tax is due and payable on such date as the Commissioner notifies to that person.

(2) In sub-section (1), "tax" includes additional tax under Part IX.

**Extension of time and payment by instalments**

84. (1) The Commissioner may, in such circumstances as the Commissioner thinks fit, extend the time for payment of an amount of tax for such period or periods as the Commissioner determines, and, where the Commissioner does so, the tax shall be due and payable accordingly.

(2) The Commissioner may, in such circumstances as the Commissioner thinks fit, permit the payment of an amount of tax to be made by instalments in such amounts and at such times as the Commissioner determines, and, subject to sub-section (3), each instalment is due and payable at the time so determined in relation to that instalment.

(3) If the Commissioner permits the payment of an amount of tax to be made by instalments and an instalment of an amount of tax is not paid on or before the time for the due payment of the instalment, the whole of the amount outstanding becomes due and payable at that time.

(4) In this section, "tax" includes additional tax under Part IX.

**Penalty for unpaid tax**

85. (1) Subject to this section, if any tax remains unpaid after the time when it became due and payable, or would, but for section 84, have become due and payable, additional tax is due and payable by way of penalty by

the person liable to pay the tax at the rate of 20% per annum on the amount unpaid, computed from that time or, where, under section 84, the Commissioner has granted an extension of time for payment of the tax or has permitted payment of the tax to be made by instalments, from such date as the Commissioner determines, not being a date before the date on which the tax was originally due and payable.

(2) Where additional tax is due and payable by a person under this section in relation to an amount of tax and—

(a) the Commissioner is satisfied that—

- (i) the circumstances that contributed to the delay in payment of the tax were not due to, or caused directly or indirectly by, an act or omission of the person; and
- (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances;

(b) the Commissioner is satisfied that—

- (i) the circumstances that contributed to the delay in payment of the tax were due to, or caused directly or indirectly by, an act or omission of the person;
- (ii) the person has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
- (iii) having regard to the nature of those circumstances, it would be fair and reasonable to remit the additional tax or part of the additional tax; or

(c) the Commissioner is satisfied that there are special circumstances by reason of which it would be fair and reasonable to remit the additional tax or part of the additional tax,

the Commissioner may remit the additional tax or part of the additional tax.

(3) Where judgment is given by, or entered in, a court for payment of—

- (a) an amount of tax; or
- (b) an amount that includes an amount of tax,

then—

(c) the tax shall not be taken, for the purposes of sub-section (1), to have ceased to be due and payable by reason only of the giving or entering of the judgment; and

(d) if the judgment debt carries interest, the additional tax that would, but for this paragraph, be payable under this section in relation to the tax shall, by force of this paragraph, be reduced by—

- (i) in a case to which paragraph (a) applies—the amount of the interest; or
- (ii) in a case to which paragraph (b) applies—an amount that bears the same proportion to the amount of the interest as the amount of the tax bears to the amount of the judgment debt.

(4) In this section, unless the contrary intention appears, "tax" includes additional tax under Part IX.

**Recovery of tax**

**86. (1) Tax, when it becomes due and payable—**

- (a) is a debt due to the Commonwealth and payable to the Commissioner in the manner and at the place prescribed; and
- (b) may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his or her official name.

(2) In sub-section (1), "tax" includes additional tax under section 85 or Part IX.

**Substituted service**

**87. (1) Where—**

- (a) a document is required to be served on a person for the purposes of proceedings against the person for recovery of tax; and
- (b) the Commissioner is satisfied, after reasonable enquiry, that the person—
  - (i) is absent from Australia and has no attorney or agent in Australia on whom service of process can be effected; or
  - (ii) cannot be found,

service of the document on the person may be effected, without leave of the court, by posting the document or a sealed copy of it in a letter addressed to the person at his or her last known place of business or residence in Australia.

(2) In sub-section (1), "tax" includes additional tax under section 85 or Part IX.

**Liquidators, &c.**

**88. (1) Where a person (in this section referred to as the "asset holder")—**

- (a) becomes, on a particular date, a liquidator of a company, being a company that is or was entitled to derive assessable petroleum receipts in relation to a petroleum project;
- (b) is a receiver, or a receiver and manager, for debenture holders of a company, being a company that is or was entitled to derive assessable petroleum receipts in relation to a petroleum project, and, on a particular date, takes possession of assets of the company; or
- (c) is agent for a non-resident principal, being a principal who is or was entitled to derive assessable petroleum receipts in relation to a petroleum project, and, on a particular date, is instructed by the principal to wind up the whole or part of a business of the principal,

the asset holder shall, within 14 days of that date, give notice in writing of the fact to the Commissioner, and the succeeding provisions of this section apply.

(2) The Commissioner shall, as soon as practicable, notify the asset holder of the amount that, in the opinion of the Commissioner, is sufficient to provide for any amount of tax that is or may become payable by the company or principal, as the case may be.

(3) Subject to sub-section (5), if the asset holder is a person of the kind referred to in paragraph (1) (a) or (b), the asset holder—

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company until the asset holder has been notified by the Commissioner under sub-section (2);

(b) shall set aside, out of the assets available for payment of ordinary debts of the company, assets to the value of an amount that bears to the value of the assets available for payment of ordinary debts of the company the same proportion as the amount notified by the Commissioner under sub-section (2) bears to the sum of—

(i) the amount notified by the Commissioner under sub-section (2);

(ii) any amount of prescribed tax that the Commissioner is required to notify to the asset holder under an Act other than this Act and has so notified; and

(iii) the aggregate of the ordinary debts of the company (excluding any debt in respect of tax or prescribed tax); and

(c) is, to the extent of the value of the assets that the asset holder is so required to set aside, liable as trustee to pay the tax.

(4) If the asset holder is a person of the kind referred to in paragraph (1) (c), the asset holder—

(a) shall not, without the leave of the Commissioner, part with any of the assets of the principal until the asset holder has been notified by the Commissioner under sub-section (2);

(b) shall set aside, out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are less than that value; and

(c) is, to the extent of the value of the assets that the asset holder is so required to set aside, liable as trustee to pay the tax.

(5) Nothing in paragraph (3) (a) prevents the asset holder parting with assets of the company for the purpose of paying debts of the company that are not ordinary debts of the company.

(6) For the purposes of sub-sections (3) and (5), a debt of a company is an ordinary debt if—

(a) the debt is an unsecured debt; and

- (b) the debt is not required, under a law of the Commonwealth or of a State or Territory, to be paid in priority to some or all of the other debts of the company.
- (7) In sub-section (3), "prescribed tax" means—
  - (a) tax within the meaning of sub-section 96 (2) of the *Fringe Benefits Tax Assessment Act 1986*;
  - (b) tax within the meaning of sub-section 215 (2) of the *Income Tax Assessment Act 1936* or of that sub-section as applied by the *Taxation (Unpaid Company Tax) Assessment Act 1982* or the *Trust Recoupment Tax Assessment Act 1985*;
  - (c) tax within the meaning of sub-section 30 (2) of the *Pay-roll Tax (Territories) Assessment Act 1971*;
  - (d) tax within the meaning of sub-section 32 (2) of the *Sales Tax Assessment Act (No. 1) 1930* or of that sub-section as applied by any other Act providing for the assessment of sales tax;
  - (e) charge within the meaning of sub-section 27 (2) of the *Tobacco Charges Assessment Act 1955*; or
  - (f) tax within the meaning of sub-section 47 (2) of the *Wool Tax (Administration) Act 1964*.
- (8) If the asset holder refuses or fails to comply with any provision of this section or refuses or fails as trustee duly to pay the tax for which the asset holder is liable under sub-section (3) or (4), the asset holder—
  - (a) is, to the extent of the value of the assets that the asset holder is required under sub-section (3) or (4) to set aside, personally liable to pay the tax; and
  - (b) is guilty of an offence punishable on conviction by a fine not exceeding \$1,000.
- (9) Nothing in this section shall be taken to limit an obligation or liability of the asset holder arising otherwise than under this section.
- (10) Where 2 or more persons—
  - (a) are liquidators of a particular company of a kind referred to in paragraph (1) (a);
  - (b) are receivers, or receivers and managers, for debenture holders of a particular company of a kind referred to in paragraph (1) (b) and take possession of assets of the company; or
  - (c) are agents for a particular non-resident principal of a kind referred to in paragraph (1) (c) and are instructed by the principal to wind up the whole or a part of a business of the principal,then—
  - (d) a reference in this section to the asset holder is a reference to both or all of those persons; and
  - (e) the obligations and liabilities attaching to the asset holder under this section attach to both or all of those persons jointly.

(11) In this section, unless the contrary intention appears, "tax" includes additional tax under section 85 or Part IX.

**Recovery of tax from trustee of deceased person**

89. (1) The succeeding provisions of this section apply where, at the time of a person's death—

- (a) tax has not been assessed or paid in respect of the whole of the assessable receipts derived by the person in respect of petroleum projects up to the time of the death of the person; or
- (b) additional tax under Part IX to which the person is liable has not been assessed or paid.

(2) The Commissioner has the same powers and remedies for the assessment and recovery of tax from a trustee of the estate of the person as the Commissioner would have had against the person if the person were still living.

(3) The trustee shall—

- (a) furnish such returns and such information as the person was, or would but for the person's death have been, liable to furnish; and
- (b) furnish such further returns and information as the Commissioner requires.

(4) Where the trustee is unable or refuses or fails to furnish a return in relation to a petroleum project in respect of a year of tax, the Commissioner may make an assessment of—

- (a) the taxable profit of the person in relation to the project of that year; and
- (b) the amount of tax payable on that taxable profit.

(5) The trustee is subject to additional tax under section 85 or Part IX to the same extent as the person would be if the person were still living.

(6) The amount of any tax payable by the trustee is a charge on all of the person's estate in the trustee's hands in priority to any other encumbrance other than a charge in respect of a debt payable to the Commissioner.

(7) In this section, unless the contrary intention appears, "tax" includes additional tax under section 85 or Part IX.

**Where no administration of deceased person's estate**

90. (1) Where a grant has not been made of probate of the will, or of letters of administration of the estate, of a deceased person within 6 months after the person's death, the succeeding provisions of this section apply.

(2) The Commissioner may make an assessment of—

- (a) the taxable profit or taxable profits in respect of which tax was payable by the deceased person; and
- (b) the amount of tax payable on that profit or those profits,



and, in a case where the deceased person resided in a State or Territory immediately before the person's death, shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State or Territory in which the deceased person resided immediately before the person's death.

(3) A person who claims an interest in the deceased person's estate may, within 60 days after the first publication of notice of the assessment, lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which the person relies.

(4) Subject to any amendment, the assessment is conclusive evidence of the liability of the deceased person.

(5) The Commissioner may give an order in writing, in the prescribed form, authorising a member or special member of the Australian Federal Police or a member of the police force of a State or Territory, or any other person specified in the order, to levy the amount of tax assessed, with costs, by distress and sale of any property of the deceased person.

(6) A person authorised under such an order has power to levy, in the prescribed manner, the amount specified in the order.

(7) Notwithstanding sub-sections (4), (5) and (6), if probate of the will, or letters of administration of the estate, of the deceased person is or are granted to a person on a particular date, that person may, within 60 days after that date, lodge with the Commissioner an objection against the assessment, stating fully and in detail the grounds on which the person relies.

(8) The provisions of Part VII (other than sub-section 71 (1)) apply in relation to an objection made by a person under sub-section (3) or (7) as if the person were the deceased person.

**Commissioner may collect tax from person owing money to person liable to tax**

**91. (1)** The Commissioner may, by notice in writing, require a person (in this section referred to as the "debtor")—

- (a) by whom money is due or accruing, or may become due, to a taxpayer;
- (b) who holds, or may subsequently hold, money for or on account of a taxpayer, or for or on account of another person for payment to a taxpayer; or
- (c) who has, or may subsequently have, authority from another person to pay money to a taxpayer,

to pay to the Commissioner, at or before a time (in this section referred to as the "payment time") specified in the notice (not being a time before the notice is served on the debtor, or before the money becomes due or is held, or the debtor so has authority, as the case may be) an amount (in this section referred to as the "garnisheed amount") equal to—

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- (d) the whole of the money, or so much of it as is sufficient to pay the amount due by the taxpayer in respect of tax; or
- (e) such amount as is specified in the notice out of each payment that the debtor becomes liable to make to the taxpayer, or, not being liable to make, makes to the taxpayer, until the amount of tax is paid.

(2) The Commissioner may, by further notice in writing, revoke or vary a notice under sub-section (1).

(3) The Commissioner shall cause a notice under sub-section (1) or (2) to be served on the debtor and a copy of the notice to be served on the taxpayer.

(4) A person who refuses or fails to comply with a notice under this section is guilty of an offence.

Penalty: \$1,000.

(5) Where a person (in this sub-section referred to as the "convicted person") is convicted of an offence against sub-section (4) in relation to the refusal or failure of the convicted person or another person to comply with a notice under this section, the court may, in addition to imposing a penalty on the convicted person, order the convicted person to pay to the Commissioner an amount not exceeding the amount or the aggregate of the amounts, as the case requires, that the convicted person or the other person, as the case may be, refused or failed to pay to the Commissioner in accordance with the notice.

(6) A person making a payment pursuant to this section shall be deemed to be acting with the authority of the taxpayer and of all other persons concerned and is, by force of this sub-section, indemnified in respect of the payment.

(7) If any payment in respect of the amount due by the taxpayer is made before payment is made by a person under a notice given pursuant to this section, the Commissioner shall forthwith give notice to that person in accordance with sub-section (2).

(8) The garnisheed amount is, from the payment time, a debt due to the Commonwealth and recoverable in a court of competent jurisdiction.

(9) Where—

(a) money has been paid by a person to a building society in respect of the issue of shares in the capital of the society (not being shares listed for quotation on a Stock Exchange); and

(b) the money has not been repaid,

the money shall, for the purposes of this section, be taken—

(c) in a case where the money is repayable on demand—to be due by the building society to the person; or

(d) in any other case—to be money that may become due by the building society to the person.

(10) Where, but for this sub-section, money is not due, or repayable on demand, to a person unless a condition is fulfilled, the money shall be taken, for the purposes of this section, to be due, or repayable on demand, as the case may be, to the person notwithstanding that the condition has not been fulfilled.

(11) A notice to be served under this section on the Commonwealth or on a State or Territory may be served on a person employed by the Commonwealth or by that State or Territory, as the case may be, being a person who, by or under a law of the Commonwealth or of that State or Territory, is charged with a duty of disbursing public money, and a notice so served shall be deemed, for the purposes of this section, to have been served on the Commonwealth or that State or Territory, as the case may be.

(12) In this section—

“building society” means a society registered or incorporated as a building society, co-operative housing society or other similar society under the law in force in a State or Territory;

“tax” includes—

- (a) additional tax under section 85 or Part IX;
- (b) an amount that a person is liable to pay to the Commissioner under Division 2;
- (c) an amount of interest that a person is liable to pay to the Commissioner under section 65;
- (d) a judgment debt or costs in respect of—
  - (i) tax;
  - (ii) additional tax under section 85 or Part IX;
  - (iii) an amount that a person is liable to pay to the Commissioner under Division 2; or
  - (iv) an amount of interest that a person is liable to pay to the Commissioner under section 65;
- (e) any fine or costs imposed by a court in respect of an offence against this Act; and
- (f) any amount ordered by a court, upon the conviction of a person for an offence against this Act, to be paid by the person to the Commissioner;

“taxpayer” means a person liable to pay tax.

### **Person in receipt or control of money of non-resident**

**92. (1)** A person who has authority to receive, control or dispose of money belonging to a non-resident who is liable to an amount of tax shall, when required by the Commissioner by notice in writing served on the person, pay the amount of tax and, by force of this section, is, when so required—

- (a) authorised and required to retain from time to time any money that comes to the person on behalf of the non-resident or so much of it as is sufficient to pay the amount of tax payable by the non-resident;
- (b) made personally liable for the amount of tax after it becomes payable to the extent of any amount so retained, or which should have been so retained, under paragraph (a); and
- (c) indemnified for all payments that the person makes pursuant to this section.

(2) For the purposes of sub-section (1), a person who is liable to pay money to a non-resident shall be deemed to be a person who has the control of money belonging to the non-resident, and all money due by the person to the non-resident shall be deemed to be money that comes to the person on behalf of the non-resident.

(3) Where the Commonwealth, a State or Territory, or an authority of the Commonwealth, a State or Territory, has the receipt, control or disposal of money belonging to a non-resident, this section (other than paragraph (1) (b)) applies to and in relation to the Commonwealth, the State or the Territory, or the authority of the Commonwealth, of the State or of the Territory, as the case may be, in the same manner as it applies to and in relation to any other person.

(4) In this section, "tax" includes additional tax under section 85 or Part IX.

### ***Division 2—Collection by instalments***

#### **Interpretation**

93. (1) In sections 84, 85, 86, 87, 92, 109, 110 and 111, but not in any other section of this Act, "tax" includes an instalment of tax payable under this Division.

(2) The ascertainment of the notional tax amount, or the amount of any instalment of tax, in accordance with this Division shall not be deemed to be an assessment within the meaning of any of the provisions of this Act.

(3) All amounts of instalments of tax shall be calculated to the nearest dollar.

#### **Liability to pay instalments of tax**

94. For the purpose of securing generally the more expeditious collection of tax, a person is liable to pay, in accordance with this Division, 3 instalments of tax in respect of each year of tax of the person in relation to a petroleum project, being a year of tax commencing on or after 1 July 1987.

#### **When instalment of tax is payable**

95. Subject to this Division, the 3 instalments of tax payable in respect of a year of tax of a person in relation to a petroleum project are due and payable respectively on 21 October, 21 January and 21 April in the year of tax concerned.

**Amount of instalment of tax**

**96.** The amount payable by a person as an instalment of tax is the notional tax amount in relation to the instalment period in relation to the instalment.

**Notional tax amount**

**97. (1)** Subject to this section, the notional tax amount of a person in relation to an instalment period in a year of tax, in relation to a petroleum project, is an amount ascertained in accordance with the formula  $A - B$ , where—

**A** is an amount equal to the tax that would be assessed in respect of the year of tax if the instalment period were the year of tax and the amounts that were taken by sub-sections 33 (3), 34 (3), 35 (3) and 36 (1) (including by reason of the application of section 48) to be incurred by the person in relation to the project (including in the case of a combined project any pre-combination project in relation to the project) on the first day of the year of tax were instead only the instalment percentages of those amounts; and

**B** is the notional tax amount, or the sum of the notional tax amounts, in respect of any preceding instalment period or periods in the year of tax of the person in relation to the project (including in the case of a combined project any pre-combination project in relation to the project).

**(2) Where—**

**(a)** a person has not furnished information under section 98 in relation to an instalment of tax; or

**(b)** the Commissioner is not satisfied with the information furnished by a person under section 98 in relation to an instalment of tax,

the Commissioner may determine that the notional tax amount of the person in respect of the period to which the instalment of tax relates is such amount that, in the opinion of the Commissioner, might reasonably be expected to be the notional tax amount, ascertained in accordance with sub-section (1), of the person in respect of the instalment period.

**(3)** As soon as practicable after a determination is made under sub-section (2) in relation to a person, the Commissioner shall cause notice of the determination to be served on the person.

**Instalment statement**

**98. (1)** Where a person is liable to pay an instalment of tax in respect of an instalment period, the person shall, not later than the date on which the instalment is due and payable or such later date as the Commissioner allows, furnish, in accordance with a form approved by the Commissioner, such information relating to the basis of the calculation of that instalment as is required by the form.

(2) Sub-section (1) does not apply in relation to an instalment of tax that a person is liable to pay in respect of an instalment period where the amount of the instalment in relation to the instalment period and in relation to each preceding instalment period (if any) is nil.

#### **Application of payments of instalments of tax**

**99. Where—**

- (a) a person has paid an amount in respect of an instalment of tax in respect of a year of tax, in relation to a petroleum project (including in the case of a combined project any pre-combination project in relation to the project); and
- (b) an assessment has been made of the amount of tax payable by the person in respect of the year of tax in relation to the project,  
the Commissioner shall credit the amount so paid in payment successively of—
  - (c) any tax payable by the person in respect of the year of tax in respect of the petroleum project, whether or not that tax is due for payment; and
  - (d) any other liability to the Commonwealth of the person entitled to the credit arising under or by virtue of this Act or any other Act of which the Commissioner has the general administration,and shall refund to the person so much of the amount as is not credited.

#### **Unpaid instalments**

**100. (1)** If, on the date on which tax becomes due and payable by a person in respect of a year of tax in relation to a petroleum project, the whole or a part of an amount payable as an instalment of tax in respect of that year of tax in relation to the project (including in the case of a combined project any pre-combination project in relation to the project) has not been paid and there is no other instalment in respect of that year of tax in relation to the project the whole or a part of which has not been paid—

- (a) where no part of the tax in respect of that year of tax has been paid—so much (if any) of the amount unpaid in respect of that instalment as exceeds the amount of that tax ceases on that date to be payable;
- (b) where part only of the tax in respect of that year of tax has been paid—so much (if any) of the amount unpaid in respect of that instalment as exceeds the amount of that tax that has not been paid ceases on that date to be payable; or
- (c) where the whole of the tax in respect of that year of tax has been paid—the amount unpaid in respect of that instalment ceases on that date to be payable.

(2) If, on the date on which tax becomes due and payable by a person in respect of a year of tax in relation to a petroleum project, there are 2 or more instalments of tax in respect of that year of tax in relation to the

project (including in the case of a combined project any pre-combination project in relation to the project) the whole or a part of each of which has not been paid—

- (a) where no part of the tax in respect of that year of tax has been paid or part only of that tax has been paid—the Commissioner may determine that the whole or any part of all or any of the amounts unpaid in respect of those instalments shall cease on that date to be payable; or
- (b) where the whole of the tax in respect of that year of tax has been paid—each of the amounts unpaid in respect of those instalments ceases on that date to be payable.

(3) In making a determination for the purposes of sub-section (2), the Commissioner shall have regard to—

- (a) the extent (if any) to which the sum of the amounts unpaid in respect of the instalments of tax referred to in that sub-section exceeds the amount of the tax referred to in that sub-section that has not been paid; and
- (b) any other relevant matters.

(4) Where, by reason of the making of a determination by the Commissioner under sub-section (2), the amount payable by a person as an instalment has been reduced or an instalment is not payable, the Commissioner shall cause to be served on the person a notice in writing specifying the reduced amount as the amount that is payable as the instalment or stating that the instalment is not payable, as the case may be.

## **PART IX—PENALTY TAX**

### **Penalty for failure to furnish return**

**101.** (1) Where a person refuses or fails to furnish, when and as required under or pursuant to this Act to do so, a return, or any information, relating to a year of tax in relation to a petroleum project, being a return relevant to or information relevant to ascertaining the person's liability under this Act, the person is liable to pay, by way of penalty, additional tax equal to double the amount of tax payable by the person in respect of the year of tax in relation to the petroleum project.

(2) Where, but for this sub-section, an amount of additional tax, being an amount less than \$20, is payable by a person under this section in respect of an act or omission, then, by force of this sub-section, the amount of additional tax shall be taken to be \$20.

### **Penalty for false or misleading statements**

**102.** (1) Where—

(a) a person—

- (i) makes a statement to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the

operation of this Act, that is false or misleading in a material particular; or

- (ii) omits from a statement made to a taxation officer, or to a person other than a taxation officer for a purpose in connection with the operation of this Act, any matter or thing without which the statement is misleading in a material particular; and

(b) the tax properly payable by the person exceeds the tax that would have been payable by the person if it were assessed on the basis that the statement were not false or misleading, as the case may be, the person is liable to pay, by way of penalty, additional tax equal to double the amount of the excess.

(2) Where, but for this sub-section, an amount of additional tax, being an amount less than \$20, is payable by a person under this section in respect of an act or omission, then, by force of this sub-section, the amount of the additional tax shall be taken to be \$20.

(3) A reference in sub-section (1) to a statement made to a taxation officer is a reference to a statement made to a taxation officer orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes a statement—

- (a) made in an application, certificate, notification, declaration, objection, return or other document made, given or furnished, under or pursuant to this Act;
- (b) made in answer to a question asked of a person under or pursuant to this Act;
- (c) made in any information furnished, or purporting to be furnished, under or pursuant to this Act; or
- (d) made in a document furnished to a taxation officer otherwise than under or pursuant to this Act,

but does not include a statement made in a document produced pursuant to paragraph 108 (1) (c).

(4) A reference in sub-section (1) to a statement made to a person other than a taxation officer for a purpose in connection with the operation of this Act is a reference to such a statement made orally, in writing, in a data processing device or in any other form and, without limiting the generality of the foregoing, includes such a statement—

- (a) made in an application, certificate, declaration, notification or other document made, given or furnished to the person;
- (b) made in answer to a question asked by the person; or
- (c) made in any information furnished to the person.

(5) In this section—

“data processing device” means any article or material from which information is capable of being reproduced with or without the aid of any other article or device;



“taxation officer” means a person exercising powers, or performing functions under, pursuant to or in relation to this Act.

**Penalty tax where arrangement to avoid tax**

**103. Where—**

- (a) for the purpose of making an assessment or arising out of the consideration of an objection, the Commissioner has calculated the tax that is assessable to a person in respect of a year of tax in relation to a petroleum project;
- (b) in calculating the tax assessable to the person, a determination or determinations made by the Commissioner under sub-section 53 (1) was or were taken into account; and
- (c) either of the following sub-paragraphs applies:
  - (i) no tax would have been assessable to the person in respect of the year of tax in relation to the petroleum project if no determination had been made under sub-section 53 (1) in relation to the person in relation to the year of tax in relation to the petroleum project;
  - (ii) the amount of tax (in this section referred to as the “amount of claimed tax”) that would, but for this section, have been assessable to the person in respect of the year of tax in relation to the project if no determination had been made under sub-section 53 (1) in relation to the person in relation to the year of tax is less than the amount of tax referred to in paragraph (a),

the person is liable to pay, by way of penalty, additional tax equal to—

- (d) in a case to which sub-paragraph (c) (i) applies—double the amount of the tax referred to in paragraph (a); or
- (e) in a case to which sub-paragraph (c) (ii) applies—double the amount by which the amount of tax referred to in paragraph (a) exceeds the amount of claimed tax.

**Assessment of additional tax**

**104. (1)** The Commissioner shall make an assessment of the additional tax payable by a person under a provision of this Part and shall, as soon as practicable after the assessment is made, cause notice in writing of the assessment to be served on the person.

(2) Nothing in this Act shall be taken to preclude notice of an assessment made in respect of a person under sub-section (1) from being incorporated in notice of any other assessment made in respect of the person under this Act.

(3) The Commissioner may, in the Commissioner’s discretion, remit the whole or any part of the additional tax payable by a person under a provision of this Part, but, for the purposes of the application of sub-section 33 (1) of the *Acts Interpretation Act 1901* to the power of remission

conferred by this sub-section, nothing in this Act shall be taken to preclude the exercise of the power at a time before an assessment is made under sub-section (1) of the additional tax.

## **PART X—MISCELLANEOUS**

### **Judicial notice of signature**

**105.** All courts and tribunals, and all judges and persons acting judicially or authorised by law or consent of parties to hear, receive and examine evidence, shall take judicial notice of the signature of a person who holds or has held the office of Commissioner, Second Commissioner or Deputy Commissioner attached or appended to any official document in connection with this Act.

### **Evidence**

**106. (1)** The mere production of—

- (a) a notice of assessment; or
- (b) a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a notice of assessment,

is conclusive evidence of the due making of the assessment and, except in proceedings under Part VII on a review or appeal relating to the assessment, that the amounts and all of the particulars of the assessment are correct.

(2) The mere production of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a document issued or given by the Commissioner, a Second Commissioner or a Deputy Commissioner is *prima facie* evidence that the second-mentioned document was so issued or given.

(3) The mere production of a document under the hand of the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of, or an extract from, a return or a notice of assessment is evidence of the matter set out in the document to the same extent as the original return or notice, as the case may be, would be if it were produced.

(4) The mere production of a certificate in writing signed by the Commissioner, a Second Commissioner or a Deputy Commissioner certifying that a sum specified in the certificate was, at the date of the certificate, due and payable by a person in respect of an amount of tax or an amount payable by way of an instalment of tax or by way of penalty under section 85 or Part IX, is *prima facie* evidence of the matters stated in the certificate.

(5) The mere production of a *Gazette* containing a notice purporting to be issued by the Commissioner is *prima facie* evidence that the notice was so issued.

(6) A return under this Act purporting to be made or signed by or on behalf of a person is *prima facie* evidence that the return was made by the person or with the authority of the person.

**Access to premises, &c.**

107. (1) For the purposes of this Act, an officer authorised in writing by the Commissioner to exercise powers under this section—

- (a) may, at all reasonable times, enter and remain on any land or premises;
- (b) is entitled to full and free access at all reasonable times to all documents; and
- (c) may inspect, examine, make copies of, or take extracts from, any documents.

(2) An officer is not entitled to enter or remain on any land or premises under this section if, on being requested by the occupier of the land or premises for proof of authority, the officer does not produce an authority in writing signed by the Commissioner stating that the officer is authorised to exercise powers under this section.

(3) The occupier of land or premises entered or proposed to be entered by an officer under sub-section (1) shall provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section.

Penalty: \$1,000.

**Relevant authority to obtain information and evidence**

108. (1) A relevant authority may, for the purposes of this Act, by notice in writing, require a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, of a State or of a Territory or by any public authority, and whether or not the person is liable to pay an amount of tax)—

- (a) to furnish the relevant authority with such information as the relevant authority requires;
- (b) to attend before the relevant authority, or before an officer authorised by the relevant authority for the purpose, at a time and place specified in the notice, and then and there answer questions; and
- (c) to produce to the relevant authority any documents in the custody or under the control of the person.

(2) The relevant authority may require the information or answers to questions to be verified or given, as the case may be, on oath or affirmation, and either orally or in writing, and for that purpose the relevant authority, or an officer authorised by the relevant authority in writing for the purpose, may administer an oath or affirmation.

(3) The oath to be taken or affirmation to be made by a person for the purposes of this section is an oath or affirmation that the information or answers the person will give will be true.

(4) The regulations may prescribe scales of expenses to be allowed to persons required to attend under this section.

(5) In this section “relevant authority” means the Commissioner or the certifying Minister.

### **Agents and trustees**

**109.** (1) The following provisions of this section apply in relation to a person (in this section referred to as the “representative”) who, as agent or trustee, derives assessable receipts in relation to a petroleum project.

(2) The representative—

- (a) shall furnish returns in relation to the assessable receipts; and
- (b) is liable to any tax payable in respect of the assessable receipts,

but only in the capacity of agent or trustee, as the case requires, and each such return shall be separate and distinct from any other return furnished or lodged by the representative.

(3) The representative is, by force of this section—

- (a) authorised and required to retain from time to time any money that comes to the representative in the capacity as agent for the other person or trustee of the trust estate, or so much of it as is sufficient to pay the amount of tax;
- (b) made personally liable for the amount of tax after it becomes payable to the extent of any amount that the representative is required to retain under paragraph (a); and
- (c) indemnified for all payments that the representative makes pursuant to this section.

(4) For the purposes of ensuring payment of the amount of tax, the Commissioner has the same remedies against attachable property of any kind vested in, under the control or management of, or in the possession of, the representative as the Commissioner would have against the property of any other person in respect of an amount of tax payable by the other person.

(5) In this section, unless the contrary intention appears, “tax” includes additional tax under section 85 or Part IX.

### **Recovery of tax paid on behalf of another person**

**110.** (1) A person who pays an amount of tax for or on behalf of another person may recover the amount from the other person as a debt, together with the cost of recovery, or retain or deduct the amount out of money in his or her hands belonging or payable to the other person.

(2) In sub-section (1), “tax” includes additional tax under section 85 or Part IX.

**Right of contribution**

**111. (1) Where—**

- (a) 2 or more persons are jointly liable or jointly and severally liable to pay tax; and
- (b) one of those persons has paid any of the tax,

the person referred to in paragraph (b) may, in a court of competent jurisdiction, recover by way of contribution and as a debt from any of the other persons referred to in paragraph (a) such part of the amount paid as the court considers just and equitable.

(2) In sub-section (1), “tax” includes additional tax under section 85 or Part IX.

**Records to be kept and preserved**

**112. (1) A person shall—**

- (a) keep records that record and explain all transactions and other acts engaged in by the person or any other person that are relevant for the purpose of ascertaining the person’s liability under this Act; and
- (b) retain those records for a period of 7 years after the completion of the transactions or acts to which they relate.

(2) A person who is required by this section to keep records shall keep the records—

- (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
- (b) so as to enable the person’s liability under this Act to be readily ascertained.

(3) Nothing in this section shall be taken to require a person (in this sub-section referred to as the “record keeper”) to keep a record of information relating to a transaction or act engaged in by another person if—

- (a) where the transaction or act was entered into or done under an arrangement to which the record keeper was a party—
  - (i) the record keeper made all reasonable efforts—
    - (A) to ascertain whether the transaction had been entered into or the act had been done; and
    - (B) to obtain the information; and
  - (ii) did not know, and could not reasonably be expected to have known, the information; or
- (b) in any other case—the record keeper did not know, and could not reasonably be expected to have known, the information.

(4) Nothing in this section shall be taken to require a person to retain records where—

- (a) the Commissioner has notified the person that retention of the records is not required; or
- (b) the person is a company that has gone into liquidation and been finally dissolved.

Penalty: \$2,000.

**Service on partnerships and associations**

113. Service, whether by post or otherwise, of a notice or document on a member of a partnership or on a member of the committee of management of an unincorporated association or other body of persons shall be deemed, for the purposes of this Act, to constitute service of the notice or other document on each member of the partnership or each member of the association or other body of persons, as the case may be.

**Regulations**

114. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, may make regulations prescribing penalties not exceeding a fine of \$500 for offences against the regulations.

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*[Minister's second reading speech made in—  
House of Representatives on 21 October 1987  
Senate on 3 November 1987]*