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Inserts for

## **Petroleum Resource Rent Tax Assessment Regulations 2024: Miscellaneous amendments**

### **Schedule 1—Amendments**

#### **Part 1—Comparable uncontrolled price**

##### *Petroleum Resource Rent Tax Assessment Regulation 2015*

###### **1 Section 23**

Repeal the section, substitute:

###### **23 The comparable uncontrolled price**

- (1) A *comparable uncontrolled price*, or *CUP*, in relation to a relevant transaction for a volume or mass of project sales gas, is a price for sales gas that was obtained for a transaction (the *other transaction*) where:
  - (a) the Commissioner is satisfied that the parties to the other transaction dealt with each other at arm's length in relation to the other transaction; and
  - (b) the Commissioner is satisfied that the other transaction is comparable to the relevant transaction; and
  - (c) the other transaction was entered into in a market that the Commissioner is satisfied is a relevant market; and
  - (d) if subsection (4) applies (subject to subsection (5))—the price has been adjusted under subsection (4).

###### *Relevant transaction*

- (2) For the purposes of this section, a *relevant transaction*, for a volume or mass of project sales gas, is:
  - (a) a sale of the gas to which paragraph 24(1)(d) of the Act applies; or
  - (b) an act by which the gas becomes an excluded commodity to which paragraph 24(1)(e) of the Act applies.

###### *Comparable transactions*

- (3) In determining, for the purposes of paragraph (1)(b), whether the other transaction is comparable to the relevant transaction, the Commissioner must have regard to all relevant factors, including the following:
  - (a) the functions performed, assets used and risks borne by:
    - (i) the entities involved in the relevant transaction; and
    - (ii) the entities involved in the other transaction;
  - (b) the characteristics of any property or services transferred;
  - (c) the terms of any relevant contracts:

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- (i) between the parties to the relevant transaction; and
  - (ii) between the parties to the other transaction;
- (d) the economic circumstances;
- (e) the business strategies of:
  - (i) the entities involved in the relevant transaction; and
  - (ii) the entities involved in the other transaction.
- (4) If the Commissioner is satisfied:
  - (a) that, to the extent (if any) that the other transaction differs from the relevant transaction, a reasonably accurate adjustment can be made to the price obtained for the other transaction in order to eliminate the effect of the difference; and
  - (b) that it is necessary to make the adjustment in order to identify a comparable uncontrolled price in relation to the relevant transaction;the Commissioner may:
  - (c) make the adjustment; and
  - (d) treat the other transaction, as adjusted, as comparable to the relevant transaction for the purposes of this section.
- (5) However, the Commissioner need not, and must not, make an adjustment under subsection (4) to account for a difference between the relevant transaction and the other transaction that arose only because:
  - (a) the parties to the other transaction dealt with each other at arm's length in relation to the other transaction; but
  - (b) the parties to the relevant transaction did not deal with each other at arm's length in relation to the relevant transaction.
- (6) The Commissioner may be satisfied that the other transaction is comparable to the relevant transaction even if:
  - (a) the parties to the other transaction dealt with each other at arm's length in relation to the other transaction; but
  - (b) the parties to the relevant transaction did not deal with each other at arm's length in relation to the relevant transaction.

## *Relevant markets*

- (7) In determining, for the purposes of paragraph (1)(c), whether a market is a relevant market, the Commissioner must have regard to the following:
  - (a) the demand and supply characteristics of the market, including:
    - (i) the composition of sales gas sold in the market; and
    - (ii) geographic differences between the production facilities and the product delivery point of the sales gas sold in the market; and
    - (iii) the end use for the sales gas sold in the market;
  - (b) the terms of contracts usual in the market, including volumes, discounts, exchange exposures and other relevant conditions that would reasonably be considered to affect the price;
  - (c) market strategies;
  - (d) the existence of spot sales (including market penetration sales) below or above marginal cost;
  - (e) processing costs;
  - (f) technology used in processing;

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(g) any other factors that it would be reasonable to consider.

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## Part 2—Advance pricing arrangements

### *Petroleum Resource Rent Tax Assessment Regulation 2015*

#### **2 Subsection 19(2)**

After “applies to”, insert “a taxpayer in relation to”.

#### **3 Subsection 19(2)**

Omit “of a taxpayer”, substitute “of the taxpayer”.

#### **4 Paragraph 19(3)(a)**

After “applies to”, insert “the taxpayer in relation to”.

#### **5 Paragraph 19(5)(a)**

After “applies to”, insert “the taxpayer in relation to”.

#### **6 Subsection 20(2)**

After “applies to”, insert “a taxpayer in relation to”.

#### **7 Subsection 20(2)**

Omit “of a taxpayer”, substitute “of the taxpayer”.

#### **8 Paragraph 20(3)(a)**

After “applies to”, insert “the taxpayer in relation to”.

#### **9 Paragraph 20(5)(a)**

After “applies to”, insert “the taxpayer in relation to”.

#### **10 Section 22**

Repeal the section, substitute:

#### **22 Advance pricing arrangements**

- (1) The Commissioner may, at the request of a participant in a relevant operation, make an agreement (an *advance pricing arrangement*) with the participant about how the assessable petroleum receipts of the participant are to be calculated in relation to project sales gas to which paragraph 24(1)(d) or (e) of the Act applies.
- (2) An advance pricing arrangement must specify:
  - (a) the term of the arrangement; and
  - (b) how the assessable receipts of the participant are to be calculated; and
  - (c) conditions under which the arrangement will apply.
- (3) The Commissioner may make an advance pricing arrangement only if the Commissioner is satisfied that:
  - (a) it is not practicable to work out a comparable uncontrolled price under section 23 for the project sales gas; and
  - (b) it is not practicable to use one or more steps of the residual pricing method in relation to the project sales gas for the participant; and

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- (c) the calculation mentioned in paragraph (2)(b) of this section:
  - (i) will provide a reasonably accurate estimate of the results that the step or steps mentioned in paragraph (b) of this subsection would be likely to produce if it were practicable to use that step or those steps; and
  - (ii) does not depart from the calculation set out in section 24; and
  - (iii) does not provide for a capital allowance to be applied to capital costs, or for capital costs to be indexed, in a way that is inconsistent with section 16, 17, 18 or 41A; and
  - (iv) does not otherwise depart from the residual pricing method any more than is necessary to address the impracticability mentioned in paragraph (b) of this subsection; and
  - (v) will otherwise give effect to the residual pricing method.

## 11 In the appropriate position in Part 7

Insert:

### 55 Transitional provision—advance pricing arrangements

- (1) An advance pricing arrangement in effect immediately before the commencement of the *Petroleum Resource Rent Tax Assessment Regulations 2024* (the **new regulations**) continues in effect, at and after that commencement, as if it had been made under the new regulations.
- (2) However, the advance pricing arrangement may be amended, at or after that commencement, only if the arrangement as amended would be in accordance with subsections 22(2) and (3) of the new regulations.

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## Part 3—Transfer pricing

### *Petroleum Resource Rent Tax Assessment Regulation 2015*

#### 12 Section 24

Repeal the section, substitute:

#### 24 RPM price (transfer price using the residual pricing method)

Subject to this Part, if the cost-plus price and the netback price of an assessable gas for a taxpayer in a year of tax can be obtained by applying the residual pricing method, the *RPM price* for the assessable gas for the taxpayer in the year of tax is the price given by the formula:

$$\frac{\text{Netback price} + \text{Cost-plus price}}{2}$$

Note: The residual pricing method can be applied only if certain information is available (see section 29).

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## Part 4—Capital allowance and capital allocation period

### *Petroleum Resource Rent Tax Assessment Regulation 2015*

#### 13 Section 5

Insert:

*capital allocation period:*

- (a) for a unit of property in relation to which an election under section 42A is made—has the meaning given by section 42A; or
- (b) for any other unit of property—has the meaning given by subsection 42(6).

Note: See also subsection 42(7), which affects the capital allocation period for capital costs incurred before the production date of a relevant operation.

#### 14 Section 16 (paragraph (a) of the definition of *capital allowance*)

Omit “final cost year”, substitute “start date for the capital cost”.

#### 15 At the end of section 16

Add:

Note: The number of years is worked out in accordance with the provision that provides for the capital cost to be augmented. For example, in the case of augmentation under subsection 39(2), that subsection provides for the number of years for which the capital cost is to be augmented.

#### 16 At the end of section 17

Add:

Note: The number of years is worked out in accordance with the provision that provides for the capital cost to be reduced. For example, in the case of reduction under subsection 41(4), that subsection provides for the number of years for which the capital cost is to be reduced.

#### 17 At the end of subsection 42(1)

Add:

Note: If the taxpayer does not know whether or not an election under section 42A has been made in relation to the unit of property, or does not know the details of such an election, the taxpayer may be unable to apply the residual pricing method (see section 29) and it may be necessary to use section 25 to determine an RPM price for the taxpayer.

#### 18 Subsection 42(2)

Omit “expected life of the unit”, substitute “capital allocation period for the unit”.

#### 19 Subsection 42(3)

Omit “If the expected operating life of the unit”, substitute “If the capital allocation period for the unit”.

#### 20 Subsection 42(3) (definition of *N*)

Omit “expected operating life of the unit”, substitute “capital allocation period for the unit”.

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## 21 Subsection 42(4)

Omit “If the expected operating life of the unit”, substitute “If the capital allocation period for the unit”.

## 22 Subsection 42(5)

Repeal the subsection.

## 23 Subsections 42(6) and (7)

Repeal the subsections, substitute:

- (6) If no election is made under section 42A for the unit of property, then:
  - (a) the *capital allocation period* for the unit of property is the period of calendar years between:
    - (i) the start date for the capital cost; and
    - (ii) the 31 December of the last year of tax that is within the expected operating life of the operation and during which the unit of property is expected to be used for the operation; and
  - (b) the method set out in subsection (4) of this section must be used to work out the annual allocation for capital costs incurred in relation to the unit of property.
- (7) Despite subsection (6) and section 42A, a cost that is a capital cost only because of subparagraph 36(1)(b)(i) is taken to have been incurred in relation to a unit of property that has a capital allocation period that is the expected operating life of the operation.

## 24 At the end of Division 3 of Part 4

Add:

### 42A Election of capital allocation period for unit of property

- (1) The participants in a relevant operation may, for a unit of property used in the relevant operation, elect to use a particular number of calendar years as the *capital allocation period* for the unit of property for the purposes of section 42.

Note: If the participants do not make an election under this section for a particular unit of property, the capital allocation period for the unit of property will be determined under subsection 42(6) (subject to subsection 42(7)).

- (2) An election under this section:
    - (a) must be made by all participants in the operation jointly; and
    - (b) must be made in writing; and
    - (c) must specify the capital allocation period for the unit of property; and
    - (d) may be made only before a return under section 59 or 60 of the Act is furnished to the Commissioner where:
      - (i) the return relates to the relevant project for the relevant operation; and
      - (ii) the return is the first such return to be furnished to the Commissioner at or after the time the unit of property is first used in the relevant operation
    - (e) is irrevocable.
  - (3) If an election has been made under this section and one or more new participants are later added to the relevant operation:
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- (a) the election continues in force for the participants who made it; and
  - (b) any new participant is also taken to have made the election.
- (4) If an election has been made under this section for a particular unit of property, the election continues to apply to the unit even if:
- (a) the unit ceases being used in the relevant operation; or
  - (b) the unit is used in another relevant operation.

## *Elections for units of property in use at commencement*

- (5) Despite paragraph (2)(d), if a unit of property was first used in the relevant operation before the commencement of this section, an election under this section may be made for the unit of property at any time:
- (a) at or after the commencement of this section; and
  - (b) before a return under section 59 or 60 of the Act is furnished to the Commissioner where:
    - (i) the return relates to the relevant project for the relevant operation; and
    - (ii) the return is the first such return to be furnished to the Commissioner at or after the commencement of this section.
- (6) An election mentioned in subsection (5):
- (a) may be made only at or after the commencement of this section; and
  - (b) applies in relation to each year of tax that begins after the day the election is made.

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## Part 5—Units of property entering the PRRT system

### *Petroleum Resource Rent Tax Assessment Regulation 2015*

#### **25 Section 30 (method statement, step 9)**

Omit “40 and 41”, substitute “40, 41 and 41A”.

#### **26 At the end of subsection 31(1)**

Add “and section 31A”.

#### **27 After subsection 31(2)**

Insert:

- (2A) However, do not include, under subsection (2), a cost incurred by or on behalf of a participant that relates to acquiring an interest, directly or indirectly, in a brought-in unit of property.

Note: For example, if a participant purchases a brought-in unit of property for use in the relevant operation, the cost of purchasing the unit is not included. Instead, certain capital costs incurred in respect of the construction, improvement or maintenance of the unit may be included (see subsection (8)).

#### **28 At the end of section 31**

Add:

- (6) Subsections (4) and (5) do not apply to capital costs included under subsection (8).

*Capital costs for units of property brought into the relevant operation*

- (7) For the purposes of this section, a unit of property is a ***brought-in unit of property*** if:
- (a) when the unit of property was created, the unit of property was not used, and was not intended to be used, in the relevant operation or any other relevant operation; and
  - (b) the unit of property was later used in the relevant operation; and
  - (c) before the unit of property was first used in the relevant operation, the unit of property was not used to carry out any of the actions mentioned in section 8 in relation to any relevant operation.

Note: The actions mentioned in section 8 all relate to petroleum recovered from a petroleum project. This means that the unit of property may have previously been used to process petroleum that was not recovered from a petroleum project. (For the meaning of ***petroleum project***, see sections 19 and 20 of the Act.)

- (8) Include a capital cost incurred in relation to a brought-in unit of property to the extent that all of the following apply to the cost:
- (a) the cost was incurred by a person who was the owner, or an owner, of the unit of property at the time the cost was incurred;
  - (b) the cost was incurred in respect of the construction, improvement or maintenance of the unit of property;
  - (c) the cost was not a payment or allowance between owners of the unit of property;

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- (d) the cost was incurred before the 31 December of the year of tax in which the unit of property was first used to carry out any of the actions mentioned in section 8 in relation to the relevant operation;
  - (e) the cost was not incurred for the purpose of preparing the unit of property to be used in the relevant operation;
  - (f) either or both of subparagraphs 36(1)(b)(ii) and (iii) apply to the cost.
- (9) A cost included under subsection (8) may be treated as a cost partly attributable to the operation if the brought-in unit of property has also been used to carry out any of the actions mentioned in section 8 in relation to another relevant operation.
- (10) If a cost included under subsection (8) is only partly attributable to the relevant operation, the amount of the cost is taken to be the amount that can reasonably be apportioned to the operation.

## 29 At the end of section 39

Add:

- (3) This section does not apply to an included capital cost that is included under subsection 31(8).

## 30 At the end of subsection 40(1)

Add:

- ; and (c) the capital cost is not included under subsection 31(8).

## 31 After paragraph 41(1)(c)

Insert:

- ; and (d) the capital cost is not included under subsection 31(8).

## 32 After section 41

Insert:

### 41A Capital costs for units of property not originally used, or intended to be used, in a relevant operation

- (1) For the purposes of step 9 of the residual pricing method, this section applies to an included capital cost for the taxpayer if the cost is included under subsection 31(8) in relation to a unit of property.
- (2) The included capital cost is indexed by applying the formula:

$$\text{Included capital cost} \times \frac{\text{GDP deflator for the first processing year}}{\text{GDP deflator for the start year}}$$

where:

*GDP deflator for the first processing year* means the GDP deflator (within the meaning of section 2A of the Act) for the year of tax in which the unit of property was first used to carry out any of the actions mentioned in section 8 of this instrument in relation to the relevant operation.

*GDP deflator for the start year* means the GDP deflator (within the meaning of section 2A of the Act) for the year of tax of the start date for the capital cost.

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- (3) The included capital cost, as indexed under subsection (2), is taken to be incurred in the year of tax in which the unit of property was first used to carry out any of the actions mentioned in section 8 in relation to the relevant operation.

### **33 Subsection 42(1)**

Omit “augmented or reduced under section 40 or 41”, substitute “augmented, reduced or indexed under section 40, 41 or 41A”.

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## Part 6—General transitional provisions

### *Petroleum Resource Rent Tax Assessment Regulation 2015*

#### **34 Section 53**

Repeal the section, substitute:

#### **53 Things done under previous regulations**

- (1) A thing done:
  - (a) before the commencement of this instrument; and
  - (b) under a provision of:
    - (i) the *Petroleum Resource Rent Tax Assessment Regulations 2005*; or
    - (ii) the *Petroleum Resource Rent Tax Assessment Regulation 2015*;has effect after that commencement as if the thing had been done under the corresponding provision of this instrument.
- (2) Without limiting subsection (1), a thing includes an election, a notification, a determination and a decision.

#### **35 In the appropriate position in Part 7**

Insert:

#### **56 Application of amendments made by the *Petroleum Resource Rent Tax Assessment Regulations 2024***

The amendments made by the *Petroleum Resource Rent Tax Assessment Regulations 2024* apply in relation to a year of tax beginning on or after 1 July 2024.

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## Part 7—Minor amendments

### *Petroleum Resource Rent Tax Assessment Regulation 2015*

#### **36 Section 5 (paragraph (a) of the definition of *project sales gas*)**

Omit “subsection 6(3)”, substitute “subsections 6(3) and (3A)”.

#### **37 Section 5 (paragraph (b) of the definition of *project sales gas*)**

Omit “subsection 7(3)”, substitute “subsections 7(3) and (3A)”.

#### **38 Subsection 6(3)**

Omit all the words after “paragraph (1)(b)”, substitute:

that:

- (a) will be processed into liquefied product within the overall operation; or
- (b) will, after becoming an excluded commodity, be used in the downstream stage of the operation in relation to the processing of sales gas mentioned in paragraph (1)(b) into liquefied product.

#### **39 Subsection 7(3)**

Omit all the words after “paragraph (1)(b)”, substitute:

that:

- (a) will be consumed in the production of electricity within the overall operation; or
- (b) will, after becoming an excluded commodity, be used in the downstream stage of the operation in relation to the production of electricity from sales gas mentioned in paragraph (1)(b).

#### **40 Paragraph 20(5)(a)**

Omit “sale”, substitute “transaction”.

#### **41 Subparagraph 20(5)(b)(i)**

Omit “sale”, substitute “transaction”.