

ISSUE OF COMBINATION CERTIFICATES

A guideline in relation to the *Petroleum Resource Rent Tax Assessment Act 1987*

Prepared by the Offshore Resources Branch
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Science

1. OBJECTIVE

- 1.1 The objective of this guideline is to assist the upstream petroleum industry to understand the requirements, indicative timing and process leading to the issuance of a combination certificate under the *Petroleum Resource Rent Tax Assessment Act 1987* (Cth) (the Act).
- 1.2 A combination certificate allows two or more offshore and/or onshore petroleum production licences to be regarded as a single project for the purposes of the Petroleum Resource Rent Tax (PRRT).
- 1.3 Applicants for a combination certificate must demonstrate that the petroleum licences included in the application are sufficiently related to allow them to be treated as a single petroleum project for the purposes of the Act.
- 1.4 The intent of combination certificates is to reduce administrative burden and compliance costs for the industry by avoiding costs and revenues being apportioned to individual production licences.
- 1.5 This document has been developed as a guide only. It does not replace information provided in the Act. Therefore, you should not rely solely on this information, nor rely upon this guideline as legal advice.

2. ROLE OF GOVERNMENT

- 2.1 The PRRT is a self-assessed tax subject to administration by the Australian Taxation Office (ATO). While the ATO is the primary point of contact for all other matters relating to the PRRT, the resources minister is the certifying minister for combination certificates.
- 2.2 Following receipt of a company's application for a combination certificate, the Department of Industry, Innovation and Science assesses that application against the eligibility criteria.
- 2.3 The resources minister may issue a combination certificate after consideration of the initial application and the department's advice.

3. DEFINITIONS AND INTERPRETATION

Where possible, technical terms used in this guideline are consistent with those defined in the Act and associated regulations. As such, the following terms used in this guideline have the following meanings:

Production Licence: An authority or right granted under Australian law to undertake activities for the recovery of petroleum from an area, other than an authority or right that is an exploration permit or a retention lease (or equivalent titles).

Petroleum Project: A petroleum project is taken to exist when there is a production licence in force. A petroleum project also encompasses the production licence area and those operations, facilities and other things required for production of Marketable Petroleum Commodities. Operations and facilities include those associated with moving, storing, processing and treating the recovered petroleum, including those located outside of the production licence area.

Marketable Petroleum Commodity (MPC): A marketable petroleum commodity is defined as a product listed in section 2E of the Act, including stabilised crude oil, sales gas, condensate, liquefied petroleum gas, ethane, and shale oil.

4. ELEGIBILITY REQUIREMENTS

- 4.1 A number of elements must be satisfied before a taxpayer can apply for a combination certificate. The application must be:
- a) supported by a current petroleum production licence
 - b) lodged within the qualifying period
 - c) submitted by a person who is, or from persons who together are, entitled to receive at least 50 per cent of the receipts from the sale of marketable petroleum commodities in relation to each of the projects.
- 4.2 As noted above, a petroleum project is taken to exist when there is a production licence in force. The PRRT applies to all petroleum production in Australia, both onshore and offshore, with the exception of that produced in the Joint Petroleum Development Area in the Timor Sea.
- 4.3 The qualifying period in relation to an application or request for a combination certificate is within 90 days after the latest of the following:
- a) the commencement of the Act; or
 - b) 1 January 2013 if the production licence relates to an **onshore petroleum project**; or
 - c) the date at which the production licence comes into force.

- 4.4 The resources minister can only accept an application or request where the applicant(s) are entitled to receive at least half (50 per cent) of the relevant receipts in relation to each of the projects.
- 4.5 Relevant receipts include those relating to the sale of petroleum from each of the projects, as well as from the sale of marketable petroleum commodities produced from that petroleum.
- 4.6 If there is more than one person or entity that holds an interest in a production licence(s), interest holders must together decide whether that licence is to form part of a combined project application or request.
- 4.7 A production licence can only be subject to a single combination certificate. Where a production licence is held by a number of parties, those parties must together determine how to structure the projects for the purposes of the PRRT.

5. CRITERIA

- 5.1 In considering an application to combine certain petroleum production licences into a single project, the resources minister must have regard to set criteria which relate to whether those licences are *sufficiently related* to be treated as a single project.
- 5.2 Section 20(1) of the Act sets out four (4) criteria. Criteria (a) and (b) are common to both offshore and onshore petroleum projects. Criterion (c) is applicable only to onshore petroleum projects, whereas criterion (d) applies to offshore petroleum projects only.
- 5.3 When determining whether eligible production licences are sufficiently related, the resources minister must have regard to the following criteria:
 - a) The respective operations, facilities and other things that comprise, have comprised, or will comprise the petroleum project and any other petroleum project or projects existing at the time at which the production licence came into force (**the extent of upstream integration**).
 - 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 (**the ownership test**).
 - c) **Onshore projects only**: the respective operations, facilities and other things that are involved, have been involved or will be involved in any further processing or treating of any petroleum or marketable petroleum commodity produced in relation to the projects (**the extent of downstream integration**).
 - d) **Offshore projects only**: the geological, geophysical and geochemical and other features of the production licence areas in relation to the projects.
- 5.4 Projects will be considered to be sufficiently related where consideration of the above criteria demonstrates that the constituent production licences are so

connected, associated or allied so that together they can be regarded as one project.

- 5.5 The PRRT Explanatory Material, prepared by Treasury, provides a number of practical examples of potential project combinations. The Explanatory Material can be found at the following link:

<http://www.comlaw.gov.au/Details/C2011B00223/Download>

6. ONSHORE PETROLEUM PROJECTS

- 6.1 In the case of onshore petroleum projects, the geological, geophysical and geochemical features of the production licence are not relevant considerations. Instead, the degree of downstream integration is examined. This is in recognition of the unique nature of onshore petroleum projects (for example, the potential for a large number of tenements/licences and wells across a broad geographic boundary being part of a single large gas project).
- 6.2 Downstream integration is defined in section 20(1)(c) of the Act as the relatedness of operations, facilities and activities (including proposed activities) that are involved in any further processing or treating of the petroleum produced in relation to the projects.
- 6.3 Relevant considerations may include whether petroleum from the projects is processed or treated using a common processing facility. Note however that, where the petroleum (or MPC) produced from the constituent projects shares only transportation or storage facilities, this alone will be unlikely to demonstrate that the projects are sufficiently related.
- 6.4 A constituent project located in coastal waters is deemed an onshore project for the purposes of the PRRT.

7. OFFSHORE PETROLEUM PROJECTS

- 7.1 Criterion (d) states that the geological, geophysical, geochemical and other features of the petroleum projects under application are a relevant consideration. The applicant should address whether these features of each petroleum project are sufficiently related for the projects to be regarded as a single project.
- 7.2 In undertaking the assessment of these features, the resources minister may seek advice from Geoscience Australia.

8. COMBINING ONSHORE AND OFFSHORE PROJECTS

- 8.1 An onshore project can be combined with an offshore project, providing the projects are considered sufficiently related and the onshore project did not exist prior to 1 July 2012.
- 8.2 If seeking to combine offshore and onshore projects, the applicant must address all four criteria listed under section 20(1).

- 8.3 If the resources minister is satisfied that the projects are sufficiently related, the combined onshore and offshore projects will be deemed an offshore project for the purposes of the PRRT.

9. ADDING SUBSEQUENT LICENCES TO A COMBINED PROJECT

- 9.1 Under section 20(6) of the Act, taxpayers are able to add new production licences to an existing combined project, provided the relevant criteria are satisfied.
- 9.2 If the new production licence(s) satisfies the criteria, a subsequent combination certificate (that includes the licences subject to the first certificate) will be issued.

10. TERMINATING/TRANSFERRING A COMBINED PROJECT

- 10.1 A combination certificate issued under section 20(1) of the Act comes into force on the issue of the certificate.
- 10.2 A combination certificate remains in force unless revoked by the resources minister under section 20(8) of the Act, or until the project itself comes to an end.
- 10.3 A combination certificate will be terminated where a new certificate is issued following the addition of a subsequent production licence(s) (see 9.2 above).
- 10.4 A combination certificate is attached to the relevant production licence(s), not the licence holder. Following the sale or transfer of an interest in a production licence(s), a combination certificate remains valid and transfers over to the new party.

11. APPLICATION PROCESS

- 11.1 There is no prescribed format that an application must take. Applicants are advised to provide any information that clearly and concisely supports the abovementioned criteria.
- 11.2 An application should address each of the relevant criteria in turn. Supporting documentation should include, where necessary:
- a) Material clearly identifying the production licences proposed to be combined.
 - b) A description of the respective upstream operations that comprise the petroleum project.
 - c) A description of the downstream facility (for onshore projects).
 - d) Project plans and maps etc. clearly illustrating the constituent licences' relationship to the relevant upstream and/or downstream components.

- 11.3 Applicants are asked to submit **two** copies of their application. A written application addressing the relevant criteria should be submitted to:

The Minister for Resources
Parliament House
Canberra ACT 2600

- 11.4 An electronic copy of the submission should be lodged via the following email address: prrt@industry.gov.au
- 11.5 If the application or request is successful, the resources minister will notify the holders of the production licence(s) in writing and publish notice of this approval in the relevant government gazette notices within 30 days of the issue of the certificate. The resources minister will also notify the Commissioner of Taxation in writing.
- 11.6 If an application for a combination certificate is refused, the resources minister will notify the person making the application or request within 30 days after making the decision. In this case the petroleum production licences will remain as separate petroleum projects for PRRT purposes, as they were prior to the application for a combination certificate.
- 11.7 A person or persons whose interests are affected by the decision of the resources minister to grant or refuse an application for a combination certificate may make an application for review of the decision under the *Administrative Appeals Tribunal Act 1975* (Cth).
- 11.8 The process for applying for or requesting a combination certificate is summarised in **Attachment A** on the following page.

COMBINATION CERTIFICATE APPLICATION PROCESS

