



# ***PS LA 2017/1 - Petroleum resource rent tax: amendment period for transfers of exploration expenditure***

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This Practice Statement provides guidance to staff on the period within which a petroleum resource rent tax assessment can be amended to correct an error in a transfer of exploration expenditure.

*This Practice Statement is an internal ATO document and an instruction to ATO staff.*

*Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.*

## 1. What this Practice Statement is about

This Practice Statement sets out the time limits in which a petroleum resource rent tax (PRRT) assessment may be amended to correct an error in the transfer of transferrable exploration expenditure (TEE).

All legislative references in this Practice Statement are to the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA), unless otherwise indicated.

Where a person in respect of a financial year has TEE, they are required to transfer as much of that expenditure as can be transferred in accordance with the rules set out in Part 5 of Schedule 1.<sup>1</sup> A transfer of TEE is made by lodging a transfer notice 'not later than 60 days after the end of the financial year or such later day as the Commissioner allows'.<sup>2</sup> A purported transfer has no effect if it is not in accordance with the rules.<sup>3</sup>

Section 45B contains equivalent provisions in relation to the transfer of TEE between group companies.

Where a person fails to transfer TEE as required under sections 45A or 45B, the Commissioner may make the transfer under section 45C.

When the PRRT law was changed in 1991 to allow for the transfer of exploration expenditure, the Commissioner was given the power to amend an assessment at any time to give effect to the provisions of, among other things, sections 45A, 45B or 45C (see former paragraph 64(7)(c)).

This power to amend at any time relates only to amounts of TEE that have not (or not properly) been transferred, as opposed to amounts purportedly transferred that were not TEE in the first place (for example, amounts properly classified as general project expenditure).

Upon the adoption of self-assessment in 2006, a number of changes were made to the amendment

provisions in the PRRTAA to replace 3 and 6-year periods with a standardised 4 years. The unlimited amendment period remained in relation to sections 45A, 45B and 45C with minor changes in wording (see paragraph 67(2)(e), and paragraph 4.25 of the Explanatory Memorandum to the Petroleum Resource Rent Tax Assessment Amendment Bill 2006).

With these changes, reference was made to particular subsections, rather than sections, of the provisions<sup>4</sup> and the words 'to give effect to' became 'to take account of the operation of'. There is no indication in the explanatory materials that any change was intended to affect the amendment power.

However, the effect of the amendments is that an unlimited period of amendment is not available under the current law where the Commissioner transfers (under subsection 45C(2)) an amount a person has failed to transfer, even though that transfer is taken to be a transfer under section 45A or 45B as the case requires (subsection 45C(4)). The reference in paragraph 67(2)(e) to subsection 45A(3) can only apply to taxpayer-requested transfers and not to a transfer by the Commissioner, even though it is taken to be a transfer under section 45A.

We consider, if there is an extension of time to lodge a transfer notice outside the 4-year period, and an amount has wrongly been transferred previously, the relevant assessment can be amended to correct that error on the basis that to do so is part of taking 'account of the operation of' the relevant subsection (that is, subsection 45A(3) or 45B(3)).

## 2. When you can issue an amended assessment

Except in the situations covered in sections 3, 4 or 5 of this Practice Statement, you should issue an amended

<sup>1</sup> See section 45A.

<sup>2</sup> See paragraph 45A(3)(a).

<sup>3</sup> See subsection 45A(4).

<sup>4</sup> Specifically, subsections 45A(3), 45B(3) or 45C(6).

assessment to correct an error in the transfer of TEE no later than 4 years after the relevant return has been lodged.<sup>5</sup>

### 3. When the 4-year limit does not apply

The 4-year time limit on issuing an amended assessment to correct an error in the transfer of TEE doesn't apply where any of the following occurs:

- an extension of time is granted to lodge a transfer notice outside of the 4-year period (see section 4 of this Practice Statement)
- the Commissioner revokes a transfer of TEE under section 45C outside of the 4-year period (see section 5 of this Practice Statement)
- we are of the opinion that there has been fraud or evasion<sup>6</sup>
- an unlimited amendment period otherwise applies<sup>7</sup>, or
- the time limit is extended.<sup>8</sup>

### 4. Extension of time to lodge a transfer notice

You can amend an assessment at any time where all of the following conditions apply:

- a taxpayer has failed to transfer TEE in an earlier year of tax
- the taxpayer requests an extension of time to lodge a transfer notice under paragraphs 45A(3)(a) or 45B(3)(a), and
- you grant an extension of time.<sup>9</sup>

### 5. Revocation of a section 45C transfer

You can amend an assessment to correct an error in the transfer of TEE at any time where all of the following conditions are met:

- there has been a failure to transfer TEE as required by sections 45A or 45B
- a transfer of TEE was made under subsection 45C(2) within the original 4-year period to remedy that failure
- you receive information not available at the time the transfer of TEE was made under subsection 45C(2) and, had that information

been available at that time, the transfer would not have been made in the same way, and

- you revoke the transfer of TEE made under subsection 45C(2) and, if appropriate, make another transfer under subsection 45C(6).<sup>10</sup>

### 6. Examples

#### **Example 1 – group company fails to transfer transferrable exploration expenditure**

*Taxpayer A is assessed for the 2009–10 year when they lodge their PRRT return for Project A on 30 August 2010. On 14 August 2015, another group company discovers that it had \$100,000 of TEE that it failed to transfer to Taxpayer A in relation to Project A under section 45B in the 2009–10 year. We can amend the assessment if we allow an extension of time to lodge a transfer notice. Without an extension of time to lodge a transfer notice, the usual 4-year amendment period applies.*

#### **Example 2 – purported transfer of excluded expenditure and transferrable exploration expenditure**

*Taxpayer A lodges its 2009–10 PRRT return for Project X, together with a transfer notice under section 45A for \$1 million of TEE, on 30 August 2010. Five years later, you discover that \$100,000 of the \$1 million was excluded expenditure under paragraph 44(1)(j) and not TEE. Section 45A applies to the extent that Taxpayer A transferred its TEE (that is, \$900,000). None of the circumstances in section 3 of this Practice Statement apply. Therefore, the 4-year time limit applies and you cannot amend the assessment under section 67 to correct the \$100,000 error in the transfer.*

#### **Example 3 – purported transfer of excluded expenditure and no transferrable exploration expenditure**

*Taxpayer A lodges its 2009–10 PRRT return for Project X, together with a transfer notice under section 45A for \$100,000 of TEE on 30 August 2010. Five years later, you discover that the whole \$100,000 was actually general project expenditure under subsection 38(1) and not TEE.*

*As Taxpayer A has no TEE in respect of the 2009–10 year, section 45A has no application and the taxpayer*

<sup>5</sup> See subsection 67(1). Where a person lodges a PRRT return, the Commissioner is taken to have made an assessment on the day the return is lodged and the return is taken to be a notice of the assessment given to the person. See subsections 62(3) and (4).

<sup>6</sup> See paragraph 67(2)(a).

<sup>7</sup> For example, see paragraphs 67(2)(b), (c) and (d).

<sup>8</sup> See sections 70 and 71.

<sup>9</sup> To take account of the operation of subsection 45A(3) or 45B(3). See paragraph 67(2)(e).

<sup>10</sup> To take account of the operation of subsection 45C(6). See paragraph 67(2)(e).

cannot take steps to rectify the incorrect transfer. Also, as none of the circumstances in section 3 of this Practice Statement apply, you cannot amend the assessment for Project X for the 2009–10 year to correct the error.

**Example 4 – purported transfer is not in accordance with the rules in Part 5 of Schedule 1**

Taxpayer A has \$100,000 of TEE that it purports to transfer to Project X pursuant to section 45A in the 2009–10 year. The original assessment for Project X was made on 30 August 2010. Five years later, Taxpayer A discovers that the transfer was not in accordance with the rules in Part 5 of Schedule 1. The TEE should have instead been transferred to Project Y. The original assessment for Project Y for the 2009–10 year was also made on 30 August 2010. Taxpayer A requests that it be allowed to lodge a transfer notice late to transfer the TEE to Project Y to correct the error.

Pursuant to subsection 45A(4), the purported transfer to Project X is of no effect. You may accept the late lodgment of the transfer notice. You can amend the 2009–10 year assessments for both Project X and Project Y to take account of the operation of subsection 45A(3).

**Example 5 – correct an error in a transfer made by the Commissioner**

Taxpayer A lodges its 2007–08 PRRT return for Project X on 28 August 2008. In August 2010, you

discover that Taxpayer A has failed to transfer what you believe to be TEE of \$100,000 to Project X. You make a transfer of \$100,000 under subsection 45C(2) to correct Taxpayer A's failure to transfer TEE and issue an amended assessment to Taxpayer A for Project X.

In August 2015, you discover that \$10,000 of the \$100,000 was in fact excluded expenditure and not TEE. Had you been aware of this information at the time you made the transfer in August 2010, you would have transferred \$90,000 and not \$100,000. You can revoke the original transfer and make a transfer of \$90,000 to Project X and issue an amended assessment for the 2007–08 year to reduce the TEE by \$10,000, to take account of the operation of subsection 45C(6).

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## Amendment history

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Part	Comment
Throughout	Content checked for technical accuracy and currency. Updated in line with current ATO style and accessibility requirements.

## References

<b>Legislative references</b>	PRRTAA 1987 Sch 1 Pt 5 PRRTAA 1987 38(1) PRRTAA 1987 44(1)(j) PRRTAA 1987 45A PRRTAA 1987 45A(3) PRRTAA 1987 45A(3)(a) PRRTAA 1987 45A(4) PRRTAA 1987 45B PRRTAA 1987 45B(3) PRRTAA 1987 45B(3)(a) PRRTAA 1987 45C PRRTAA 1987 45C(2) PRRTAA 1987 45C(4) PRRTAA 1987 45C(6) PRRTAA 1987 62(3) PRRTAA 1987 62(4) PRRTAA 1987 former 64(7)(c) PRRTAA 1987 67 PRRTAA 1987 67(1) PRRTAA 1987 67(2)(a) PRRTAA 1987 67(2)(b) PRRTAA 1987 67(2)(c) PRRTAA 1987 67(2)(d) PRRTAA 1987 67(2)(e) PRRTAA 1987 70 PRRTAA 1987 71
<b>Other references</b>	Explanatory Memorandum to the Petroleum Resource Rent Tax Assessment Amendment Bill 2006

## ATO references

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