Government response to the Treasury Gas Transfer Pricing Review

Recommendation	Final response
Recommendation 1: Treasury considers that the existing GTP Regulation results in a structural undervaluation of gas at the PRRT taxing point for integrated LNG projects, particularly when resource prices are high. Modifying the existing 'safe harbour' transfer pricing method – the 'Residual Pricing Method' (RPM) – to ensure gas is more fairly priced at the PRRT taxing point for integrated LNG projects would address this under-valuation and could be implemented in one of two ways. Recommendation 1a. The RPM could be replaced with a 'Netback only' method. The rate of return that is provided to downstream assets in this case should be maintained at the current Long Term Bond Rate plus 7 percentage points (LTBR+7) with an additional allowance of LTBR+7 on operating expenditure in the year it is incurred. Recommendation 1b. Alternatively, the existing safe harbour pricing method – the RPM – could be modified to provide a profit split weighted 80:20 to the notional upstream entity with an additional allowance of LTBR+7 on operating expenditure in the year it is incurred. Treasury considers addressing the under-valuation of the resource via the Netback only is likely to raise the overall tax burden on new projects such that it increases risks for future investment in new and existing projects. The modified profit split reduces this risk by recognising that some of the rent is attributable to downstream operations. However, the PRRT has been found to be better suited to oil projects rather than LNG projects since the accumulation of a large stock of carry forward deductions, compounded by uplifting, can defer the payment of PRRT indefinitely. Changes to the RPM alone would not effectively address this issue for LNG projects. Treasury considers that a cap on the use of deductions to offset assessable income earned by LNG producers under the PRRT could be introduced as an alternative to changing the profit split ratio. This would bring forward PRRT receipts from LNG projects which are yet to pay PRRT and ensure a minimum return to taxpayers from the offshore LNG industry, while further limiting negative impacts on investment incentives and risks to future supply. This would be an adaptation of the PRRT's function as a rent tax, to account for the particular economics of LNG projects, by incorporating a minimum payment linked to project revenues. Recommendation 1c. Limit deductible expenditure to the value of 90 per cent of PRRT assessable receipts in respect of each project in the relevant income year (applied after mandatory transfers of exploration expenditure). Unused denied deductions would be carried forward and uplifted at the Government long-term bond rate (LTBR). This option would only apply to projects that produce LNG. To minimise the impacts of upfront payments on project	The Government will implement option 1c of the recommendation and introduce a measure to cap the use of deductions to offset assessable income earned by LNG producers under the PRRT. This approach will contribute to fiscal repair and a fairer and more timely return for the community on the extraction of resources, by bringing forward PRRT revenue and ensuring a greater return to taxpayers from the offshore LNG industry. Compared with changing the RPM, a deductions cap would provide greater certainty to support future investment and gas supply, supporting the economy's net zero transition. The Government notes that Treasury has consulted industry on the three options in Recommendation 1, and that the recommended design for the deductions cap takes into account stakeholder feedback to minimise impacts on new investment in current and future projects. This policy change will commence from 1 July 2023.

economics, projects would not be subject to the cap until 7 years after first production. The cap would not apply to certain classes of deductible expenditure in the PRRT: closing-down expenditure, starting base expenditure and resource tax expenditure.	
Recommendation 2: If a 'Netback only' approach is adopted (Recommendation 1 refers), reduce the augmentation rate for the construction and pre-production time periods to the general PRRT augmentation rate to reflect that the methodology should not compensate investors with commercial rates of return on assets during the pre-earnings phase.	The Government will not implement this recommendation, as it is not applicable in light of its preferred response to Recommendation 1.
Recommendation 3: Require projects to make an irrevocable election to use the shorter or longer asset life formula to remove the integrity risk that projects change the operating life of capital projects to benefit from higher rates of return allowable under the shorter asset life formula.	The Government agrees with this recommendation. This change will better reflect the contribution of the upstream part of LNG production to the integrated operation. This will address an integrity risk that projects change the operating life of capital projects to benefit from higher rates of return allowable under the shorter asset life formula. This policy change will commence from 1 July 2024.
Recommendation 4: If the RPM is retained, include appropriate exploration and development costs in the upstream cost base, with an appropriate way of bringing very old expenditure to current values. This could be achieved by applying the GDP deflator to original expenditure.	The Government will not proceed with this recommendation. While it is important in principle to include these costs as relevant costs for the upstream cost base, further consultations have revealed practical difficulties with doing this in a way that ensures a level playing field between projects and project participants. These include identifying the appropriate exploration expenditure to include and tracing this expenditure through transfers of interests in petroleum fields.
Recommendation 5: If the RPM is retained, equalise the treatment of the notional upstream and downstream entities between loss situations and profit situations.	The Government agrees with this recommendation. This is an integrity measure which removes the asymmetry in the current rules which means that profits are split 50:50, but losses are attributed 100:0 to the upstream – meaning all the downside is effectively borne by the taxpayer. Losses will now be shared 50:50. This policy change will commence from 1 July 2024.

Recommendation 6: Update the comparable uncontrolled price (CUP) rules to align with the OECD guidelines. In particular, the analysis for the CUP should be broadened to consider all reasonable conditions of a comparable transaction. Reasonably accurate adjustments would continue to be permitted.	The Government agrees with this recommendation. This will ensure the GTP rules are fit for purpose if CUPs become available in the future. This policy change will commence from 1 July 2024.
Recommendation 7: Modify the Advance Pricing Arrangement (APA) rules to provide guidance to industry and the Commissioner of Taxation on the principles that the Commissioner must have regard to in agreeing an APA. If the RPM is retained, the use of an APA should be limited to circumstances where it is required to give practical effect to the statutory residual profit split.	The Government agrees with this recommendation. The Government will limit the use of APAs to circumstances where they are required to give practical effect to the statutory residual profit split. This will provide greater certainty on the circumstances in which an APA can be used. This policy change will commence from 1 July 2024.
Recommendation 8: Update the regulations for tolling arrangements to support the effective operation of the RPM and to ensure that arm's length/commercial transactions for parts of the LNG production chain (that reflect the underlying resource ownership and risks to parties) are used as far as possible as a reference for establishing a gas transfer price.	The Government agrees with this recommendation. This clarifies the way tolling arrangements interact with the gas transfer pricing rules and ensures that commercial tolling arrangements are reflected in the way the gas transfer price is calculated. This policy change will commence from 1 July 2024.
Recommendation 9: Update both the PRRT general anti-avoidance rule and the arm's length rule to clarify that they apply to the GTP Regulation. This follows a recommendation made by the Callaghan Review that the Government amend the PRRT anti-avoidance rules to be in line with the income tax anti-avoidance rules.	The Government agrees with this recommendation. This ensures anti-avoidance provisions operate across the PRRT in a consistent fashion and will help ensure that companies cannot enter into artificial tolling arrangements to reduce PRRT liabilities. This builds on recommendation 12 of the Callaghan Review. This will better enable the Commissioner of Taxation to pursue tax avoidance arrangements. This policy change will commence from 1 July 2023.

Recommendation 10: The project combination rules should be revisited with a view to strengthening the requirement that the new field have some relevant geological or geochemical connection to the existing project.	The Government will not proceed with this recommendation. To ensure continued confidence and certainty for investors in gas projects, particularly in the East Coast market, the existing project combination rules will be retained.
Recommendation 11: Update the GTP Regulation to ensure that where an LNG facility enters the PRRT regime (either solely for the purposes of the GTP Regulation or for broader PRRT calculations) for the first time for backfill or tolling purposes, the value of the plant for use in PRRT calculations is the historical cost of the LNG facility, uplifted by the GDP deflator to the date of first production for PRRT purposes.	The Government agrees with this recommendation. This provides certainty for how assets should be valued in these circumstances and removes potential disputes about which valuation method would be appropriate. This policy change will commence from 1 July 2024.

Callaghan Review – recommendations that the Albanese Government will proceed with, which were announced but unenacted measures of the former Government.

Recommendation 5: Allow PRRT taxpayers to lodge annual returns after they start holding an interest in an exploration permit, retention lease or production lease rather than having to wait until they receive assessable receipts from the project.
Recommendation 6: Grant power to the Commissioner of Taxation to treat a new project as a continuation of an earlier project, where it would be reasonable to do so.
Recommendation 7: Grant discretion to the Commissioner of Taxation to recognise more than one project from a production licence area where there are genuinely separate and independent petroleum operations.
Recommendation 8: Extend to offshore projects, the option to have all interests held by a group taken together and reported as a single PRRT return.
Recommendation 9: Allow PRRT taxpayers to adopt a substituted accounting period for PRRT so it can align with their choice to use a substituted accounting period for income tax.
Recommendation 10: Allow PRRT taxpayers operating with a Multiple Entry Consolidate (MEC) Group to make a functional currency choice for PRRT purposes that aligns with the functional currency choice made for income tax purposes.
Recommendation 11: Grant power to the Commissioner of Taxation to administratively exempt projects from PRRT obligations where they are clearly unlikely to pay PRRT in the foreseeable future.
Recommendation 12: Amend PRRT anti avoidance rules to be in line with the income tax anti-avoidance rules.