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Senate Economics Legislation Committee
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Committee Secretary

Tax and Superannuation Laws Amendment (2014 Measures No. 6) Bill 2014

The Minerals Council of Australia (MCA) welcomes the opportunity to comment on schedule 4 of the *Tax and Superannuation Laws Amendment (2014 Measures No. 6) Bill 2014* (the bill) to align Fuel Tax Credits (FTCs) with the increased rate of fuel excise and excise-equivalent customs duty.

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally. MCA member companies represent more than 85 per cent of Australia's annual minerals industry production.

The minerals industry supports the timely passage of schedule 4 of the bill. Aligning FTCs with the increased rate of fuel excise will ensure that the FTC scheme continues to meet its policy objective to remove excise from a key business input and remote community electricity generation.

The bill should be passed in the current Spring sittings to allow increased FTC claims to be made in claimants' November Business Activity Statements (BAS) due to be lodged on 21 December 2014.

Fuel Tax Credits are underpinned by sound tax policy principles

The purpose of the Fuel Tax Credit scheme is to:

- Ensure fuel used as a business input is not taxed; and
- Ensure excise is not imposed on non-transport use of fuel.

By removing tax on fuel (less a road user charge for on-road), the FTC scheme reflects the policy principle that tax should not be imposed on business inputs. It is the same principle that underpins the GST system whereby tax is not applied on business to business transactions through input tax credits.

FTCs fully offset excise imposed on fuels used off-road. This not only recognises the tax policy principle that tax should not be imposed on business inputs, it also reflects that excise represents an implicit user charge for roads and that excise was originally introduced to fund

and maintain roads. Off-road mining activities do not use publicly funded roads and therefore should not pay an implicit road user charge. Rebates for off-road use of diesel fuel have existed ever since excise was extended to diesel in 1957 in line with this principle.

A recent report on the economics of fuel taxation by Deloitte Access Economics, commissioned by the MCA, noted that:

virtually since the inception of taxes on diesel, policy has tried to quarantine 'off road' use of diesel through the use of exemptions or a rebate scheme – if you aren't using the diesel on roads, then there's no case to hit you with an implicit road user charge. In recognition of that, some industries (mining, farming, forestry and fishing) have historically not been charged the full tax on diesel.ⁱ

The FTC scheme also operates to remove excise from fuel used in electricity generation, heating and other non-transport applications to ensure that excise is targeted at transport use of fuels only.

In recognition of these principles, the *Fuel Tax Act 2006* automatically links FTC rates to the excise rate as set out in the *Excise Tariff Act 1921* and *Customs Tariff Act 1921*. This ensures that credits fully offset excise for fuel used off-road by business regardless of the legislated rate of excise.

The bill before the committee simply ensures that the policy principle underpinning the *Fuel Tax Act 2006* is retained by increasing fuel tax credits in line with excise. Automatic indexation should continue regardless of whether excise is increased by tariff proposals or legislative amendment to the Excise and Customs Tariff Acts.

Fuel tax credits are not a 'subsidy'

FTCs are not a subsidy or form of industry assistance. Credits claimed under the scheme refund tax that should not have been paid in the first place at the fuel pump. Treasury has stated in documents released under freedom of information that:

Fuel Tax Credits are **not a subsidy** for fuel use, but a mechanism to reduce or remove the incidence of excise or duty levied on the fuel used by business off road or in heavy on-road vehicles.ⁱⁱ

Rob Heferen, Executive Director of Revenue Group Treasury, made the same point in Budget Estimates on 5 June 2014 stating that:

It is there to ensure that the double taxation does not occur. So the tax that is on the business input is relieved from the business activity. It is particularly important from a tax policy point of view. Certainly, with export competing industries, that double taxation obviously would be problematic.ⁱⁱⁱ

Nor does Treasury consider FTC's a tax expenditure. Mr Heferen also stated that:

The fuel tax credits—it is an outlay; it is not a tax expenditure..... The net amount paid for the fuel—so the amount of tax itself, to the extent that someone is entitled to either be exempt from that or have that refunded—to the extent that it is an off-road use, as in manufacturing, mining, agriculture and those sorts of things, would ordinarily be included as part of the base and therefore the departure from the base is not a tax expenditure. It is not a subsidy. It is just what the base ought to be.^{iv}

FTCs are not industry assistance and are not regarded as such by the Productivity Commission. Moreover, as the Productivity Commission stated in its latest Trade and Assistance review:

the estimated effective rate of assistance from tariff and budgetary assistance for mining has been negligible.^v

Fuel tax credits are vital to regional Australia

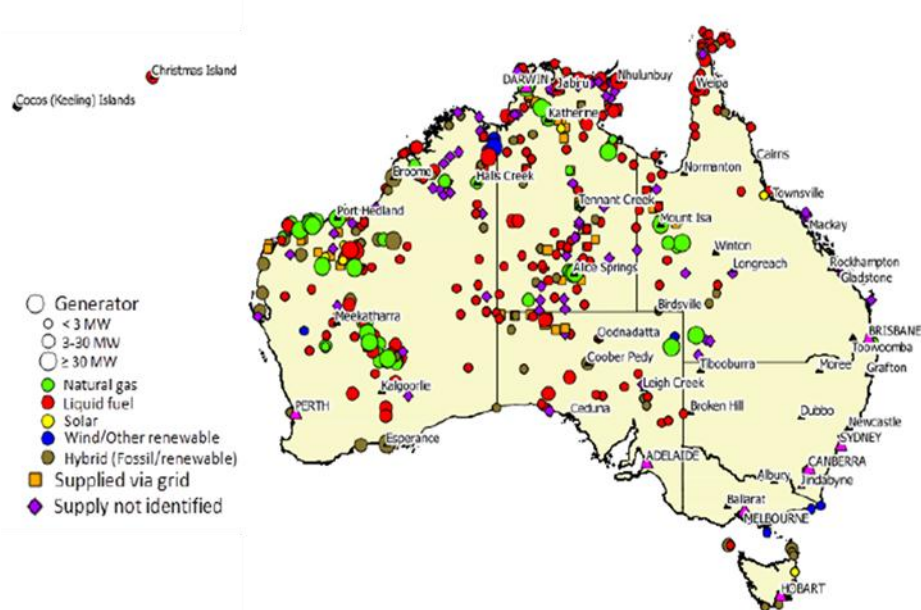
Diesel fuel is a critical business input for regional businesses and communities given their distance from the electricity grid, road networks and characteristics of the industries operating heavy equipment - such as mining and agriculture. Many regional and remote businesses therefore operate on private roads, not publicly funded roads, and rely on diesel generators for electricity.

A diverse range of industries and services claim FTCs including agriculture, forestry, fishing, manufacturing, accommodation, construction, hospitals and local government. Of the 690,000 claims for fuel tax credits in 2012-13, the largest single share was by agriculture, forestry and fishing operations just under 300,000 or 45 per cent of total claims.

Mining accounts for the largest share of claims by value (39 per cent), reflecting the fact that diesel fuel is a critical input to operate large vehicles, rail and heavy mining equipment in pit. It is also a key input for electricity generation at some remote mine sites not connected to electricity grids. A 2012 report by Port Jackson Partners estimated that that diesel contributes up to one quarter of mine operating costs and removal of FTCs would increase operating costs on Australian mining between 4-7%.^{vi}

The importance of liquid fuel (primarily diesel) for electricity generation in regional, particularly northern Australia, is demonstrated by the following Bureau of Resource and Energy Economics (BREE) map:

Off grid electricity generation, Australia, 2011-12^{vii}



The bill before the committee ensures the continuation of the link between FTCs and the excise rate. If the bill is not passed, the gap between the real excise rate paid by industry due to the tariff proposals and FTCs claimable would constitute a new tax on every mine in Australia, on rural exports and on regional communities located off the electricity grid.

Taxing fuel, a key business input, would introduce a distortion to Australia's tax system to the disadvantage of industries reliant on diesel fuel. The impact of such a tax would be particularly harmful to Australia's economy because it would impose an unrecoverable cost on some of Australia's largest export industries including mining and agriculture. The additional cost would be unrecoverable because commodity prices are set globally and tax increase cannot be passed on to foreign consumers.

As noted by Deloitte Access Economics, an increase in diesel tax on Australia's mining industry "would simply see a loss of global market share, profits and employment"^{viii}, with an impact on Australia's most marginal and remote mines:

An increase in the diesel tax on miners would mean that many existing mines could find their lives considerably foreshortened. And the potential development of new mines may remain in limbo, some of it to be permanently mothballed.^{ix}

Importantly, a number of Australia's competitors do not levy taxes on fuels used in mining or agriculture in recognition of the reliance on off-road activities and the tax principle of avoiding tax on business inputs.

A stable FTC scheme grounded in the tax policy principle will help ensure Australia's competitiveness and improve the efficiency of that tax system. The bill before the committee will ensure the continuation of the link between FTCs and movements in excise rates based on sound tax principles.

The minerals industry recommends to the committee that the bill be passed. This would ensure that:

1. The current link between FTCs rates and excise rates is not broken;
2. The sound tax policy principle that business inputs should not be taxed will be adhered to; and
3. A new tax on regional communities and exports is avoided.

The MCA appreciates the opportunity to provide these comments to the Committee.

Yours Sincerely

James Sorahan
Director - Taxation

ⁱ DAE, *The economics of fuel taxation in the mining sector: Report prepared for the Minerals Council of Australia*, 1 July 2014.

ⁱⁱ Treasury QTB, Treasury Freedom of Information Disclosure Log, *Document 19 AFR ARTICLE: G20 COMMITMENT ON FOSSIL FUEL SUBSIDIES*, 28 February 2011
<http://www.treasury.gov.au/~media/Treasury/Access%20to%20Information/Disclosure%20Log/2012/G20%20commitments%20on%20fossil%20fuel%20subsidies/Downloads/Document%2019.ashx>

ⁱⁱⁱ Senate Committee Hansard, Hearing before Senate Economics Legislation Committee, Estimates, Treasury testimony - Mr Rob Heferen, Executive Director Revenue Group, Treasury, 5 June 2014.

^{iv} Ibid.

^v Productivity Commission, Trade and Assistance Review 2012-13, 27 June 2014.

^{vi} Port Jackson Partners, *Opportunity at risk: Regaining our competitive edge in minerals resources*, September 2012.

^{vii} Bureau of Resource and Energy Economics, *Beyond the NEM and the SWS: 2011-12 regional and remote electricity in Australia*, October 2013.

^{viii} DAE, Opt Cid.

^{ix} Ibid.