Chapter 2

The Temporary Budget Repair Levy

2.1 This chapter discusses the legislation introduced by the package of Temporary Budget Repair Levy (the Levy) bills.

2.2 The committee first gives a brief overview of the policy context for the Levy, an outline of the bills' provisions and who will be affected by the measure. It then briefly describes the structure of the package of bills, and gives an indication of how they introduce the Levy and support its implementation. Lastly, it gives a summary of the main provisions of the new laws.

Policy context

2.3 In the 2015–15 Budget, the government announced 'a Budget repair strategy…designed to deliver budget surpluses building to at least 1 per cent of GDP by 2023–24'.[1]

2.4 This strategy included measures to reduce government expenditure, cuts to direct assistance to individuals and households, and some revenue lifting measures, such as the Levy. The Budget stated that the strategy was designed to share the burden of the 'Budget repair' task across all sectors of society. It stated:

> This Budget is about asking all Australians—from households to businesses and the public sector—to make a contribution today to repair the budget and build a stronger, more prosperous future for all.[2]

2.5 The Levy was designed to ensure high income earners make a contribution to 'Budget repair'.[3] As the Explanatory Memorandum for the Levy states:

> The introduction of a temporary budget repair levy will mean that high−income individuals will contribute to the task of repairing the Budget based on their ability to pay.[4]

Overview of the Levy

2.6 The Levy introduces a three-year progressive levy of 2 per cent on the part of a taxpayer's annual taxable income that is in excess of $180,000. This measure will commence on 1 July 2014 and remain in place until 31 June 2017.[5]

2.7 The Levy requires no additional changes to the tax system, as it will be administered and collected as part of the existing tax collection framework.[6]

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1 *2014–15 Budget, Budget Strategy and Outlook, Budget Paper No. 1, 2014-15*, p. 1–7.

2 *2014–15 Budget, Budget Strategy and Outlook, Budget Paper No. 1, 2014-15*, p. 1–1.

3 The Hon. Steven Ciobo MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 13 May 2014, p. 69.

4 Explanatory Memorandum, p. 7.

5 *2014–15 Budget, Budget Measures, Budget Paper No. 2, 2014-15*, p. 15.

2.8 The Levy is projected to contribute $3.1 billion to Commonwealth revenues over the forward estimates:

2013-14	2014-15	2015-16	2016-17	2017-18	Total
–	$600m	$1,150m	$1,200m	$150m	$3.1b

Source: *Explanatory Memorandum*, p. 4.

Effect of Levy

2.9 The Levy is progressive and only taxpayers who incur the highest marginal tax rate will be liable to pay it. Treasury estimates this measure will affect less than 4 per cent of taxpayers in 2014–15, around 400,000 individuals in total.[7]

2.10 As the Explanatory Memorandum suggests, the Levy has been targeted at high income earners so that:

> …almost none of the people affected by cuts to direct assistance [in the 2014–15 Budget], such as pensions and family payments, directly incur the Temporary Budget Repair Levy.[8]

2.11 The Levy will be imposed on top of the basic income tax and Medicare Levy liabilities for which high income earners are liable. Taxpayers on the highest marginal tax rate currently pay $54,547 plus 45 cents for every dollar earned over $180,000 in tax.[9] They are also subject to the Medicare Levy, which will increase from 1.5 per cent to 2.0 per cent of their taxable income from 1 July 2104.[10]

2.12 The Levy's introduction means a taxpayer with an annual taxable income of $300,000 will pay an additional $2,400 in tax every year the Levy applies.[11] The Levy's effect on other high income earners is shown in the following table:

Income	$190,000	$200,000	$220,000	$250,000	$300,000	$350,000	$400,000	$450,000	$500,000
Levy	$200	$400	$800	$1,400	$2,400	$3,400	$4,400	$5,400	$6,400

Source: Chris Pash, 'Budget 2014: Here's how the deficit tax will work' in *Business Insider Australia*, 13 May 2014

6 Explanatory Memorandum, p. 21.

7 Explanatory Memorandum, p. 7.

8 The Hon. Steven Ciobo MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 13 May 2014, p. 70.

9 See Australian Tax Office, 'Individual income tax rates' at www.ato.gov.au/Rates/Individual-income-tax-rates/ (accessed 20 May 2014); see also Explanatory Memorandum, p. 6.

10 This increase will fund the growth of DisabilityCare Australia (formerly known as the National Disability Insurance Scheme). See Australian Tax Office, 'Medicare Levy' at www.ato.gov.au/Individuals/Medicare-levy/ (accessed 20 May 2014).

11 *2014–15 Budget, Budget Measures, Budget Paper No. 1: Budget Strategy and Outlook*, p. 9.

The bills in the package

2.13 The Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 introduce the provisions of the Levy. The other bills in the package amend other relevant acts to reflect the introduction of the Levy.[12]

2.14 To minimise opportunities for tax minimisation or avoidance, the bills temporarily increase some tax rates for the time the Levy is active so they are consistent with the top personal marginal tax (45 per cent). Where relevant, these amendments also reflect tax rates based on a calculation comprising the top personal marginal tax rate and the Medicare Levy (which will be 2 per cent from 1 July 2014).[13]

2.15 The following rates will be adjusted to reflect the Levy's introduction:

- Fringe Benefit Tax (FBT) provisions;
- Income tax laws relating to the income of minors;
- Family Trust Distribution Tax;
- Tax imposed on bearer debentures;
- Income tax imposed on First Home Saver Accounts, when conditions for receiving assistance have not been complied with;
- Income tax imposed on employee shares schemes, where the recipient of interest has not supplied a Tax File Number;
- Tax imposed on superannuation payments received by temporary residents of Australia upon departure;
- Tax imposed on excess non-concessional contributions to superannuation funds;
- Tax imposed on excess untaxed roll-over amounts of superannuation benefits;
- Trustee Beneficiary Non-disclosure Tax;
- Tax imposed on interest on non-resident trust distributions;
- Income tax imposed on companies that 'taint' their share capital accounts; and
- Tax imposed in certain trust stripping arrangements.

Provisions of the new law

Working out the Levy

2.16 The Levy will be calculated by reference to the taxpayer's taxable income in the financial years that the measure is active.[14]

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12 Explanatory Memorandum, p. 4.

13 Explanatory Memorandum, pp 6 and 8.

14 Explanatory Memorandum, p. 7.

2.17 The Explanatory Memorandum makes clear that individuals with a taxable income less than $180,000 will not be liable to pay the Levy, 'except where their income (or part thereof) is subject to some other tax rate based on the top personal marginal tax rate or based on a calculation comprising the top personal rate'.[15]

2.18 The Levy is not included in a taxpayer's basic income tax liability, and the levy liability must be calculated in addition to the amount of basic income tax stipulated by subsection 4–10 (3) of the *Income Tax Assessment Act 1997*.[16]

2.19 Taxpayers cannot reduce their income with non-refundable offsets to avoid paying the Levy, apart from people who have excess offsets from foreign income. The Explanatory Memorandum states:

> The levy cannot be reduced by non-refundable tax offsets. That is, the taxpayer's income tax liability for an affected financial year is calculated as the taxpayer's basic income tax liability on taxable income *less* their tax offsets, to which the levy liability is then added. However, a taxpayer with excess foreign income tax offsets after applying their foreign income tax offsets against their basic income tax liability may apply those excess offsets against their levy liability.[17]

2.20 The Levy will be taken into account by the Commissioner of Taxation (the Commissioner) in calculating any refund of excess tax offsets or credits, or pay as you go (PAYG) withheld amounts. The Explanatory Memorandum states:

> Where a taxpayer has a tax liability (as a result of the levy) and is also entitled to credits, such as an entitlement to a refund of excess refundable tax offsets or pay as you go withheld amounts, the Commissioner of Taxation (Commissioner) will apply the taxpayer's credit entitlement against both the taxpayer's basic income tax liability and levy liability under Division 3 of Part IIB of the *Taxation Administration Act 1953*.[18]

Maximum tax rate provisions

2.21 The bills protects the current tax offsets that are available to reduce the liabilities of taxpayers receiving some employment termination payments, other lump sums received on termination of employment, and certain superannuation lump sum payments.[19]

2.22 While the Levy applies to parts of these payments that exceed $180,000, the tax offset mechanism will continue to apply to reduce the liabilities of taxpayers receiving these kind of payments, so their overall income tax rate does not exceed the relevant cap.[20]

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15 Explanatory Memorandum, p. 7.

16 Explanatory Memorandum, p. 10.

17 Explanatory Memorandum, p. 10.

18 Explanatory Memorandum, p. 8.

19 Explanatory Memorandum, p. 11.

20 Explanatory Memorandum, p. 11.

Trusts

2.23 The Levy will apply to trustees with income taxed as if it were that of an individual, in cases where the net income of the trust exceeds $180,000 a year. This ensures trustees who pay tax in place of an individual will incur the same level of tax as the individual would be liable for if they paid tax themselves.[21]

Fringe Benefits Tax adjustments

2.24 The bills include an adjustment to the FBT rate from 47 per cent to 49 per cent. This increase is an 'important integrity component of the measure' ensuring FBT is consistent with the top personal marginal tax rate, including the new Temporary Budget Repair Levy of 2 per cent.[22]

2.25 This adjustment is being made to reduce the opportunities for taxpayers to avoid paying the Levy by reducing their taxable income through accessing salary packaging or fringe benefits schemes.[23]

2.26 However, the increase to the FBT rate will not be active for exactly the same period as the Levy, but will be introduced to coincide with the 2015-16 and 2016-17 Fringe Benefits Years. This means FBT adjustments will become active on 1 April 2015 and end on 31 March 2017, as the following chart shows.

Source: Explanatory Memorandum, p. 22.

2.27 This has been done to avoid the administrative burden on employers and the business sector that would come from increasing the FBT rate partway through the Fringe Benefits year.[24]

2.28 The bills also contain provisions to prevent temporary FBT increases negatively affecting lower income employees in the not-for-profit sector, hospitals and ambulance workers, as well as employees of public benevolent institutions and health promotion charities.[25]

21 Explanatory Memorandum, p. 7.

22 Explanatory Memorandum, p. 8.

23 Explanatory Memorandum, p. 6.

24 Explanatory Memorandum, pp 9 and 22.

25 Explanatory Memorandum, p. 8 and pp 13–14.

2.29 For other eligible tax-exempt organisations entitled to FBT rebates, such as charitable institutions, the bills align the rate of rebate with the increased rate of FBT from 1 April 2015.[26]

Tax withholding by employers and Pay as you go (PAYG)

2.30 The Commissioner will issue new withholding schedules that take account of the Levy for employers who withhold tax throughout the year. This will ensure they make appropriate contributions towards the tax liabilities of employees throughout the year.[27]

2.31 The Commissioner will also take account of the levy in determining the appropriate amounts of PAYG instalments.[28]

26 Explanatory Memorandum, p. 14.

27 Explanatory Memorandum, p. 8.

28 Explanatory Memorandum, p. 8.