The Senate

Economics
Legislation Committee

Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 [Provisions] and related bills

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Senate Economics Legislation Committee

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Introduction

Referral of the Bill

1.1 On 15 May 2014, pursuant to the Selection of Bills Committee report, the Senate referred the provisions of the following package of 15 bills (the bills) to the Senate Economics Legislation Committee for inquiry and report by the 16 June 2014:[1]

- Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014;
- Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014;
- Family Trust Distribution Tax (Primary Liability) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Fringe Benefits Tax Amendment (Temporary Budget Repair Levy) Bill 2014;
- Income Tax (Bearer Debentures) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Income Tax (First Home Saver Accounts Misuse Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Income Tax (TFN Withholding Tax (ESS)) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Superannuation (Excess Non-concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Superannuation (Excess Untaxed Roll-over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Taxation (Trustee Beneficiary Non-disclosure Tax) (No.1) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 2) Amendment (Temporary Budget Repair Levy) Bill 2014;
- Tax Laws Amendment (Interest on Non-Resident Trust Distributions) (Temporary Budget Repair Levy) Bill 2014;
- Tax Laws Amendment (Untainting Tax) (Temporary Budget Repair Levy) Bill 2014; and
- Trust Recoupment Tax Amendment (Temporary Budget Repair Levy) Bill 2014.

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1 *Journals of the Senate*, No. 29—15 May 2014, p. 819.

1.2 The Selection of Bills Committee stated the bills were referred to the Economics Legislation Committee for 'Scrutiny of tax design and integrity issues'.[2]

1.3 The bills were introduced to the House of Representatives on 13 May 2014 and passed on 28 May 2014.[3]

Conduct of the inquiry

1.4 The committee advertised the inquiry on its website and invited a number of stakeholders to make submissions by 30 May 2014. The committee received seven submissions, all of which are available on the committee's website.[4] A list of the submissions received can be found at Appendix 1.

1.5 The committee decided that the submissions were straightforward, provided sufficient information on the proposed legislation and did not require further examination. Thus, the committee resolved not to hold a public hearing. Nonetheless, the submissions raised some important matters that required additional information from the Treasury. The committee wrote to the Treasury seeking its response to a number of particular matters of concern detailed in the written submissions to which the Treasury has provided answers. Some of this material has been incorporated into the body of the report but for the sake of completeness the committee has attached the full response at Appendix 2. Treasury's answers to the committee's questions on notice can also be found on the committee's website.

Overview of the bills

The 2014–15 Budget context

1.6 In the 2014–15 Budget, the government committed to 'repairing the Budget' and stated it was taking steps to 'ensure the Government is living within its means, and to rein in the age of entitlement'.[5]

1.7 The Temporary Budget Repair Levy (the Levy) is one of a range of measures announced in the 2014–15 Budget aimed at achieving these goals. It is designed particularly to ensure high income earners make a contribution to 'repairing the Budget'.[6]

2 Selection of Bills Committee, *Report No. 5 of 2014, 15 May 2014*, Appendix 9.

3 *House of Representatives Hansard*, 28 May 2014, p. 27. See also *House of Representatives Votes and Proceedings*, No. 35, 13 May 2014, p. 457 and *House of Representatives Votes and Proceedings*, No. 40, 28 May 2014, p. 505.

4 See www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics

5 Hon Joe Hockey MP, Treasurer, and Senator the Hon. Mathias Cormann, Minister for Finance, *2014-15 Budget Joint Media Release*, 13 May 2014, at http://jbh.ministers.treasury.gov.au/media-release/021-2014/ (accessed 22 May 2014).

6 The Hon. Steven Ciobo MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 13 May 2014, pp 69–70.

The main provisions

1.8 This package of bills amends Australian tax laws to introduce a three-year progressive levy on high income earners. This Levy will apply at a rate of two per cent on the part of their taxable income that is in excess of $180,000 per annum. The Levy will be active for the financial years 2014–15 to 2016–17, so will commence on 1 July 2014 and end on 31 June 2017.[7]

1.9 The bills adjust other tax rates based on the top personal marginal tax rate (currently set at 45 per cent), as well as tax rates based on the top personal rate when it is combined with the Medicare Levy (currently 1.5 per cent, but increasing to 2 per cent on 1 July 2014).[8]

The Temporary Budget Repair Levy bills package

1.10 The principal bill in this package is the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, which introduces the Levy, including its rate, threshold and the period it will be active.

1.11 The other 14 bills support the Levy by amending other tax provisions 'to maintain the integrity and ensure the fairness in the tax system, and minimise opportunities for avoiding the levy'.[9] This includes increasing a number of tax rates based on the top personal marginal tax rate threshold, to ensure they are consistent with the Levy.[10]

1.12 All the bills are covered by a single Explanatory Memorandum introducing the provisions of the new legislation, as well as outlining its implementation and effects.[11]

Human rights implications and compliance cost impacts

1.13 The bills do not raise any human rights issues.[12] Similarly, they do not alter existing compliance obligations for individuals, and only have a minor transitional impact for entities that withhold tax with respect to individuals.[13]

Structure of this report

1.14 Including this chapter, the report has three chapters:

- Chapter 2 looks at the provisions of the bills and its implementation; and

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7 *2014–15 Budget, Budget Measures, Budget Paper No. 2, 2014–15*, p. 15.

8 Explanatory Memorandum, p. 6.

9 Explanatory Memorandum, p. 4.

10 Explanatory Memorandum, p. 6. See also *2014–15 Budget, Budget Measures, Budget Paper No. 2*, p. 15.

11 The Explanatory Memorandum *is* available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5239_ems_35baadaf-7f19-4b2b-9501-27e99f46a530/upload_pdf/394131.pdf;fileType=application%2Fpdf

12 Explanatory Memorandum, p. 4.

13 Explanatory Memorandum, p. 4.

- Chapter 3 discusses the issues and concerns about the bills that were raised in public submissions received by the committee.

Acknowledgements

1.15 The committee thanks all those who participated in, and assisted the committee with, the inquiry.

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]

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.

Chapter 3

Issues raised

3.1 The submissions received by the committee raised a number of issues about the provisions and implementation of the Temporary Budget Repair Levy (the Levy), which this chapter will discuss in turn.

3.2 First, in brief, it will outline submissions that were broadly supportive of the Levy's introduction. It will then outline the concerns submitters raised about the Levy, which included:

- its short timeframe and temporary nature;
- perceived flaws in the Levy's design, including adding potential complexity to the tax system and providing opportunities for tax minimisation opportunities;
- potential implementation issues for the superannuation industry; and
- failure to address inequities in the broader tax system.

Support for repairing the budget

3.3 A number of submissions recognised the importance of 'restoring Australia's public finances to a sustainable condition'.[1] For example, the Grattan Institute stated:

> Perhaps the most important argument for budget reform is that deficits borrow from the future. They require future generations of taxpayers to pay for today's spending. There are fundamental issues of intergenerational fairness if future taxpayers are forced to bear the burden of today's spending that they do not have a say in, nor benefit from.[2]

3.4 In this regard, it is important to note that according to government estimates, the debt is heading for $667 billion unless the government takes corrective action.[3]

Support for the Levy

3.5 The committee received some evidence voicing support for the Levy.

3.6 The Australia Institute considered that the Levy would begin to address growing inequality in Australia, particularly the widening gap in income levels between the highest and lowest earners.[4] While it supported the levy, the Institute wanted the government to go further to make the levy permanent.[5]

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1 *Submission 2*, p. [1].

2 *Submission 7*, p. 2.

3 See for example, *Proof Committee Hansard*, Estimates, 5 June 2014, p. 11.

4 *Submission 1*, p. 4.

5 *Submission 1*, p. 4.

3.7 Mr Saul Eslake stated the Levy's design would not affect Australia's economic activity or labour force participation negatively.[6] Moreover, Mr Eslake supported 'the notion that the "burden" of restoring Australia's public finances to a sustainable condition should be (and should be seen to be) "fairly shared" as between different stakeholders', particularly through changes to the tax system to target high income earners.[7]

3.8 However, Mr Eslake thought the Levy was not 'the *best* way to achieve this goal' and suggested more effective and equitable tax measures could be found to ensure high income earners contributed to 'Budget repair'.[8]

3.9 Although the Grattan Institute argued that the Levy does not meet all of the criteria of effective budget repair, it does meet some. The Levy:

- is being introduced quickly;
- has a reasonably clear explanation and rationale;
- ensures that tax as well as spending is part of the solution; and
- those on high incomes make some contribution to fixing the budget.[9]

Criticisms of the Levy

The Levy's timeframe

3.10 Taxpayers Australia considered the Levy's implementation period was too short to make a real contribution to 'Budget repair'. Its submission contended that the Levy will end right at the time government spending pressures will be particularly high and need some support:

> Estimates released by Treasury show public debt accelerating rapidly over the period 2018–2023 but we note that the Debt Tax is scheduled to end in 2017. The $3.1bn which Treasury estimates the tax will raise contributes little to the repair of the budget and contributes nothing in the period when action is most required (post 2017).[10]

3.11 The Australia Institute argued the Levy should be a permanent feature of Australian income tax scales, rather than a temporary measure ending in mid-2017.[11] Its submission encouraged the government to consider 'incorporating it into the regular income tax scales and perhaps increasing the top marginal rate over time'.[12]

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6 *Submission 2*, p. 2.

7 *Submission 2*, p. 2.

8 *Submission 2*, p. 2.

9 *Submission 7*, p. 3.

10 *Submission 3*, p. 1.

11 *Submission 1*, p. 4.

12 *Submission 1*, p. 4.

3.12 Along similar lines, the Grattan Institute noted that the Levy fails on one of the most important criteria for effective budget repair—it has no impact on the long term structural position of the Budget, as it will cease in 2017–2018.[13]

3.13 In regard to this criticism, the committee believes that it is imperative to keep in mind the broader sweep of budget measures. The minister explained that the government's focus has been on pursuing structural savings and structural reforms, mostly on the spending side but also on the revenue side:

> Re-introducing indexation of the fuel excise, for example, is a structural reform on the revenue side. But the virtue and challenge that comes with structural reforms is that they start low and slow and build over time. So the judgement that the government made was that there was a need for an immediate effort to get us into a stronger starting position as we set out to repair the budget for the medium to long term. In order to do that, we did make some decisions in relation to immediate savings on the spending side and some immediate additional effort on the revenue side. Over the forward estimates, about 80 per cent of the budget repair effort comes from spending reductions and just over 20 per cent comes from revenue increases.[14]

3.14 According to the minister, the temporary budget repair levy is part of the short-term, immediate effort to get Australia into a stronger starting position 'to repair the budget mess that we have inherited'. He then explained that 'beyond that three-year period, progressively, the structural savings and the structural reforms will continue to build'.[15]

Flaws in Levy's design

Introducing complexities into the tax system

3.15 The Tax Institute expressed the view the Levy would create unnecessary complexity in the Australian tax system, which would create a burden of compliance for taxpayers while not substantially increasing tax returns for government.[16]

3.16 It suggested the bills would introduce unnecessary complexity to the *Income Tax Assessment Act 1997* by the addition of three steps to calculate a taxpayer's basic income tax liability.[17] The Institute's submission stated:

> Section 4–10 of the *Income Tax Assessment Act 1997* (the Tax Act) works out how much tax you must pay, and the calculation consists of four steps. Three additional steps are required to the calculation in order implement the Levy. The Levy is not included in calculating the taxpayer's basic income tax liability under Step 2 of the method statement in section 4–10(3) of the

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13 *Submission 7*, p. 3.

14 *Proof Committee Hansard*, Estimates, 5 June 2014, p. 12.

15 *Proof Committee Hansard*, Estimates, 5 June 2014, p. 29.

16 *Submission 4*, pp 1–3.

17 *Submission 4*, p. 2.

> Tax Act. Instead a further 3 Steps are required to adjust the calculation in the method statement in order to take into account the Levy: see section 4–11(3) inserted by Item 2 of *Tax Laws Amendment (Temporary Budget Repair Levy) Bill* 2014. A note to section 4–10(3) is to be inserted to remind the relevant taxpayers that they must pay the Levy in addition to the income tax liability that they have calculated under section 4–10(3).
>
> The rationale behind treating the Levy as a further adjustment to the section 4–10(3) calculation is to ensure that the Levy cannot be offset by non-refundable tax offsets except the foreign income tax offset: Explanatory Memorandum at para 1.14. We would expect that the number of non-refundable tax offsets available to those earning taxable income exceeding $180,000 would be limited. If there is no substantial increase in the tax collected, we question the practical utility of adding this complexity to the calculation of the individual's income tax liability under section 4–10(3).[18]

3.17 Additionally, the Tax Institute considered that the bills would add a discrepancy to the *Income Tax Rates Act 1986*. It outlined the situation in its submission:

> …the increase in the top rate of tax appears to apply inconsistently. Amendments to the Income Tax Rates Act 1986 (the Rates Act) in Items 35 and 36 *Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014* increase references to 45% in certain provisions of the *Rates Act* by 2%. These Items do not include a reference section 12(1) and Schedule 7 of the Rates Act. This has the effect that the rate of tax on superannuation remainders and employment termination remainders under section 1(a) and (aa) of Schedule 7 of the *Rates Act* remain at 45%. The rationale for this discrepancy is not explained in the Explanatory Memorandum.[19]

3.18 The committee received advice from Treasury about whether the Levy added any unnecessary complexity to the tax system. Treasury stated that 'Our view is that changes to the income tax system are among the simplest of tax changes'.[20]

3.19 Moreover, Treasury suggested there was more than enough time for high income taxpayers to recalculate their tax liabilities for 2014–15 to incorporate the Levy, especially considering they would also have to incorporate the new Medicare Levy rate from 1 July 2014.[21]

Tax minimisation and arbitrage opportunities

3.20 Some submissions to the inquiry argued the Levy's design contained opportunities for high income earners to minimise their tax liabilities. For instance, Mr Eslake's submission suggested the Levy could be avoided by most high income earners through:

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18 *Submission 4*, p. 2.

19 *Submission 4*, p. 2.

20 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 2.

21 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 2.

> … greater use of the myriad provisions in the income tax system which offer preferential or concessional treatment for particular types of income, forms of business organization or categories of investment vehicles.[22]

3.21 Taxpayers Australia shared this view, commenting that 'only the wealthy but poorly advised will be paying the Debt Tax'.[23] It contended that the Treasury's projections for the tax raising $3.1 billion over three years may be overstated, as:

> …considerable amounts of relatively straightforward tax planning is likely to take place which have the effect of reducing taxable income, often to beneath the $180,000 threshold.[24]

3.22 According to Taxpayers Australia, many tax advisers are already actively marketing strategies to avoid the Levy, including:

- accelerating tax receipts or tax deductible expenditures into years where tax relief is available or the Levy is not active;
- deferring tax receipts or tax deductible expenditures into years where tax relief is available or the Levy is not active;
- exploiting the misalignment between the financial and FBT years through salary packaging programs;
- increasing contributions to superannuation funds, which will continue to be taxed at 15 per cent, and so reducing taxable income below the Levy's threshold; and
- using family trusts to split and stream incomes across the beneficiaries of the trusts (e.g. children and spouses), to lower tax liabilities and reduce the main earner's income below the Levy's threshold.[25]

3.23 The committee received advice from Treasury about general tax minimisation or avoidance behaviours potentially encouraged by the introduction of the Levy.

3.24 Treasury stated that a central feature of the Australian tax system was a degree of flexibility in the way taxpayers could receive payments in different years or through different entities.[26] Treasury argued that, even if this flexibility could reduce the tax liabilities of some individuals, 'there are substantial limits on this flexibility':

> As with elsewhere in the tax system, should individuals abuse this flexibility and seek to put in place arrangements driven solely by tax benefit, their behaviour will constitute tax avoidance and be subject to the

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22 *Submission 2*, p. 2.

23 *Submission 3*, p. 3.

24 *Submission 3*, p. 2.

25 *Submission 3*, p. 3.

26 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 1.

general anti-avoidance rules in Part IVA of the *Income Tax Assessment Act 1936*.[27]

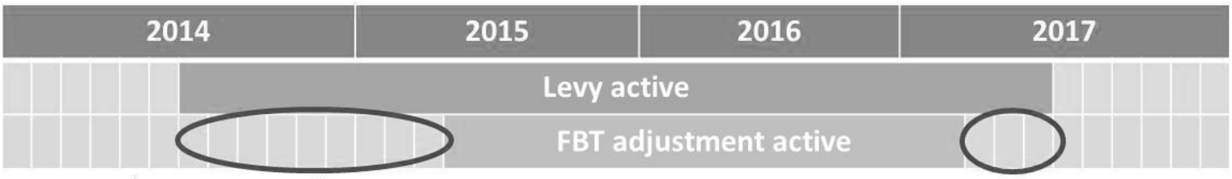
3.25 The Treasury informed the committee that there were 'specific anti-avoidance rules directed at preventing taxpayers from re-arranging their affairs to gain a tax benefit in the manner raised in submissions.' such measures include 'rules in relation to the alienation of personal services income, pre-paid outgoings and advance expenditure'.[28]

Misalignment with the Fringe Benefits Tax system

3.26 Some submitters noted the opportunities high income earners will have to exploit the Levy's misalignment with the FBT system through the use of salary packaging and fringe benefits schemes. This would both reduce their taxable income and impose a lower rate of tax on money they put into these schemes.

3.27 The Levy will be active across financial years, and so will commence on 1 July 2014, whereas adjustments to FBT settings will align with the Fringe Benefits year, and so will be introduced on 1 April 2015. Similarly, the Levy will end on 31 June 2017, whereas FBT adjustments will end three months before this on 31 March 2017.

3.28 As a result, FBT rates will be 2 per cent lower than the top marginal rate (including the Levy and Medicare Levy) in periods highlighted in the following timeline.



Source: Explanatory Memorandum, p. 22.

3.29 This discrepancy was noted by Hayes Knight, who highlighted the reduction of government revenues that would come from the increased use of salary sacrificing programs by high income earners in these periods.[29]

3.30 Taxpayers Australia also highlighted the arbitrage opportunities this offers taxpayers on the top marginal rate and noted the potential lost revenues for government this represents.[30]

3.31 Looking at this issue from a tax policy and a compliance point of view, Mr Rob Heferen, from the Treasury suggested that 'given that the FBT rate is going to

27 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 1.

28 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 1.

29 *Submission 6*, p. 2.

30 *Submission 3*, p. 3.

change, the probability of people restructuring affairs for nine months in order to have to move back is pretty minimal'.[31] He explained:

> There are costs in entering into such arrangements. So that balanced with the idea of having separate FBT rates for the one FBT year, and this happens because the FBT year…is from 1 April to 31 March. That would introduce quite significant costs to taxpayers and employers. Given that there is only going to be nine months, in essence, it is really the flood levy story again.[32]

3.32 Mr Heferen emphasised the fact that the compliance costs for employers and employees, 'in grappling with that change for the 2014–15 year, would be quite significant'. He was not aware of any time where the FBT rate has been changed out of alignment with the FBT year.[33]

3.33 The committee also requested additional written advice from Treasury about the potential effects of the mismatch between financial and fringe benefits cycles. In its written response, Treasury indicated that this mismatch was a well-established feature of the tax system, so had been considered in the Levy's design. The Treasury provided the following advice:

> While the rate of fringe benefits tax is aligned with the highest marginal rate of income tax applicable to individuals (plus the rate of the Medicare levy), the income tax and fringe benefits tax have always applied over different annual periods. As these periods differ, to have any rate apply over the same period would require at least one tax to have a split period in which two different rates would apply.[34]

3.34 Treasury's written advice also confirmed the assessment that delaying the introduction of the higher FBT rate until the 2015–16 FBT year would avoid imposing a burden of compliance on businesses and employers, which would be caused by demanding they calculate part-year fringe benefits for their employees.[35] Furthermore, it reinforced the argument that 'the small size and temporary nature of the levy would limit the likelihood of taxpayers taking action to avoid the levy'.[36]

Effects on the superannuation system

3.35 Some submitters, including ASFA, and the Tax Institute,[37] discussed the amendments to the superannuation system made by the bills, and raised two potential negative effects:

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31 *Proof Committee Hansard*, Estimates, 5 June 2014, p. 9.

32 *Proof Committee Hansard*, Estimates, 5 June 2014, p. 29.

33 *Proof Committee Hansard*, Estimates, 5 June 2014, p. 9.

34 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 2.

35 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 1; See also Explanatory Memorandum, p. 22.

36 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 2.

37 *Submission 6*, p. 2.

- the superannuation industry would have difficulty implementing the Levy, due to the short timeframe between the policy announcement in the 2014–15 Budget on 13 May 2014 and the implementation date of 1 July 2014; and
- unintended inequity introduced into the superannuation system by amendments to excess non-concessional contribution arrangements.[38]

3.36 The Association of Superannuation Funds of Australia Limited (ASFA) expressed the concern that the superannuation industry may struggle to implement the Levy by the start of the 2014–15 financial year.[39]

3.37 ASFA explained that superannuation entities have a more complex tax collection process than individuals and employers, which involves superannuation companies calculating and deducting tax imposts from member benefits payments before they are paid (rather than tax being deducted from an employee's pay based on the ATO's assessment of their 2013-14 income). Therefore, the introduction of the Levy would mean:

> For the superannuation industry…the appropriate tax will need to be deducted from benefit payments that are paid from 1 July 2014 as failure to do so would result in the incidence of the tax falling on the superannuation trustee.[40]

3.38 ASFA highlighted two situations that would particularly affect the superannuation industry:

> The two examples of this, which create implications for superannuation entities, are the provisions relating to Departing Australia Superannuation Payments (DASP) and the tax levied on the no-[Tax File Number] contributions income of funds.[41]

3.39 On the basis of these concerns, ASFA requested the commencement date of the bill relating to Departing Australia Superannuation Payments be delayed until 1 October 2014, to allow the industry sufficient time to adapt. Moreover, they requested the non-Tax File Number component of the new legislation not apply to superannuation funds.[42]

3.40 The Tax Institute raised another issue: the bills may unintentionally introduce inequity into the superannuation system that would particularly affect members of Defined Benefits Funds. Its submission outlined the problem:

> Amendments in the *Superannuation (Excess Non-concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill* 2014

38 See for example, *Submission 4*, pp 2–3.

39 *Submission 6*, p. 2.

40 *Submission 6*, p. 2.

41 *Submission 6*, p. 2.

42 *Submission 6*, p. 3.

> and paragraphs 1.70 to 1.72 of the Explanatory Memorandum indicate that tax rate applying to excess non-concessional contributions tax will increase from 47 to 49 per cent of an individual's excess non-concessional contributions for a financial year. The Tax Institute is concerned that this will result in inequity, particularly for members of Defined Benefit Funds. Employees in some funds routinely exceed the cap through no fault of their own as they have no control over what is paid in by their employer by reason of an award. Those in Defined Benefit Funds are unable to have the sum returned to them to avoid the excess and therefore cannot take advantage of the amendment announced in the 2014–15 Budget whereby those non-concessional contributions withdrawn from a fund can be taxed at the individual's marginal rate. Instead, members of Defined Benefit Funds, (who may not be on the highest marginal tax rate) would be taxed at 49% on these deemed excess contributions which they might never receive.
>
> The rate of tax on non-complying superannuation funds will increase from 45 per cent to 47 per cent, as will the rate of tax on the non-arm's length component of the taxable income of a superannuation fund. As with the rate change to Excess Non-Concessional Contributions Tax, this will impact taxpayers who are not on the highest marginal rate of tax.[43]

3.41 3.23 The committee received advice from Treasury about the potential repercussions of the Levy's introduction on the superannuation system that were discussed in submissions.

3.42 Treasury responded to the concerns ASFA raised about implementation timeframes and equity issues. Regarding the timeframe for the Levy's introduction, Treasury noted that many tax changes had been announced on Budget night for application in the next financial year and that the resulting 'burden…for taxpayers, especially sophisticated taxpayers, is minor'.[44]

3.43 Regarding ASFA's proposed adjustment to Departing Australia Superannuation Payments, Treasury stated that:

> …having different rates applying for different parts of the tax year creates significant compliance burdens. Further, having a different rate apply for particular amounts, especially when, as with Departing Australia Superannuation Payments, the timing of payments is largely within the control of the taxpayer, poses integrity risks and is therefore generally inappropriate.[45]

3.44 Treasury also responded to the concerns raised by the Tax Institute about the Levy's effects on Excess Non-Concessional Contributions Tax, by noting:

> …work is underway to implement the Government's 2014–15 Budget announcement to provide a mechanism to ensure individuals are not excessively taxed and we expect the Government will consult closely with

43 *Submission 4*, pp 2–3.

44 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 3.

45 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 3.

the sector to ensure appropriate relief is available to all taxpayers with excess non-concessional contributions.[46]

Conclusion

3.45 The committee understands that in order 'to repair the budget and deliver important structural reforms' that would 'facilitate future growth in living standards', the government was asking all Australians, including high income earners, to contribute to achieving a healthy budget.

3.46 The committee has considered all the concerns that were raised by submissions and received expert advice on these matters from the Treasury.

3.47 Some submitters were concerned the Levy's introduction would encourage tax minimisation or avoidance by taxpayers. The committee considers the Levy will not encourage undue tax minimisation or avoidance behaviours by Australian taxpayers, as the Levy's design intentionally adjusts a number of tax rates to reflect the introduction of the Levy. These adjustments have been proposed to reduce potential opportunities for taxpayers to avoid their tax liabilities.

3.48 The committee acknowledges the adjustments to FBT are scheduled to begin after the introduction of the Levy, and that this may result in some tax avoidance behaviour by taxpayers. However, the committee supports the decision to adjust FBT in line with the Fringe Benefits Year rather than the financial year, as this will avoid imposing undue compliance costs and increasing unnecessary red tape for businesses and employers.

3.49 Overall, the committee supports the introduction of the temporary Levy. The Levy will ensure high income earners will make a contribution to the government's Budget Repair Strategy, which was announced in the 2014–15 Budget.

3.50 The committee considers the Levy is a simple and reasonable measure in the 2014-15 Budget context; it is entirely appropriate for the government to ask all Australians to make a contribution to Budget repair when they can afford to do so.

3.51 The committee supports the targeting of the measure to the highest income earners, so that the most vulnerable Australians are protected. The committee notes the threshold of $180,000 was chosen so almost none of the Australians affected by expenditure cuts to direct assistance in the 2014-15 Budget, such as family payments and pensions, would be liable to pay the Levy.

3.52 Moreover, the committee supports the progressiveness of the Levy, which would also ensure taxpayers who are better off will contribute a little more to the repair of the Budget, based on their ability to pay.

46 Answers to written questions on notice, received from the Treasury on 6 June 2014, p. 3.

Recommendation 1

3.53 The committee recommends that the Senate pass the bills.

Senator David Bushby
Chair

Dissenting report by Australian Greens

1.1 The Australian Greens do not support the majority report of the committee which recommends the passing of the Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 and related bills.

1.2 The Government has attempted to frame the debate regarding the Budget more generally as one of 'emergency'. This is incorrect; the Federal Government still maintains AAA credit ratings from the three biggest credit ratings agencies in the world: S&P, Moody's and Fitch; and Australia also has one of the lowest debt to GDP ratios among OECD countries.

1.3 Despite the 'budget emergency', the Government has not attempted to raise extra revenue. In fact, they have deliberately chosen to reject revenue streams from the big polluters and mining companies, and subsidies continue to be paid to fossil fuel industries.

1.4 The Australians Greens accept the need for responsible economic management. Governments should balance their budgets over the economic cycle. However, as many of the submissions to the inquiry outlined, the deficit levy does not help address the long term structural issues of the Budget.

1.5 The Grattan Institute stated:

> The Levy has no impact on the long-term structural position of the Budget, as it will cease to exist in 2017-18.[1]

1.6 Mr Saul Eslake outlined:

> It [the deficit levy] does not make any lasting contribution to 'fixing the budget' in any structural sense.[2]

1.7 The levy is a 'political' fix for the Government so they can point to the idea that as welfare recipients, pensioners and anyone visiting the doctor are losing out, and so are high income earners. During his Budget speech the Treasurer outlined that higher income earners would:

> … pay a Temporary Budget Repair Levy that in effect increases the top marginal tax rate by two percentage points, for people earning more than $180,000 a year.
>
> It is only fair that everyone makes a contribution.[3]

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1 *Submission 7*, p. 3.

2 *Submission 2*, p. 2.

3 Transcript of the Treasurer's Budget night speech, 13 May 2014, at www.budget.gov.au

1.8 The Government has created a crisis and is now trying to persuade people that they are all contributing to solving the 'emergency'. The reality is that the current Government wants to protect high income earners. At a recent Senate Estimates hearing Senator Cormann stated:

> We are very conscious of the fact that higher income earners already do a lot of the heavy lifting when it comes to contributing to Commonwealth revenue. But, in the context of this budget, we decided and judged that it was necessary to ask everyone across the community to make a contribution, including asking higher income earners to make an additional effort on top of the significant effort that they are already making.[4]

1.9 However, the Grattan Institute makes it clear that:

> It does not share the pain very effectively, as it will only have a short-term impact on high-income earners. By contrast, spending cuts that will have a disproportionately large effect on lower income earners are permanent.[5]

1.10 Not everyone is making an equal contribution; Mr Saul Eslake makes the point that:

> It will encourage at least some higher-income households to take more active steps to engage in tax-minimization or avoidance activities, including by making greater use of the myriad provisions in the income tax system which offer preferential or concessional treatment for particular types of income, forms of business organization or categories of investment vehicles.[6]

1.11 Making the tax increase permanent would go some way to minimising the tax avoidance that will occur under the temporary levy.

1.12 While the Government's stated aim is about bringing the budget back into surplus, the Prime Minister has been quoted in the media as saying:

> The whole point of getting the budget under control now... is so that we can give tax cuts in the not-too-distant future.[7]

1.13 This statement indicates the motivating factor for the way the Government is attempting to sell its Budget to the Australian community. 'Everyone' does the heavy lifting and then higher income earners end up with tax cuts, while changes to welfare remain.

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4 Economics Legislation Committee Hansard, 5 June 2014, p. 12.

5 *Submission 7*, p. 3.

6 *Submission 2*, p. 2.

7 Sabra Lane, 'Tony Abbott raises tax cut prospects amid budget questions', 7.30, Australian Broadcasting Corporation, 21 May 2014.

1.14 While welfare spending has been cut with little thought for the consequences, the Government is delaying any decisions on long term structural changes to the tax system. Tax expenditure arrangements which overwhelmingly benefit wealthier individuals and companies have been sent to a white paper process despite the fact that the Henry Review was completed in 2010 and includes broad-ranging tax reform options.

1.15 If the Government was serious about structural reform they would genuinely address growing inequality and the need for revenue, and a new permanent higher marginal tax rate would have been proposed.

1.16 The Australian Greens recognise the structural budget issues, that is why we have proposed long term structural changes to the tax system to raise more revenue and reduce tax avoidance, including:

- apply a 'public insurance' levy on the big four banks that are too big to fail: $11 billion (revised PBO costing as at MYEFO);
- impose a $2 per tonne levy on thermal coal exports: $929 million (PBO pre-election costing);
- implement the original super profits tax on mining companies $35.58 billion (revised PBO costing as at MYEFO);
- make millionaires pay 50 per cent on their income over $1 million: $907 million (revised PBO costing as at MYEFO);
- reduce tax avoidance by taxing discretionary trusts (except those set up by farmers) the same as corporations: $3.3 billion (revised PBO costing as at MYEFO); and
- retain the carbon price with revenue of around $12.55 billion.

1.17 The Greens will not allow the Government to use the hype of a so-called budget emergency and the introduction of a temporary levy as part of an ideological campaign that targets the most vulnerable and disadvantaged in our community.

Recommendation

1.18 That the Senate not pass the bill in its current form, and instead pass an amendment making the tax increase permanent with additional measures to minimise tax avoidance.

Senator Peter Whish-Wilson
Senator for Tasmania

APPENDIX 1

Submissions received

Submission Number	Submitter
1	The Australia Institute
2	Mr Saul Eslake
3	Taxpayers Australia Inc.
4	The Tax Institute
5	Hayes Knight (NSW) Pty Ltd
6	The Association of Superannuation Funds of Australia Limited
7	Grattan Institute

APPENDIX 2

Additional information received

- Answers to written questions on notice, received from the Treasury on 6 June 2014.

Australian Government
The Treasury

6 June 2014

Dr Kathleen Dermody
Committee Secretary – Senate Economics Legislation Committee
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Dr Dermody

INQUIRY INTO THE TAX LAWS AMENDMENT (TEMPORARY BUDGET REPAIR LEVY) BILL 2014 AND RELATED BILLS

Thank you for your letter of 5 June 2014 on behalf of the Senate Economics Legislation Committee in relation to the Committee's inquiry into the Temporary Budget Repair Levy. As requested by the Committee we have reviewed issues that have been raised in submissions on which the Committee has sought further advice.

Minimisation and avoidance [raised by Taxpayers Australia, the Tax Institute and Hayes Knight]

A number of submissions raised concerns about the scope for individuals to avoid or minimise the effect of the levy. Examples included taking measures to change the year in which income or deductions are recognised to reduce their taxable income in the years to which the levy applies, or introducing arrangements to reduce their salary or wage by salary sacrificing for fringe benefits, including contributions to superannuation, or splitting salary through family trust arrangements.

As the income tax system, in large part, taxes individuals based on the amounts they receive and spend, individuals are able to affect the amount of tax they pay by altering their income or expenses for an income year. Similarly, as the tax system provides different treatment for certain types of payment or certain types of entity, individuals are able to choose to receive payments in a certain way or through a certain entity with the result that they receive different tax outcomes.

While such flexibility does provide individuals with some scope to reduce their tax liabilities, especially where the rates of tax change, it is a necessary feature of a tax in which liability is tied to individual's actual income for a year. Attributing payments to particular years regardless of when they actually occur or denying choices where they might result in tax benefits would be complex and impose considerable compliance burdens.

That said, there are substantial limits on this flexibility. As with elsewhere in the tax system, should individuals abuse this flexibility and seek to put in place arrangements driven solely by tax benefits, their behaviour will constitute tax avoidance and be subject to the general anti-avoidance rules in Part IVA of the *Income Tax Assessment Act 1936*. Further, there are specific anti-avoidance rules directed at preventing taxpayers from re-arranging their affairs to gain a tax benefit in the manner raised in submissions, such as rules in relation to the alienation of personal services income, pre-paid outgoings and advance expenditure.

Application [raised by the Tax Institute and Hayes Knight]

Concerns were also raised in submissions about the application of the measure, both in relation to the tax rates that have been altered and in respect of the different commencement dates in respect of income tax and fringe benefits tax.

There are a number of specific tax rates that are aligned with the highest rate of tax that can apply to the income of individuals. The alignment of these rates is generally for the purpose of ensuring the integrity of the tax system – eg. the relevant amounts could be a substitute for income that would otherwise be taxed at this rate.

In many cases it may either be impossible or impractical for the marginal rate for the relevant individual to be determined when the tax applies (for example, fringe benefits tax is paid by employers, not individuals, and so the employer will not be in a position to know the tax rates applicable to each of their individual employees). In some cases, such as withholding taxes or excess non-concessional contributions tax, the use of this rate is also intended to provide an incentive for certain behaviour (such as providing tax file numbers for data matching or limiting contributions into the concessional superannuation environment). As a result, not matching any increase would give rise to opportunities for tax minimisation and avoidance.

These rates fall into two broad categories. Some rates apply to amounts that are not income or not income of individuals and so would otherwise be taxed differently or not at all. Others apply to amounts that are income of individuals but otherwise might not necessarily be taxed at the relevant rate.

The rates that fall into the first category will be increased by these Bills to include the rate of the levy. As the amounts subject to these rates generally do not otherwise form part of the income of an individual, they could otherwise escape the application of the levy entirely (for example, amounts subject to fringe benefits tax are not included in the taxable income of any entity).

The rates that fall into the second category have not been increased in these Bills to include the rate of the levy. As these amounts already form part of the individual's income they will already be subject to the levy if the individual is in the appropriate income range (for example, employment termination remainders form part of an individual's taxable income and are included in calculating the levy payable on this income). If the Bills were to increase these rates, it would result the imposition of the levy twice in respect of the relevant amounts.

After considering the issues raised by submissions, we have reviewed the proposed changes to the various tax rates and still think that they give effect to the Government's policy intention. We also note in relation to excess non-concessional contributions tax that work is underway to implement the Government's 2014-15 Budget announcement to provide a mechanism to ensure individuals are not excessively taxed and we expect the Government will consult closely with the sector to ensure appropriate relief is available to all taxpayers with excess non-concessional contributions.

With regard to fringe benefits tax, while the rate of fringe benefits tax is aligned with the highest marginal rate of income tax applicable to individuals (plus the rate of the Medicare levy), the income tax and fringe benefits tax have always applied over different annual periods. As these periods differ, to have any rate apply over the same period would require at least one tax to have a split period in which two different rates would apply. The compliance burden imposed on business by such an arrangement would be entirely disproportionate to the benefits of alignment.

Instead, where the relevant rate is changed, it is accepted that there will be a period or periods in which rates are not aligned. It should be noted that the small size and temporary nature of the levy will limit the likelihood of taxpayers taking action to avoid the levy.

Complexity [raised by the Tax Institute and the Association of Superannuation Funds of Australia]

Other submissions raised concerns that the proposal may be unnecessarily complex either in design on in terms of the time given to entities to change their systems.

Our view is that changes to income tax rates are among the simplest of tax changes.

On the timing for implementation, tax rate changes have often been announced on Budget night for application to the next financial year. The burden that a change in rate creates for taxpayers, especially sophisticated taxpayers, is minor (especially given that a change would be required in any case for the already legislated changes to the Medicare levy to fund the National Disability Insurance Scheme). As discussed above, having different rates applying for different parts of the tax year creates significant compliance burdens. Further, having a different rate apply for particular amounts, especially when, as with Departing Australia Superannuation Payments, the timing of payments is largely within the control of the taxpayer, poses integrity risks and is therefore generally inappropriate.

Other issues

The Committee has also asked if Treasury had any other observations in respect of the matters raised in the submissions. While we have reviewed all submissions within the time allowed and have no further comment at this time, we would be glad to provide further information should the Committee identify any additional areas of specific interest.

I hope this information assists the Committee. Please do not hesitate to contact Tania Constable (who has taken over from Rob Donelly) or Chris Leggett should we be able to assist any further.

Yours sincerely

Robert Heferen
Executive Director
Revenue Group