

# Chapter 1

## Introduction and overview of the bill

1.1 On 30 October 2014, the Senate referred the provisions of the Tax and Superannuation Laws Amendment (2014 Measures No. 6) Bill 2014 (the bill) to the Senate Economics Legislation Committee for inquiry and report by 25 November 2014.

1.2 The bill, which contains five schedules, proposes to amend the *Income Tax Assessment Act 1997* (ITAA 1997), the *Taxation Administration Act 1953*, the *Fuel Tax Act 2006*, and the *Energy Grants (Cleaner Fuels) Scheme Regulations 2004* to:

- permit taxpayers to apply existing business restructure roll-overs when they hold relevant shares, revenue assets or trading stock (schedule 1);
- allow foreign pension funds access to the managed investment trust (MIT) withholding tax regime (schedule 2);
- provide an exemption from Australian tax on income derived by entities engaged by the Government of the United States of America (US) in connection with Force Posture Initiatives (schedule 3); and
- enable fuel tax credit and grant claimants to claim the higher rate of fuel tax credits as a result of the *Excise Tariff Proposal (No. 1) 2014* and the *Customs Tariff Proposal (No. 1) 2014* tabled in the House of Representatives (schedules 4 and 5).<sup>1</sup>

1.3 The Selection of Bills Committee stated that the bill was referred to the Economics Legislation Committee to:

- consider the appropriate rate of indexation for fuel and ensure fuel tax credit provisions operate efficiently as do grants calculated by reference to duty rates; and
- ensure that amendments have been effectively designed to remove tax impediments to certain business restructures, provide certainty for foreign pension fund investments in Australian managed investment trusts and implement tax aspects of the Force Posture Agreement with the US.<sup>2</sup>

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1 *Tax and Superannuation Laws Amendment (2014 Measures No. 6) Bill 2014*, Explanatory Memorandum, pp. 3–6.

2 Selection of Bills Committee, *Report No. 14 of 2014*, October 2014, Appendix 7.

## **Conduct of the inquiry**

1.4 The committee advertised the inquiry on its website and wrote to relevant stakeholders and other interested parties inviting submissions. The committee received 6 submissions, which are listed in the appendix. The committee did not hold a public hearing for this inquiry.

1.5 The committee thanks all of the individuals and organisations that contributed to this inquiry.

## **Structure of report**

1.6 This report comprises two chapters:

- Chapter 1 provides an overview of the bill and detail about the consideration of the bill by other parliamentary committees; and
- Chapter 2 discusses the issues and concerns about the bill that have been raised in public submissions received by the committee.

## **Overview**

### ***The schedules of the bill***

#### *Schedule 1—roll-overs for business restructures*

1.7 Schedule 1 proposes to amend the ITAA 1997 to extend the existing business restructure roll-overs available where a member of a company or unit trust can defer the income tax consequences of transactions that occur in the course of a business restructure.<sup>3</sup>

1.8 In his second reading speech, the Hon Stephen Ciobo MP, Parliamentary Secretary to the Treasurer, stated:

This bill will make it easier for firms to restructure by extending the business restructure rollover provisions. In the usual course of growing a business, a firm may reach a point where it needs to restructure...this could result in an income tax liability for the owners of the firm, even though no real change in ownership will take place.<sup>4</sup>

1.9 These amendments permit taxpayers to apply the roll-overs in circumstances where they hold the relevant share or units as revenue or trading stock. The separate but effectively identical business restructure roll-overs for shares and units in a unit trust are also consolidated into a single set of provisions in these amendments.<sup>5</sup>

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3 Explanatory Memorandum, p. 3.

4 The Hon Steven Ciobo MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 30 October 2014, p. 10.

5 Explanatory Memorandum, p. 3.

1.10 The schedule also proposes to amend the ITAA 1997 to:

- allow roll-overs for trusts transferring all their assets to a trust or company to apply where the new trust or company holds rights needed to facilitate the transfer;
- address a technical defect in the operation of the business restructure roll-overs in relation to revenue assets; and
- clarify that the business restructure roll-overs only apply where the new asset has the same character, as a revenue asset or trading stock, as the original asset.<sup>6</sup>

1.11 The amendments extending the business restructure roll-overs in relation to revenue assets and trading stock have effect from 8 May 2012 for shares and 10 May 2012 for unitholders in a unit trust who exchange their units for shares in a company. The technical amendment to the provisions in the business restructure for revenue assets also applies from 8 May 2012, as do the amendments introducing the same character rules for assets acquired in a business restructure.<sup>7</sup>

1.12 The amendments relating to roll-overs where trusts transfer assets apply to transfers after 1 November 2008 for transfers between trusts and from 10 May 2011 from trusts for companies.<sup>8</sup>

1.13 The technical amendments to the revenue asset roll-overs and to certain capital gains tax trust restructure roll-overs were announced in the 2011–12 Budget.<sup>9</sup> The amendments providing revenue asset and trading stock roll-overs where interest holders exchange their units in a trust for shares in a company were announced as part of the 2011–12 Mid-Year Economic Fiscal Outlook. The amendments broadening the existing revenue asset and trading stock roll-overs that apply where interest holders exchange their shares in a company for shares in another company were announced in the 2012–13 Budget.

1.14 On 14 December 2013, the Assistant Treasurer announced that the government intended to proceed with all the components in this measure.<sup>10</sup>

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6 Explanatory Memorandum, p. 3.

7 Explanatory Memorandum, pp. 3–4.

8 Explanatory Memorandum, p. 3.

9 Explanatory Memorandum, p. 4.

10 Senator the Hon Arthur Sinodinos AO, Assistant Treasurer of the Commonwealth of Australia, 'Integrity restored to Australia's taxation system', Media Release, 14 December 2013.

*Schedule 2—managed investment trust withholding regime for foreign pension funds*

1.15 Schedule 2 of the bill proposes to amend the ITAA 1997 and the *Taxation Administration Act 1953* to ensure that pension funds can access the MIT withholding tax regime, applying to income years commencing on or after 1 July 2008.<sup>11</sup>

1.16 This measure was signalled by the Treasurer and the Assistant Treasurer on 6 November 2013, with the announcement of a new tax regime for managed investment trusts. The Assistant Treasurer stated that:

The new tax regime for Managed Investment Trusts...reaffirms our commitment to growing Australia's financial services industry by making them more attractive in foreign markets. It will establish MITs in their own right with a transparent framework, aimed at driving demand.<sup>12</sup>

1.17 The Hon Stephen Ciobo MP informed the House of Representatives that the MIT withholding tax regime did not currently apply to payments made to a trust without 'presently entitled beneficiaries', causing a payment from a managed investment trust to a foreign pension fund to be taxed at the highest marginal tax rate. Mr Ciobo continued by stating that:

The amendments in this bill mean that foreign pension funds will be treated as the final beneficiary of a fund payment and will have access to the concessional managed investment trust withholding tax.<sup>13</sup>

*Schedule 3—income tax exemption for Force Posture Initiatives*

1.18 Schedule 3 of the bill proposes to amend the *Income Tax Assessment Act 1936* to provide an exemption from Australian tax on income derived by certain entities involved with the Force Posture Initiatives in Australia, with the exemption taking effect from the 2014–15 income year and later years.<sup>14</sup>

1.19 The Force Posture Agreement (the Agreement), first announced in 2011, was signed by the Government of Australia and the Government of the US on 12 August 2014, and provides a legal, policy and financial framework to govern the Force Posture Initiatives in Australia.<sup>15</sup> The Department of Defence informed the committee that:

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11 Explanatory Memorandum, pp 4–5.

12 The Hon Joe Hockey, MP, Treasurer of the Commonwealth of Australia, with Senator the Hon. Arthur Sinodinos AO, Assistant Treasurer of the Commonwealth of Australia, 'Restoring integrity in the Australian tax system', Joint Media Release No. 017, 6 November 2013.

13 The Hon Steven Ciobo MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 30 October 2014, p. 10.

14 Explanatory Memorandum, p. 5.

15 Explanatory Memorandum, p. 37.

First announced in 2011 by then-Prime Minister Gillard and US President Obama, the US Force Posture Initiatives in Australia currently involve annual rotational US Marine Corps (USMC) deployments and enhanced aircraft cooperation activities with the US Air Force (USAF) in northern Australia. The USMC rotations occur for around six months at a time during the northern dry season. This year's rotation comprised around 1150 personnel, with the size of the rotations to increase in the coming years to around 2500 personnel, equipment and aircraft. The enhanced aircraft cooperation initiative involves an extension of long standing bilateral activities, building on USAF visits for exercising and training. The US Force Posture Initiatives in Australia are an important new element of the Australia US alliance and are an expression of Australia's support for a strong US presence in the Asia-Pacific.<sup>16</sup>

1.20 The Agreement provides a legal, policy and financial framework to govern the US Force Posture Initiatives in Australia and contains important protections and assurances for both countries. Relevant to the committee's inquiry, the Agreement includes an exemption from Australian tax for Australian source income derived by US contractors in connection with the initiatives in Australia, providing that the relevant income is taxable in the US. According to the Department of Defence, the amendment is intended to avoid a situation where persons or companies doing work exclusively for the US Government in Australia under contract to the US Government for the purposes of the US Force Posture Initiatives are not taxed in both jurisdictions.<sup>17</sup> This schedule incorporates the necessary amendments to the tax law to legislate this portion of the agreement.<sup>18</sup>

#### *Schedule 4 and 5—fuel tax credits and grants*

1.21 Schedules 4 and 5 propose to amend the *Fuel Tax Act 2006* and the *Energy Grants (Cleaner Fuels) Scheme Regulations 2004*. The schedules are intended to ensure that changes to the amount of excise and excise-equivalent customs duty payable by taxpayers as a result of any tariff proposals tabled in the House of Representatives are taken into account in calculating fuel tax credits and the cleaner fuels grant for biodiesel and renewable diesel. This measure includes the higher rate of fuel tax credits and grant amounts contained in the Excise Tariff Proposal (No. 1) 2014 and the Customs Tariff Proposal (No. 1) 2014.<sup>19</sup>

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16 *Submission 5*, p. [1].

17 *Submission 5*, p. [2].

18 The Hon Steven Ciobo MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 30 October 2014, p. 11.

19 Explanatory Memorandum, p. 43.

1.22 These amendments also make subsequent changes to the fuel tax credit attribution rules consistent with the introduction of fuel indexation under the Excise Tariff Proposal (No. 1) 2014 and the Customs Tariff Proposal (No. 1) 2014.<sup>20</sup>

1.23 The amendments will apply generally from 10 November 2014, with the consequential change to the attribution rules applying from 1 July 2014.<sup>21</sup>

1.24 The government announced the reintroduction of the indexation of fuel duty excise in the 2014–15 Budget.<sup>22</sup> The changes to the fuel tax credit attribution rules were included in the Fuel Indexation (Road Funding) Bill 2014 that was introduced to Parliament on 19 June 2014. The amendments to take into account the effect of the tariff proposals in determining fuel tax credits and grants have not previously been announced.<sup>23</sup>

1.25 The proposed changes in this bill will allow businesses who claim fuel tax credits or grants under the Cleaner Fuels Grants Scheme to receive the appropriate credit or grant when a tariff proposal increases the rate of fuel duty being collected. Mr Ciobo stated that:

...these amendments will ensure businesses will be able to receive fuel tax credits equal to the rate of fuel tax duty specified in the tariff proposal straight away. This will save business from having to claim extra fuel tax credits at a later date and avoid any negative cash flow consequences that result from the use of tariff proposals.<sup>24</sup>

## **Consideration of aspects of the bill by other committees**

### ***Parliamentary Joint Committee on Human Rights***

1.26 One of the functions of the Parliamentary Joint Committee on Human Rights (PJCHR) is to examine bills for compatibility with human rights and to report to both Houses of the Parliament on that issue.<sup>25</sup> The PJCHR considered that the bill was 'compatible with human rights'.<sup>26</sup>

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20 Explanatory Memorandum, p. 43.

21 Explanatory Memorandum, p. 6.

22 The Hon Steven Ciobo MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 30 October 2014, p. 11.

23 Explanatory Memorandum, p. 6.

24 The Hon Steven Ciobo MP, Parliamentary Secretary to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 30 October 2014, p. 11.

25 *Human Rights (Parliamentary Scrutiny) Act 2011*, s. 7(a).

26 Parliamentary Joint Committee on Human Rights, *Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Bills introduced 20 – 30 October 2014, Legislative Instruments received 20 September – 10 October 2014: Fifteenth Report of the 44<sup>th</sup> Parliament*, 14 November 2014, p. 9.

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***Joint Standing Committee on Treaties***

1.27 The Joint Standing Committee on Treaties (JSCOT) was appointed to inquire and report on matters arising from treaties or any question relating to a treaty or other international instrument.<sup>27</sup> The Force Posture Agreement was tabled on 26 August 2014 and was to be considered by JSCOT. Defence informed the committee that JSCOT held a public hearing on the Agreement on 22 September 2014, with JSCOT due to report on the Agreement by 26 November 2014.

1.28 The Department of Defence noted that, given the important protections and assurances provided by the Agreement, it was 'strongly in Australia's national interest for the Agreement to enter into force as soon as is practicable and well ahead of the arrival of next year's rotation of US Marines (which is expected to occur around March–April 2015)'. It noted that a timely consideration of Schedule 3 of the bill by the Parliament was desirable. According to the Department of Defence, on 12 August 2014, in order to expedite the Agreement coming into force, the Minister for Defence wrote to the Chair of JSCOT, Mr Wyatt Roy MP. The minister was seeking JSCOT's concurrence that 'the proposed amendment to the Act arising from the Agreement could be introduced into Parliament during the period in which JSCOT was likely to be considering the Agreement'. On 26 August 2014, Mr Roy advised the minister that JSCOT had agreed to this request.<sup>28</sup>

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27 Joint Standing Committee on Treaties, resolution of appointment.

28 *Submission 5*, p. [2].

