

# Chapter 2

## Key Issues

2.1 As noted in chapter 1, the bill contains five schedules that propose to amend various taxation laws 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 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 (schedules 4 and 5).

2.2 This chapter examines discrete sections of schedules 1, 3, 4 and 5 to the bill on which the committee received evidence. The committee did not receive evidence on schedule 2.

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

#### *Stakeholder views on schedule 1*

2.3 Pitcher Partners, an accountancy firm, submitted that the relation between subsection 615-30(3) and 615-30(4) is unclear. They interpreted subsection 615-30(3) to require an interposed company to take 'positive action' to make a choice within specified deadlines, for example by preparing a document as evidence that a choice was made. However, subsection 615-30(4) states that the manner in which an interposed company prepares its income tax return is considered sufficient evidence of the making of a choice.<sup>1</sup>

2.4 It was suggested that the ambiguity in the subsections arises because the means by which a 'choice' is evidenced is not made clear. They asked, 'In particular, does subsection 615-30(4) mean that the way a company prepares its tax return is evidence that the choice was made *within the required deadlines*?'<sup>2</sup>

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1 Pitcher Partners, *Submission 4*, p. 1.

2 Pitcher Partners, *Submission 4*, p. 1. [emphasis added]

### ***Committee views on schedule 1***

2.5 The committee notes the concerns raised by Pitcher Partners and would like to draw the issues raised in the evidence to the attention of the government for clarification.

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

#### ***Stakeholder views on schedule 3***

2.6 In its submission, the Department of Defence informed the committee that in order for Australia to fulfil its obligations under the Force Posture Agreement, and to allow for its eventual entry into service, 'an amendment to the Act is required as set out in schedule 3'. As noted in the previous chapter, the proposed amendment:

...would ensure that income derived by a person or company (other than a company incorporated in Australia)—as a result of work done exclusively for the US Government in Australia under contract to the US Government for the purposes of the US Force Posture Initiatives in Australia—is not taxed in Australia; provided that income is taxed in the US.<sup>3</sup>

2.7 The intention of the amendment is to avoid a situation whereby such persons or companies would be taxed in both jurisdictions. The Department of Defence made clear that the proposed tax exemption on income 'derived by certain entities engaged by the US Government would only extend to those specific entities performing duties directly connected with the US Force Posture Initiatives in Australia'.<sup>4</sup>

#### ***Committee view on schedule 3***

2.8 The committee understands the principle of fairness that underpins schedule 3 and the importance of its passage through the parliament.

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

#### ***Stakeholder views on schedules 4 and 5***

2.9 In their submissions the Minerals Council of Australia (MCA), the Australian Trucking Association (ATA) and the Australian Institute of Petroleum (AIP) expressed the view that this schedule would ensure that the increase in fuel excise as a result of indexation was fully offset by fuel tax credits and the cleaner fuels grants for eligible business uses.<sup>5</sup>

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

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

5 See the Minerals Council of Australia, *Submission 1*; Australian Trucking Association, *Submission 2*; Australian Institute of Petroleum, *Submission 3*.

2.10 The MCA stated that it considered the passage of this bill to be timely. The MCA added:

Aligning fuel tax credits (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 remove community electricity generation.<sup>6</sup>

2.11 The ATA explained that this schedule was particularly important to the trucking industry:

The concept underlying the fuel tax credits system is that trucking business should be able to claim back the full amount of tax they paid on their fuel purchases, minus a road user charge to recover the cost of the industry's impact on the road network.<sup>7</sup>

2.12 The ATA also stated in its submission that the fuel tax credit system was based on the policy principle that intermediate business inputs, including fuel, should only be taxed to correct externalities such as the use of roadways by the trucking industry.<sup>8</sup>

2.13 The AIP emphasised its support for the policy principles of the fuel tax credit system due to the relief it delivers from the burden of excise being provided for business inputs to production.<sup>9</sup> The AIP argued that:

...any excise (or excise-equivalent customs duty) levied on liquid or gaseous fuel used for non-transport purposes should be eligible for a Fuel Tax Credit (FTC) and that business can claim FTCs for eligible transport purposes.<sup>10</sup>

#### *Mechanism to remove excise*

2.14 The MCA highlighted that the FTCs do not consist of a subsidy, but rather consist of 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'.<sup>11</sup> The MCA added that FTCs were in place to ensure that there was not an incidence of 'double taxation'.<sup>12</sup>

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6 Minerals Council of Australia, *Submission 1*, p. 1.

7 Australian Trucking Association, *Submission 2*, p. 3.

8 Australian Trucking Association, *Submission 2*, p. 3.

9 Australian Institute of Petroleum, *Submission 3*, p. 2.

10 Australian Institute of Petroleum, *Submission 3*, p. 2.

11 Minerals Council of Australia, *Submission 1*, p. 2.

12 Minerals Council of Australia, *Submission 1*, p. 2.

2.15 The AIP argued that FTCs have a direct impact on any industries that use fuel extensively and the concept was similar to input tax credit for GST paid on business inputs:

If indirect taxes paid by producers are not credited or rebated, it distorts relative prices and therefore production and consumption decisions and patterns due to the uneven incidence of effective tax rates, particularly for industries that use fuel more intensively.<sup>13</sup>

2.16 In this way, the reduction of the excise helps to keep Australian export industries competitive with countries that do not levy taxes on fuels in areas such as mining or agriculture.<sup>14</sup>

### *Importance of FTCs for regional Australia*

2.17 In its submission, the MCA explained that FTCs were essential for regional businesses, due to their distance from the electricity grid, road networks and characteristic of industries that use heavy equipment, such as large vehicles, rail and mining equipment. In addition, many regional businesses operate on private roads, rather than public roads, while requiring diesel generators for electricity.<sup>15</sup> This includes the agriculture, forestry, fishing, manufacturing, accommodation and construction industries, among others.

2.18 The MCA stated that of the claims for FTCs in 2012–13 the 'largest single share was by agriculture, forestry and fishing operations...45 per cent of total claims' while mining accounts for 'the largest share of claims by value (39 per cent)'.<sup>16</sup>

2.19 Similarly, the National Farmers' Federation highlighted the importance of FTCs to agriculture, forestry and fishing operations. It argued that:

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 agriculture.<sup>17</sup>

2.20 The National Farmers' Federation supported the timely passage of schedule 4, arguing that aligning FTCs with the increased rate of fuel excise would 'ensure that the FTC scheme continues to meet its policy objective to remove excise from a key business input and remote community electricity generation'.<sup>18</sup>

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13 Australian Institute of Petroleum, *Submission 3*, p. 2.

14 Minerals Council of Australia, *Submission 1*, p. 4.

15 Minerals Council of Australia, *Submission 1*, p. 3.

16 Minerals Council of Australia, *Submission 1*, p. 3.

17 *Submission 6*, p. [3].

18 *Submission 6*, p. [1].

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*Tariff proposals not ratified*

2.21 The Explanatory Memorandum identified a problem should legislation to ratify the tariff proposals not come into force before the close of the session of Parliament in which it was moved or the expiration of 12 months after the tariff proposal was moved in the House of Representatives. It noted that the effect of the tariff proposal ceases to be taken to have had the effect of amending the *Excise Act 1901* and the *Excise Tariff Act 1921* or the *Customs Act 1901* and the *Customs Tariff Act 1995*, so as to alter the amount of fuel tax credit entitlement.<sup>19</sup>

2.22 In such an event, item 4 of Schedule 4 prescribes that fuel tax credit claimants will have a 'fuel tax adjustment' under section 44-5 of the *Fuel Tax Act 2006*. This amount would consist of the difference between the amount of fuel tax credits claimed and the amount that is claimable following the expiration of 12 months after the tariff proposal was moved, or the close of the session of Parliament.<sup>20</sup>

2.23 The ATA commented on this particular section of the bill, noting that without it, small fleet operators and owner-drivers would have to bear the cost burden of underpayments as a consequence of the increased fuel tax rate. The ATA stated that the 'new section would ensure that tariff proposals are taken into account in working out the amount of fuel tax credits that businesses can claim'.<sup>21</sup>

2.24 However, in the event that Parliament is unable to ratify the tariff proposals used for calculating a business' fuel tax credits before 20 October 2015, businesses would be required to refund the additional fuel tax credits received as a result of this bill. The ATA continued by stating that 'requiring operators to pay back their extra fuel tax credits would only make sense if they could also claim back the extra fuel they paid'. This would not be the case, as the money would be refunded to fuel manufacturers and fuel importers.<sup>22</sup>

*Claims through the business activity statement*

2.25 In its submission, the ATA raised an issue with the fuel tax credits that would be claimed through quarterly business activity statements (BAS). Currently, businesses will be required to calculate their fuel tax credits based on the tax rate that applied on the first day of the tax period to which the credit is attributable for fuel acquired, manufactured or imported from 1 July 2015. While this will have no effect on monthly BAS payers,<sup>23</sup> quarterly BAS payers are unable to claim the fuel tax

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19 Explanatory Memorandum, p. 47.

20 Explanatory Memorandum, p. 47.

21 Australian Trucking Association, *Submission 2*, p. 5.

22 Australian Trucking Association, *Submission 2*, p. 7.

23 The tariff proposals index the fuel rate on 1 February and 1 August. See *Excise Tariff Proposal (No. 1)* and *Customs Tariff Proposal (No. 1) 2014*.

credits until two months after indexation (first day of April and October, rather than 1 February and 1 August).<sup>24</sup>

2.26 According to the ATA, schedule 4 would remove the 1 July 2015 change over, resulting in businesses being able to continue to calculate their fuel tax credits based on the fuel tax rate applying on the day that the fuel was acquired or imported, taking effect for tax periods starting on or after 1 July 2014.<sup>25</sup>

### ***Committee view on schedules 4 and 5***

2.27 The committee notes that these schedules remove the incidence of fuel duty for business activities arising from the implementation of the fuel excise indexation budget measure. The committee acknowledges, and draws the government's attention to, the concerns that the submissions have raised with schedule 4 relating to the fuel tax adjustment.

2.28 The committee reaffirms the importance of saving business from having to claim extra fuel tax credits at a later date, while avoiding any negative cash flow consequences that result from the use of tariff proposals.

### **Recommendation 1**

**2.29 The committee recommends that the Senate pass the bill.**

**Senator Sean Edwards**  
**Chair**

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24 Australian Trucking Association, *Submission 2*, p. 6.

25 Australian Trucking Association, *Submission 2*, p. 6.