



Parliament of Australia
Parliamentary Budget Office

Phil Bowen PSM FCPA
Parliamentary Budget Officer

Mr Bert van Manen MP
Chair
Standing Committee on Tax and Revenue
Parliament House
CANBERRA ACT 2600

Dear Mr van Manen

Further to my letter of 20 August 2015, attached is a copy of the Parliamentary Budget Office's submission to the Standing Committee on Tax and Revenue inquiry into the Tax Expenditures Statement.

Yours sincerely



Phil Bowen

17 September 2015



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Submission to the Standing Committee on Tax and Revenue inquiry into the Tax Expenditures Statement

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Executive Summary

The Parliamentary Budget Office's (PBO) mandate includes the preparation of submissions to inquiries of Parliamentary Committees on request, with the requests and the PBO's responses to be made public.

The Chair of the House of Representatives Committee on Tax and Revenue wrote to the PBO in August 2015 requesting the preparation of a submission to the Committee's inquiry into the Tax Expenditures Statement (TES).

This submission focuses on the contribution of the TES to budget transparency and the role it plays in informing public debate and discussion on the budget and on fiscal sustainability.

This submission is informed by the PBO's experience as a user of the TES in the production of policy costings and budget analyses.

The TES is prepared under the revenue forgone method, which does not take into account behavioural responses. The TES also does not take account of any impacts on government outlays. While there are sound reasons for this approach, and it is in line with international practice, it means that the Commonwealth Treasury's (Treasury) estimates of tax expenditure are not the same as the budget impact of their abolition.

The fact that Treasury's estimates of tax expenditure are often used inappropriately in public debates as a proxy for the budget impact of tax concessions points to a significant unmet demand in the community.

Treasury's estimates of tax expenditures cover the forward estimates period of the budget. However in some cases the financial impact of tax expenditures could be significantly different beyond the forward estimates. In these circumstances there would be value in the TES including an estimate of the mature impact of such tax expenditures.

A key challenge for tax expenditure estimates is the choice of an appropriate benchmark. While ideally this would be based around a consistent set of clear principles, in practice there is a need to recognise entrenched features of the tax system. In some circumstances there could be value in adopting the Canadian approach of quantifying as memorandum items the value of some elements of the tax system that are not technically tax expenditures.

Reliability ratings for tax expenditure estimates are not a reflection on the quality of the analysis underpinning the estimate, but reflect the reality that estimates are subject to uncertainty. The level of uncertainty will vary due to factors such as: the quality of the available data; the assumptions that are needed to complete the estimate; and the volatility of the underlying costing base.

While improving the reliability of tax expenditure estimates is a worthy goal, significant progress is unlikely to be achieved without attention to the underlying factors driving the uncertainty of estimates—in particular, the availability of relevant high quality data. This raises a policy question of whether the improved reliability of tax expenditure estimates justifies an increase in the reporting burden on taxpayers.

While the submission identifies some areas where the TES could usefully be enhanced, these enhancements would require additional resources for the Treasury and the Australian Taxation Office (ATO).

Introduction

- 1 The purpose of the PBO is to inform the Parliament by providing independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals.
- 2 In particular, the PBO aims to help level the playing field for all parliamentarians by providing access to costing and budget analysis services, and enhance the transparency and public understanding of election commitments and the budget and fiscal policy settings.
- 3 The PBO's primary interest in the TES is in the information it provides about the budgetary impact of specific elements of the tax system, and the consequential impact on overall fiscal sustainability. The TES is often used as a starting point for those looking at options to reform the tax system. The PBO also often uses the models underlying the TES as a starting point for costings.
- 4 The tax expenditure concept is based on the idea that 'tax subsidies constitute a form of government spending and thus are essentially linked to the methods of government spending traditionally covered in budget documents.'¹ Tax expenditures are not inherently inferior to direct expenditures—there can be sound reasons why concessional tax treatment is a more efficient way of achieving a policy objective.
- 5 While the tax expenditure concept has its critics,² it is generally accepted that the regular publication of tax expenditures helps inform the trade-offs inherent in public policy debate on the Government's annual Budget by allowing for a comparison of the costs and benefits of tax expenditures with direct expenditures. The TES, like the Government's annual Budget, is not itself a cost-benefit analysis document. However, unlike direct expenditures, interactions between tax expenditure estimates mean that it is not appropriate to sum the individual estimates in the TES.
- 6 Australia's TES is recognised as being one of, if not the most, comprehensive in the world.³ For example, an assessment of New Zealand's tax expenditure reporting used Australia's TES as a benchmark on the grounds that 'Australia appears to go furthest in meeting "best practice" standards.'⁴

1 Surrey, SS & McDaniel, PR 1976, 'The Tax Expenditure Concept and the Budget Reform Act of 1974', *Boston College Law Review*, vol. 17, no. 5, p. 679, available at: <http://lawdigitalcommons.bc.edu/bclr/vol17/iss5/1>

2 Some supporters of smaller government draw a distinction between tax expenditures (which reduce the overall tax burden) and direct expenditure (which requires a higher overall tax burden).

3 Dunn, J 2014, *Additional Paper—Note on Tax Expenditures and Fiscal Transparency: 'Best Practices' and Current New Zealand Reporting*, Transparency International New Zealand, p. 5, available at: <http://www.transparency.org.nz/docs/2013/Additional-Paper-Tax-Expenditures-Integrity-Plus-NZ-2013-NIS.pdf>

4 Ibid, p. 3.

- 7 More comprehensive reporting of tax expenditures does not necessarily mean that Australia has a more concessional tax system than other countries. Caution is needed in making international comparisons of tax expenditures, as countries use different approaches to quantifying and reporting tax expenditures, as well as having different tax systems and tax expenditure benchmarks.⁵
- 8 As comprehensive as Australia's TES is, it still has limitations. In particular, the usefulness of the TES is limited to what has actually been estimated. Estimates in the TES are not the same as the budget impact of abolishing the tax concession, but are often used inappropriately this way in policy debates.
- 9 While it is valid to criticise those who use the TES in a way that it was not intended or designed for, the fact that it is used this way points to a significant unmet demand in the community. On the other hand, calls for the TES to provide estimates of budget impacts of individual tax concessions need to be mindful of the highly resource intensive nature of producing estimates of this type, and the significant technical challenges it can present.
- 10 The remainder of this submission expands on four specific issues in relation to tax expenditures: the different methods for measuring tax expenditures; the value of longer term tax expenditure estimates; the challenges posed in choosing an appropriate and consistent benchmark for estimating tax expenditures; and the interpretation of the reliability of tax expenditure estimates.

Issues

Reporting methods

- 11 One of the roles of the PBO is providing analysis of the budget cycle and Australia's fiscal sustainability. The TES provides comprehensive information on one input to Australia's budget position and fiscal sustainability. The PBO's primary interest is how effectively the information provided in the TES informs public debate of fiscal sustainability, and whether the approach taken to estimating the tax expenditures is the most appropriate to this end.
- 12 Conceptually, when considering possible approaches for estimating tax expenditures, there are three components that can vary:
 - whether behavioural responses are taken into account
 - whether flow-on effects are taken into account only for revenue or for both revenue and expenditure
 - the breadth of policy being investigated, which may be a single policy or a policy package.
- 13 There are trade-offs in choosing to use any particular points along these axes, particularly around the resources devoted to estimating tax expenditures and the number of assumptions required.

5 OECD 2010, *Choosing a Broad Base – Low Rate Approach to Taxation*, OECD Tax Policy Studies, no. 19, OECD Publishing, p. 115, available at: http://www.oecd-ilibrary.org/taxation/choosing-a-broad-base-low-rate-approach-to-taxation_9789264091320-en; Directorate General for Taxation and Customs Union & Directorate General for Economic and Financial Affairs 2013, *Tax Reforms in EU Member States 2013: Tax Policy Challenges for Economic Growth and Fiscal Sustainability*, Working paper No. 38, European Commission, Luxembourg, pp. 55-64, available at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_38.pdf

- 14 Commonly accepted methods of reporting on tax expenditures vary in the extent of behavioural responses and flow-on effects that are taken into account, and are typically used for individual policies rather than packages (that is, they have narrow breadth). Several methods and their relative advantages are discussed below.
- **Revenue forgone**
Revenue forgone measures the benefit to the taxpayer of a tax concession. It is a calculation of the number of times a tax concession is accessed multiplied by the average size of the concession. The estimates are static—they do not take into account any behavioural change by the taxpayer. Of the methods discussed here, this method requires the fewest assumptions, the least judgement, and the fewest resources to produce.
 - **Expenditure equivalent**
The expenditure equivalent estimates the amount that would need to be paid to the taxpayer through the outlays system as a taxable grant in order to provide the same benefit to the taxpayer as provided by the tax expenditure. The estimates differ from revenue forgone calculations because they are grossed up by an amount equal to one minus the taxpayer's marginal tax rate.
 - **Revenue gain**
Revenue gain estimates the revenue impact of a tax concession. This differs from the revenue forgone method since the behaviour of the taxpayer can change as policies change; indeed, the objective of tax concessions is often to achieve behavioural change. The revenue gain method attempts to answer the question: how would revenue collections differ if a tax concession were abolished? The revenue gain method is more resource intensive and requires more assumptions to be made, but also provides estimates that are more meaningful for public policy debate.
 - **Policy costing**
A policy costing estimates the budget impact from a policy change. This differs from the revenue gain method in that it includes related expenditure impacts and the impact of behavioural change on both revenue and expenditure. A policy costing in the tax expenditure context attempts to answer the question: how would the budget bottom line differ if a tax concession were abolished? The policy costing approach is comprehensive and the most resource intensive,⁶ but would provide estimates equivalent to those published for measures in the budget papers.
- 15 Most countries that report tax expenditures use the revenue forgone method.⁷ Fewer countries use the revenue gain method. Australia's TES primarily uses the revenue forgone method but also includes the revenue gain approach for 10 large tax expenditures. While revenue forgone estimates are simpler to calculate and require fewer assumptions, revenue gain and policy costing estimates relate more directly to the budget impact, and thus to Australia's fiscal sustainability. The other approach, expenditure equivalent, is seldom used in practice as it conveys similar information to the revenue forgone method but is more complex.

6 International Monetary Fund 2013, 'The Functions and Impact of Fiscal Councils', *IMF Policy Paper 16 July 2013*, IMF, available at: <https://www.imf.org/external/np/pp/eng/2013/071613.pdf>

7 Burton, M & Sadiq, K 2013, *Tax Expenditure Management: A Critical Assessment*, Cambridge University Press

- 16 Given the public policy interest in quantifying tax expenditures, the wider use of revenue gain estimates for large TES items would provide a more appropriate alternative to the widely cited revenue forgone estimates. That said, the benefits of this approach need to be balanced against the resources required to produce additional revenue gain estimates.
- 17 Typically, the methods discussed above are used to estimate the cost of individual tax concessions, rather than a package of relevant policies that includes all relevant tax concessions. While this is useful in terms of increasing transparency for individual components of the tax system, it is problematic when more breadth is required. In particular, adding together the separate components does not take into account the interactions between tax expenditures. On the occasions that public debate is interested in an aggregate figure on tax expenditures, the reported figures in the TES are unable to accommodate.
- 18 One method of dealing with the non-additivity of the tax expenditure items is to take an aggregate ('top-down') approach rather than beginning with the impact of individual tax expenditures ('bottom-up'). Tax gap analysis measures the difference between the modelled theoretically optimal tax collection and the actual tax collected.⁸ In the United Kingdom, HM Revenue and Customs publishes annual estimates of tax gaps.⁹ The tax gap for the Goods and Services Tax (GST) has previously been examined in the Australian context by the ATO¹⁰ and in the international context by the Organisation for Economic Co-operation and Development (OECD).¹¹ One limitation of this method is that it does not provide information about the contributions of different tax concessions—if we wish to know the relative impact of different policies, we must begin with a 'bottom-up' approach. When estimated in a way that includes tax expenditures, the tax gap would comprise tax expenditures, taxpayer compliance, and substantial measurement and methodological issues. It is thus a difficult and time-consuming exercise to estimate overall tax expenditures using this approach.
- 19 One possibility is to adopt a targeted approach, investigating the interactions for large tax expenditure items when it is likely to make a material difference to the estimate or for items that generate significant public interest.

8 Tax gap can refer to either the compliance gap, or how much taxpayers are legally obliged to pay compared to how much they do pay, or to a broader gap that incorporates tax expenditures in the modelled estimate. While some examples here are looking at the compliance gap, a similar approach can be applied for the broader tax gap concept.

9 HM Revenue & Customs 2014, *Measuring tax gaps 2014 edition: Tax gap estimates for 2012-13*, HMRC, available at: <https://www.gov.uk/government/statistics/measuring-tax-gaps>

10 Australian Taxation Office 2012, *Measuring tax gaps in Australia for the GST and the LCT*, ATO, Canberra, available at: [https://www.ato.gov.au/Business/BUS/Measuring-tax-gaps-in-Australia-for-the-goods-and-services-tax-\(GST\)-and-the-luxury-car-tax-\(LCT\)/](https://www.ato.gov.au/Business/BUS/Measuring-tax-gaps-in-Australia-for-the-goods-and-services-tax-(GST)-and-the-luxury-car-tax-(LCT)/)

11 See for example, OECD 2014, *Consumption Tax Trends 2014: VAT/GST and Excise Rates, Trends and Policy Issues*, OECD publishing, which provides estimates of the VAT Revenue Ratio.

Longer term estimates

- 20 In some cases, the longer term impacts of tax expenditures can be significantly different from the impacts over the forward estimates. In line with the costing guidelines from the Charter of Budget Honesty,¹² it is preferable for items that mature beyond the forward estimates to include a statement about the financial impact in the relevant years.
- 21 For the purposes of identifying the impact of tax expenditures on fiscal sustainability, longer term estimates would be useful in these cases. Some of the tax expenditures have cumulative impacts so the forward estimates alone may not provide the full picture.
- 22 In addition, the interactions between different items of tax expenditure can become more substantial in the longer term. For example there is currently a tax expenditure for the concessional treatment of superannuation contributions. However, changes in superannuation contributions flow through to the superannuation earnings (which is also a tax expenditure item) and to, for instance, other forms of savings and the Age Pension.
- 23 It may be appropriate to have a targeted approach, where longer term estimates are provided in cases where it is likely to inform public debate about fiscal sustainability. Looking at longer timeframes also requires more resources since estimates of tax expenditure first require disaggregated estimates of tax collections, and these do not exist for the long term. The validity of previously held assumptions must also be re-examined for the longer timeframe.

TES benchmarks

- 24 The value of a tax expenditure item relating to an activity is defined as the difference between the tax that is currently collected on the activity and the tax that would be collected on the same activity under a non-concessional (benchmark) tax system. In order to determine how much tax would be collected under a non-concessional tax system, analysts of tax expenditures construct tax benchmarks to represent the 'regular' tax arrangements that apply broadly to similar classes of taxpayer or types of activity. The design of the benchmarks used in tax expenditure analysis has a major bearing on what is identified as a tax expenditure and on the magnitude of the tax expenditure estimates.
- 25 There are eight benchmarks used in the TES, each one corresponding to a particular part of the taxation system. Five of these benchmarks (personal income tax, business tax, retirement savings taxation, fringe benefits tax and capital gains tax) are based on a comprehensive income tax, using a Schanz-Haig-Simons (SHS) definition¹³ of economic income as the basis for the benchmark. The remaining three benchmarks (commodity and other indirect taxes, natural resource taxes and the GST) are based around the general design features of each type of taxation, including the method of tax, the 'standard'¹⁴ tax rates and the 'standard' tax base for each type of taxation.

12 Department of the Treasury & Department of Finance and Deregulation 2012, *Charter of Budget Honesty - Policy Costing Guidelines*, Finance, Canberra, available at: <http://www.finance.gov.au/publications/charter-of-budget-honesty/>

13 The Schanz-Haig-Simons definition is a widely accepted and utilised definition of economic income. Income in a period is defined as equal to the increase in the entity's economic wealth (stock of assets) over the period, plus the entity's consumption in the period, where consumption includes all expenditures except those incurred in earning or producing income.

14 'Standard' meaning the default or most common rate or base that applies to transactions that are subject to the relevant tax.

- 26 The choice of the system in which these benchmarks are based is a critical element of tax expenditure analysis as it determines what elements of a tax system are identified as tax expenditures. For instance:
- The retirement income benchmark defines the benchmark tax system in terms of a SHS definition of economic income which can be characterised as treating contributions as taxable income, earnings and capital gains as taxable income and withdrawals from the system as exempt (TTE). An alternative benchmark could be based on a consumption tax benchmark on the basis that such a tax base is more appropriate for long term savings from an economic efficiency perspective. A consumption tax benchmark would treat contributions as exempt, earnings and capital gains as exempt and withdrawals as taxable income (EET). The tax expenditures identified under these two approaches are entirely different. The benchmark based on income taxation (TTE) identifies the (lower) superannuation fund tax rate for contributions and earnings as tax expenditures. The benchmark based on consumption taxation (EET) would identify the contributions and earnings taxes as negative tax expenditures and the exemption for superannuation benefits as a tax expenditure.
- 27 Once the type of taxation system on which the benchmark will be set has been determined, there are still important details of the benchmark that need to be decided. Setting tax expenditure benchmarks involves an element of judgement to determine what constitutes the 'regular' taxation system, with the result that benchmarks may vary from country to country and within countries over time. The principal criterion of benchmark design is that the benchmark should represent a consistent tax treatment of similar activities or classes of taxpayers. Setting the benchmarks for tax expenditures involves drawing the line between elements of the tax system that are 'inside' and those that are 'outside' of the benchmarks and drawing this line involves judgements that can be arbitrary.
- 28 Tax expenditure benchmarks should be based around clear principles that set out what it is that should be taxed (the tax base) and how the rate of tax applying to the base is determined. Variations from these principles and tax offsets are identified as tax expenditures. These principles should be broadly based so they apply uniformly across the range of taxpayers or activities to which a tax applies.
- 29 In practice, the benchmarks actually applied in the TES include exceptions for certain longstanding and entrenched elements of the tax system referred to as 'structural' elements. These structural elements of the benchmarks warrant careful scrutiny as they can mean that provisions that give a substantial benefit to some taxpayers are not identified as tax expenditures. Examples of some of the structural elements of the Australian tax expenditure benchmarks include:¹⁵
- The carve-out for the mutuality principle, which states that under the income tax benchmark an entity should not be taxed on income it earns from dealings with itself. This principle means that the tax exemption for profits of mutual entities such as social and sporting clubs is not identified as a tax expenditure (even though those entities may compete directly with other venues such as hotels).
 - Progressive rates of income tax, which mean that low income earners pay tax at a lower rate on their income than higher income earners.

15 Department of the Treasury 2015, *2014 Tax Expenditures Statement*, Treasury, Canberra, available at: <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/TES-2014>

- The realisation basis for capital gains taxation, which means that unrealised capital gains, which fall within the SHS economic definition of income used in the TES, do not count as income in the period that they arise. This gives a benefit to people with capital gains, who are able to defer tax on those gains until the gains are realised, compared to taxpayers who receive similar amounts of cash income.
 - The different rates and tax systems applying to alcoholic beverages, where particular rates of tax and the wine equalisation tax have been chosen as the benchmark, reducing the range of tax expenditures identified. The different rates and systems of tax result in widely diverging tax rates applying to the consumption of alcohol, to the benefit (and detriment) of the consumers of different alcoholic beverages.
 - The benchmark rate of tax for customs duties (other than excise equivalent customs duties) in the TES is set as zero, on the basis that zero tariffs are consistent with free trade which is treated as a structural element of the benchmark tax system. Consequently all customs duty revenue is shown as negative tax expenditure in the TES and there are no tax expenditures shown for free trade agreements or tariff concessions.
- 30 Many of the structural elements of the TES benchmarks are features of the tax system that are accepted as normal and may be justified on equity, efficiency or practical administrative grounds. Nonetheless, the structural elements of the benchmarks have a significant impact on the tax expenditures reported and should be carefully scrutinised—in particular, as acknowledged by Treasury, the choice of benchmark involves judgement and in some cases can be somewhat arbitrary.
- 31 Similarly, there are many elements of the tax system that fall within the benchmark that are of interest because they provide particular benefits to certain taxpayers. In Canada, such elements of the tax system are dealt with as ‘memorandum items’ in their tax expenditures statement. Examples of items that are not tax expenditures but which could be dealt with as memorandum items in the Australian TES include:
- Dividend imputation, which provides a benefit to the resident shareholders of Australian companies that ensures that income distributed as dividends is not double taxed.
 - Negative gearing, which allows investors to offset current losses incurred in relation to their investments against other current year income.
 - Mutuality (a structural element of the income tax benchmark), which is held to mean that an entity is not taxable on income earned from dealings with itself or between its members.
 - Work related deductions, which recognise that the taxpayer should not be taxed in relation to income that is expended in earning taxable income.
- 32 The Canadian approach of estimating the dollar value benefit to taxpayers of these memorandum items has considerable merit as it would provide greater transparency for a range of issues of interest to tax policy development and would also provide a useful alternative avenue for examining the impact of the structural elements of the benchmarks. However these benefits would need to be balanced against the additional resources required to expand the scope of the TES in this way.

Reliability estimates

- 33 The Australian National Audit Office's (ANAO) 2013 performance audit on the preparation of the TES recommended that the methodology for allocating reliability ratings to tax expenditure items be reviewed and standardised in order to improve the consistency of reliability ratings.¹⁶ The ANAO also commented that there had been 'no measurable improvement' in the reliability of tax expenditure estimates over time.¹⁷
- 34 The PBO includes reliability ratings in its costings of policy proposals. In many respects, the issues around the allocation and interpretation of reliability estimates in relation to tax expenditure items parallel the issues the PBO faces in allocating reliability ratings to costings.¹⁸
- 35 Earlier this year, the PBO issued a technical note to explain why reliability ratings are included in its costings of policy proposals, the factors that affect the reliability of costings and how the PBO takes these factors into account in allocating reliability ratings.¹⁹
- 36 A key point stressed in that note was that the reliability rating is not a reflection on the quality of the analysis underpinning the costing. Rather, reliability ratings reflect the reality that while all costing estimates are subject to uncertainty, the level of uncertainty will vary due to factors such as the quality of the available data; the assumptions that are needed to complete the estimate; and the volatility of the underlying costing base.²⁰
- 37 The PBO uses a qualitative assessment process to determine the reliability rating for its costings. As such, reliability ratings reflect the best professional judgement of the PBO of the level of uncertainty around the estimates in its costings of policy proposals. The PBO's technical note includes a table setting out the characteristics of costings by reliability rating, and the factors taken into account in allocating reliability ratings.
- 38 While improving the reliability of tax expenditure (and policy costing) estimates is a worthy goal, significant progress is unlikely to be achieved without attention to the underlying factors driving the uncertainty of estimates—in particular, the availability of relevant high quality data. In many cases, this could only be achieved by increasing the reporting burden on taxpayers—raising the question of whether the resultant improvement in the reliability of tax expenditure estimates justifies the additional compliance costs on taxpayers. Ultimately, these are policy questions.

16 Australian National Audit Office 2013, *Preparation of the Tax Expenditures Statement: Department of the Treasury, Australian Taxation Office, Performance Audit Report No. 34 2012–13*, ANAO, Canberra, available at: <http://www.anao.gov.au/Publications/Audit-Reports/2012-2013/Preparation-of-the-Tax-Expenditures-Statement>

17 Ibid, p. 17

18 The main difference is that costings usually require behavioural assumptions to be made, while tax expenditures prepared using the revenue forgone approach do not.

19 Parliamentary Budget Office 2015, *Factors Influencing the Reliability of Costings of Policy Proposals: The PBO's Approach to Reliability Ratings*, Technical Note No. 01/2015, PBO, Canberra, available at: http://www.apb.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/Technical_notes

20 Ibid

List of Acronyms

ANAO	Australian National Audit Office
ATO	Australian Taxation Office
EET	Exempt/Exempt/Taxable
GST	Goods and Services Tax
OECD	Organisation for Economic Co-operation and Development
PBO	Parliamentary Budget Office
SHS	Schanz-Haig-Simons
TES	Tax Expenditures Statement
Treasury	Commonwealth Treasury
TTE	Taxable/Taxable/Exempt