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Tax Laws Amendment (2004 Measures No. 7) Bill 2004

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Contents

Glossary

The following abbreviations and acronyms are used throughout this Bills Digest.

Abbreviation	*Definition*
ACA	allocable cost amount
ATO	Australian Taxation Office
CGT	capital gains tax
Commissioner	Commissioner of Taxation
ESS	Employee share scheme
FBT	fringe benefits tax
FBTAA 1986	*Fringe Benefits Tax Assessment Act 1986*
GDP	gross domestic product
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
PRRTAA 1987	*Petroleum Resource Rent Tax Assessment Act 1987*
SIS	simplified imputation system
TAA 1953	*Taxation Administration Act 1953*

Tax Laws Amendment (2004 Measures No. 7) Bill 2004

Date Introduced: 8 December 2004

House: House of Representatives

Portfolio: Treasury

Commencement: On various dates as explained in the Main Provisions section of this Digest.

Purpose

There are 11 schedules to the Tax Laws Amendment (2004 Measures No. 7) Bill 2004 (the Bill) and the main purpose of each schedule as stated in the General Outline and Financial Impact section of the Explanatory Memorandum to the Bill is set out below.[1]

> Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953* by introducing a 25 per cent entrepreneurs' tax offset on the income tax liability attributable to business income for small businesses in the simplified tax system (STS) that have an annual turnover of $75,000 or less.
>
> Where STS turnover is greater than $50,000 the offset will be phased out so that the offset ceases once STS turnover reaches $75,000.[2]
>
> … …. …
>
> Schedule 2 to this Bill amends the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to remove the requirement that taxpayers in the simplified tax system (STS) must use the STS accounting method (generally referred to as a cash basis of accounting).[3]
>
> … … …
>
> Schedule 3 to this Bill amends the *Income Tax Assessment Act 1936* to allow taxpayers who have deferred the income tax liability on a discount received on shares or rights acquired under an employee share scheme (ESS), to roll-over a taxing point that would otherwise occur because of a corporate restructure.[4]
>
> … … …
>
> Schedule 4 to this Bill amends the *Fringe Benefits Tax Assessment Act 1986* to increase the fringe benefits tax (FBT) exemption thresholds for long service award benefits.[5]
>
> … … …

Schedule 5 to this Bill introduces an amendment to the *Petroleum Resource Rent Tax Assessment Act 1987* to allow petroleum exploration companies conducting exploration work in a designated frontier area to obtain an uplift on expenditure incurred. These amendments will:

- enable the Minister responsible for the *Petroleum (Submerged Lands) Act 1967* to allocate up to 20 per cent of the annual offshore petroleum acreage release areas as designated frontier areas; and
- apply a 150 per cent uplift to certain exploration expenditure conducted in the first term of an exploration permit in a designated frontier area.[6]

… … …

Schedule 6 to this Bill provides greater flexibility, clarifies certain aspects of the consolidation regime and ensures that the regime interacts appropriately with other aspects of the income tax law.[7]

… … …

Schedule 7 to this Bill amends Division 328 of the *Income Tax Assessment Act 1997* to ensure that the roll-over relief available for partnerships under the uniform capital allowances regime is also available in relation to depreciating assets allocated to simplified tax system (STS) pools.[8]

… … …

Schedule 8 to this Bill amends the *Income Tax Assessment Act 1997* to provide greater flexibility, reduce compliance costs and ongoing uncertainty surrounding family trust elections and interposed entity elections.

These amendments will allow trustees to make family trust elections and interposed entity elections at any time, in relation to earlier years.[9]

… … …

Part 1 in Schedule 9 to this Bill corrects a minor technical defect in Subdivision EA of Division 7A of the *Income Tax Assessment Act 1936* (ITAA 1936). This will ensure that a loan from a trustee to a shareholder of a corporate beneficiary will not be treated as a deemed dividend if the loan is repaid before the earlier of the due date for lodgement or the date of lodgement of the trust's income tax return for the year in which the loan is made.

Part 2 in Schedule 9 to this Bill amends Division 7A of the ITAA 1936 to allow a loan from a private company to be repaid or put on a commercial footing before the earlier of the due date for lodgement and the date of lodgement of the private company's income tax return for the income year in which the loan is made in order to avoid the loan being treated as a deemed dividend.[10]

… … …

> Schedule 10 to this Bill makes minor corrections and amendments to the taxation laws. These corrections and amendments are part of the Government's ongoing commitment to improve the quality of the taxation laws. They fix errors such as duplications of definitions, missing asterisks from defined terms, incorrect numbering and referencing and outdated guide material.[11]
>
> … … …
>
> Schedule 11 to this Bill amends the income tax law to allow revocation of unused provisional certificates issued under Division 10BA of the *Income Tax Assessment Act 1936* in respect of certain film projects. This will enable those projects to then apply for the tax offset for large scale films contained in Division 376 of the *Income Tax Assessment Act 1997* (ITAA 1997).[12]

Background

As there is no central theme to the Bill, the background to the various measures will be discussed under the Main Provisions section below.

Main Provisions

Schedule 1—25% entrepreneurs' tax offset

On 26 September 2004, the Prime Minister in his 2004 election policy statement *Promoting an Enterprise Culture* indicated that a re-elected Coalition Government will introduce a new 25 per cent 'entrepreneurs' tax discount for eligible small businesses that will deliver further tax relief of more than $900 million over the forward estimates period.[13]

Item 5 of **Schedule 1** to the Bill will insert **proposed Subdivision 61-J—25% entrepreneurs' tax offset** into the *Income Tax Assessment Act 1997* (ITAA 1997) to implement this measure.

Proposed subsection 61-505(1), which covers the 25 per cent entrepreneurs' tax offset (ETO) for an individual or company, states that you are entitled to the ETO for an income year if:

(a) you are an individual or a company

(b) you are a simplified tax system (STS) taxpayer for the year

(c) your STS group turnover for the year is less than $75 000, and

(d) you have net STS income for the year.

Division 328 of the ITAA 1997 provides the legislative framework for the STS, which was introduced on 1 July 2001. Subdivision 328-F sets out the entities that are eligible to be STS taxpayers. It provides that you can choose to be an STS taxpayer only if you are carrying on a business and you (and your associates acting in concert in your business) together have:

- an average annual business turnover of less than $1 million, and
- depreciating assets with an end of year value below $3 million.

While eligibility for the 25 per cent ETO is limited to those in business with a STS group turnover of $75 000 or below, the amount of the ETO will vary depending on whether the annual STS group turnover is $50 000 or less or is more than $50 000. **Proposed subsection 61-505(2)**, which sets the method of working out the amount of the 25 per cent ETO, provides that if your annual business STS turnover is $50 000 or less, the 25 per cent ETO will be 25 per cent of your basic income tax liability for the year. Where your annual business turnover is more than $50 000 and less than $75 000, the 25 per cent ETO, will be phased-out.

Similarly, **proposed section 61-510** provides for working out the 25 per cent ETO for a partner in a partnership, **proposed section 61-515** provides for working out the 25 per cent ETO for a trustee of a trust and **proposed section 61-520** provides for working out the 25 per cent ETO for a beneficiary of a trust.

The reader is referred to pages 13 to 29 (paragraphs 1.1 to 1.38) of the Explanatory Memorandum to the Bill for a detailed explanation of the provisions which is illustrated with examples.

Group impacted by this measure

The Regulation Impact Statement in the Explanatory Memorandum identifies the group of taxpayers who will benefit by this measure as follows.

> Groups affected by the 25 per cent entrepreneurs' tax offset are STS taxpayers and non-STS taxpayers in receipt of gross STS income under $75,000, namely very small, micro and home-based businesses who are in the STS. It is estimated that more than 300,000 small and home-based businesses will be able to benefit from the 25 per cent tax offset.[14]

Application

Item 11 of **Schedule 1** provides that the 25 per cent ETO will apply to assessments for the first income year starting on 1 July 2005 and later income years.

Schedule 2—Simplified Tax System accounting method

As indicated above, Division 328 of the ITAA 1997 provides the legislative framework for the Simplified Tax System (STS) and offers eligible small businesses the choice of using the modified accounting, capital allowance and trading stock regimes. Subdivision 328-C deals with the accounting method for STS taxpayers and section 328-105 provides that STS taxpayers account for their ordinary income when received and general deductions when paid. This modified accounting method is generally referred to as the 'cash accounting method' because income is accounted for when received and deductions claimed when expenses are actually paid.

If therefore a taxpayer decides to be an STS taxpayer, the taxpayer is required to adhere to the cash accounting method. This requirement precluded many small businesses to which the cash accounting method was not appropriate to their business activities from entering the STS system. The Prime Minister in his 2004 election policy statement *Promoting an Enterprise Culture* indicated that a re-elected Coalition Government will also extend the STS for small businesses to include business that account on an accrual basis, delivering additional tax relief of $330 million over three years.[15] Under the accrual basis of accounting, businesses recognise income when it is derived and expenses when they are incurred. **Item 9** of **Schedule 2** repeals Subdivision 328-C to give effect to this measure.

Application

Under **item 11** of **Schedule 2**, the amendments apply for the first income year starting on or after 1 July 2005 and later income years.

Schedule 3—Employee share schemes

Division 13A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) provides for the taxation treatment of shares and rights acquired under employee share schemes (ESS). The key principle as set out in section 139 is that any discount from the market price of the shares or rights is assessable. However, two alternative concessions are available for shares or rights provided under schemes satisfying certain requirements:

- the first concession is that the discount will not be included in the employee's assessable income until a later year. An employee may under current tax law defer the income taxing point on a discount on shares held under an ESS for up to 10 years, and
- the second concession is that the employee may make an election that reduces the amount assessed provided certain additional requirements are satisfied.

Subdivision 130-D of the ITAA 1997 deals with the capital gains consequences of shares or rights acquired under employee share schemes.

The measure in **Schedule 3** to the Bill will allow taxpayers who have obtained the first concession to roll-over a taxing point which would otherwise occur when a corporate restructure takes place without triggering any immediate income tax and capital gains tax consequences. The recommendation for roll-over of the taxing point was made in the report titled *Shared Endeavours: Inquiry into employee share ownership in Australian enterprises* (the Nelson Report) of the Inquiry into employee share ownership in Australia by the House of Representatives Standing Committee on Employment, Education and Workplace Relations.[16] The Treasurer and the Minister for Employment and Workplace Relations released on 27 March 2003 the Government's response which included the acceptance of the recommendation which is being implemented by the amendments proposed in **Schedule 3**.[17]

Item 11 of **Schedule 3** inserts **proposed Subdivision DA** into Division 13A with the object of allowing Division 13A to continue to apply, in appropriate circumstances, to 100 per cent takeovers or restructures of companies that have employee share schemes. **Proposed subsection 139DQ(1)** provides:

(a) that if a taxpayer acquires shares or rights in a new company that can reasonably be regarded as matching shares or rights in the old company, and

(b) the acquisition occurs with a 100 per cent takeover or restructure of the old company, and

(c) as a result of the takeover or restructure, the taxpayer ceased to hold the shares or rights in the old company,

then if the conditions in **proposed section 139DR** are met, the matching shares or rights in the new company are treated for the purposes of Division 13A as if they were a continuation of the shares or rights in the old company.

There are six conditions set out in **proposed section 139DR** as follows:

(1) The first condition is that, immediately before the takeover or restructure, the taxpayer held shares or rights in the old company under an employee share scheme.

(2) The second condition is that at the time the taxpayer acquires the matching shares or rights, the taxpayer is an employee of:

  (a) the new company; or

  (b) a holding company of the new company; or

  (c) a subsidiary of the new company or of a holding company of the new company.

(3) The third condition is that:

  (a) to the extent that the matching shares or rights are shares, they are ordinary shares; or

(b) to the extent that the matching shares or rights are rights, they are rights to acquire ordinary shares.

(4) The fourth condition is that, if [**proposed subsection 139DQ(1)**] did not apply, the cessation time, for the shares or rights in the old company to which the matching shares or rights relate, would occur as a result of the takeover or restructure.

(5) The fifth condition is that, at the time the taxpayer acquires the matching shares or rights, the taxpayer does not hold a legal or beneficial interest in more than 5% of the shares of the new company.

(6) The sixth condition is that, at that time, the taxpayer is not in a position to cast, or control the casting of, more than 5% of the maximum number of votes that may be cast at a general meeting of the new company.

Thus the treatment of matching shares or rights in the new company as a continuation of the shares or rights held in the old company means that the exchange is not considered as a disposal of shares or rights in the old company or an acquisition of shares or rights in the new company for the purpose of Division 13A of the ITAA 1936. The 10 year deferral period can run from the date of acquisition of shares or rights in the old company under the ESS even though there has been an exchange for shares or rights in the new company under a takeover or restructure.

The capital gains or losses consequences of the exchange of old for new and matching shares or rights are disregarded because of amendments to the capital gains and losses provisions in the ITAA 1997 proposed by **items 17** to **21** of **Schedule 3**. **Item 18** inserts **proposed subsection 130-83(1A)** which provides that any capital gains or loss arising from a CGT event which happens in relation to the original shares or rights is disregarded:

- in consequence of acquiring matching shares or rights, and
- where such matching shares or rights are treated as a continuation of the original shares or rights under **proposed section 139DQ** of the ITAA 1936.

The reader is referred to paragraphs 3.8 to 3.61 on pages 45 to 60 of the Explanatory Memorandum for a detailed explanation of the new law and examples of its operation.[18]

Application

Item 22 of **Schedule 3** provides that amendments made by **Schedule 3** apply and are taken to have applied to any acquisition of shares or rights on or after 1 July 2004 that are within the meaning of 'acquisition' in Division 13A of the ITAA 1936.

Schedule 4—FBT exemption thresholds for long service award benefits

In the 2004–05 Budget, it was announced that the Government will increase the fringe benefit tax exemption thresholds for long service award benefits with effect from 1 April 2005.[19] It was proposed to increase the current exemption thresholds for long service award benefits from $500 to $1 000 for 15 years of service and from $50 to $100 for each additional year of service.

The amendments to the *Fringe benefits Tax Assessment Act 1986* (FBTAA 1986) by **items 1** and **2** of **Schedule 4** give effect to this proposal.

Application

Item 3 of **Schedule 4** states that the amendments apply to FBT years beginning on or after 1 April 2005.

Schedule 5—Petroleum exploration incentives

Background

Australia has extensive offshore basins that have petroleum production potential (see map). But most of these areas have not been explored because they are often in deep water and distant from existing infrastructure. This makes exploration in such areas relatively expensive and risky. The Bill contains an incentive for companies to explore in designated parts of such areas—'designated frontier areas'. The Bill increases the value of deductions for exploration expenditure in designated frontier areas from 100 per cent to 150 per cent for the purposes of determining the amount of petroleum resources rent tax (PRRT) payable. This effectively means that taxpayers will share the risk that explorers face in these areas.

Underlying the incentive in the Bill are the broader issues of declining self-sufficiency—the ratio of crude oil and condensate (including liquefied petroleum gas) to consumption—and concerns about the level of expenditure on exploration especially offshore. With future indigenous crude oil and condensate production predicted to decline, the incentive is primarily aimed at boosting exploration expenditure especially offshore. Australia both imports and exports crude oil because we need different types to produce the range of refined products demanded (Australian crudes tend to be light, limiting their suitability for heavier products such as marine oils and bitumen). Australia imports more crude oil than it exports; in 2003–04, imports were 23 649 million litres while exports were 17 660 million litres.[20] The gap between imports and exports is expected to widen; by 2019–20, the share of imported oil in primary consumption is expected to rise to 52 per cent from 37 per cent in 1998–99 in the absence of any major new domestic discoveries.[21] Australia exports more refined petroleum products than it imports, but Australian refineries rely on imports for about 60 per cent of the crude oil they use.

With respect to exploration expenditure, according to the Australian Bureau of Statistics, offshore petroleum exploration spending fell from $814 million in 1998 to $667 million in 2003.[22] The Australian Petroleum Production and Exploration Association Limited

(APPEA)—the industry umbrella body—has advocated a range of measures to encourage exploration in frontier areas including a 175 per cent deduction, for company tax purposes, of exploration expenditures in high-risk frontier areas.

The petroleum resource rent tax (PRRT) is a Commonwealth tax on 'economic rent'. Rent is a payment to a factor of production, such as labour, that exceeds the amount necessary to keep that factor in its current occupation. For example, if a person receives a salary of $50 000 but would earn $40 000 in the next best alternative employment, the person receives rent of $10 000.

As applied to petroleum production, investors require a certain rate of return—including allowance for risk— to undertake a project. A return above this threshold rate would result in the investors receiving rent. The PRRT applies to the return after all costs associated with exploration, development and production have been deducted. The PRRT is thus tied directly to the profitability of a project. (In contrast, production-based taxes, such as the crude oil excise, are not tied directly to profitability.) The PRRT also provides the community—the ultimate owners of Australia's petroleum resources—with a fair proportion of the potentially high returns from the exploitation of scarce and non-renewable resources. Under section 5 of the *Petroleum Resource Rent Tax Act 1987*, the rate of tax is 40 per cent. The PRRT is levied before company tax, and is deductible for company tax purposes. Projects incurring the PRRT are not subject to excise or royalties.

The PRRT applies to offshore areas under Commonwealth jurisdiction except those located in the North West Shelf exploration permit areas where a revenue-sharing agreement between the Commonwealth and Western Australia applies. Producers of hydrocarbons (crude oil, condensate, liquefied petroleum gas, natural gas and ethane) pay the PRRT. The Bass Strait project off Victoria used to account for more than 90 per cent of PRRT revenue. But with production in Bass Strait declining and newer projects maturing, this proportion is falling. In 2004–05, estimated PRRT revenue is $1.1 billion.[23]

The *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA 1987) provides for the assessment and collection of the PRRT. The PRRT is generally assessed on a project basis. The tax base is net cash flows after recovery of eligible exploration expenditure, operating costs, and capital expenditure. Any excess of expenditure over receipts can be compounded forward annually for deduction against future receipts from the project under a system of augmentation (section 36 of the PRRTAA 1987 deals with augmentation). For exploration expenditure, the annual augmentation rate depends on when the expenditure was incurred. If the expenditure is incurred within five years of the date on which information is provided to obtain a production licence, the augmentation rate is the long-term bond rate plus 15 percentage points; in 2004, for example, the augmentation rate was 20.68 per cent and 20.34 per cent in 2003. If the exploration expenditure is incurred more than five years earlier, the rate is the implicit price deflator for expenditure on gross domestic product. (Development (non-exploration) expenditure is subject to a separate set of augmentation rates.)

In a report titled *Exploring: Australia's Future*, the House of Representatives Standing Committee on Industry and Resources briefly examined augmentation rates. The Committee recommended (recommendation three) that the PRRT be reviewed to investigate:

- allowing undeducted exploration expenditure incurred more than five years prior to the provision of a production licence to be compounded forward at the long-term bond rate plus 15 percentage points for the first five years and then, for the subsequent years, compounded forward at the long-term bond rate, and
- reducing the PRRT rate for petroleum production from newly discovered accumulations in waters of greater than 400 metres depth.[24]

Basis of policy commitment

In the 2004–05 Budget, the Government announced that it would increase the value of exploration deductions in designated frontier areas from 100 per cent to 150 per cent for PRRT determination.[25] On 11 May 2004, the Treasurer and the Minister for Industry, Tourism and Resources elaborated on the proposal in a joint announcement.[26] The commitment was also contained in the Government's 2004 election energy policy.

Position of significant interest groups/press commentary

The APPEA welcomed the announcement, noting that the incentive could potentially help reduce Australia's dependence on imported petroleum. A report in the *Sydney Morning Herald* reported the Budget decision without comment.[27]

Main Provisions

Schedule 5 amends the PRRTAA 1987 to implement the incentive.

Eligibility for the incentive is subject to certain conditions. First, the incentive applies only to 'designated frontier areas' as broadly defined in **item 1** and elaborated in **item 4**. **Item 1** defines a 'designated frontier area' as locations covered by **proposed subsection 36A (item 4)** or **proposed subsection 36B(1) (also item 4)** and by an exploration permit area.

Second, the incentive applies to the annual offshore acreage releases for 2004 to 2008. For 2004, **proposed subsection 36A (item 4)** designates specified areas off Tasmania, Western Australia and the Northern Territory. For 2005 to 2008, **proposed subsection 36B (item 4)** provides that the Minister may designate up to (and including) 20 per cent of potential exploration permit areas as frontier areas, that is, the Minister for Industry, Tourism and Resources may designate up to 20 per cent of the annual offshore petroleum acreage release areas as frontier areas.

Designated frontier areas must be more than 100 kilometres from an existing oil discovery.[28] The purpose of this proviso seems to be to reduce the likelihood that a 'new' discovery is not merely an extension of an existing field but is a genuinely new discovery. Designated areas must also not be adjacent to an area designated in the previous year's acreage release. The purpose of this proviso seems to be to ensure that exploration is conducted in diverse locations.

Third, only 'designated frontier expenditure' is eligible for the incentive. In short, the uplift (that is, increase) in the rate from 100 per cent to 150 per cent applies to pre-appraisal exploration expenditure incurred in the initial term ('original period' in the Bill) of the exploration permit granted for the designated area. **Item 2** inserts into section 2 of the PRRTAA 1987 a definition of 'designated frontier expenditure'. This provides, among other things, that the exploration expenditure must be incurred during the original period of the exploration permit concerned (that is, before the permit is first renewed or ceases to be in force).

The original period restriction limits the amounts eligible for the incentive. The restriction is also likely to have the effect of encouraging exploration companies to compress as much exploration expenditure as possible into the original period. The Explanatory Memorandum explains clearly the definition of 'designated frontier expenditure'.[29]

Item 4 also inserts **proposed subsection 36C**. This defines 'uplifted frontier expenditure' as 150 per cent of designated frontier expenditure actually incurred.

A consequence of adding **proposed subsections 36A, 36B and 36C** is that augmentation applies to the uplifted frontier expenditure.

In 1990, the PRRT was changed considerably. The changes allowed undeducted exploration expenditures, incurred after 1 July 1990, to be transferred to other projects. (At the same time, the carry-forward (augmentation) rate for undeducted general projects expenditures was reduced from the long-term bond rate plus 15 percentage points to the long-term bond rate plus five percentage points.) The Schedule to the PRRTAA 1987 contains provisions relating to the incurring and transfer of exploration expenditure on or after 1 July 1990. In short, undeducted exploration expenditure incurred after 1 July 1990 is transferable to other projects with a notional taxable profit held by the same entity. In the case of a company in a company group, the expenditure is also transferable to other PRRT-liable projects held in the group. According to section 22 of the PRRTAA 1987, taxable profit is the excess of assessable receipts over the sum of:

- deductible exploration expenditure incurred, and
- any amounts transferred to the project under section 45A (that is, transfers of exploration expenditure between projects) or section 45B (that is, transfers of exploration expenditure between group companies).

Under the Bill, uplifted expenditure retains access to the transferability provisions. **Items 7** and **8** deal with 'incurred exploration expenditure'. The essence of these items is to replace the current definition of 'designated frontier expenditure' with a definition of 'uplifted frontier expenditure' so that the uplifted amount can be transferred. Paragraphs 5.28 to 5.32 of the Explanatory Memorandum adequately describe these items.[30]

Part 4 of the Schedule is relevant to determining whether there is transferable expenditure when a production licence has not been issued. Similar to items 7 and 8, **items 9** and **10** have the effect of inserting reference to 'uplifted designated frontier expenditure' in place of the current 'designated frontier expenditure' in calculating whether there is transferable expenditure in relation to a petroleum project for which there is not yet a production licence.

Paragraphs 5.35 to 5.36 of the Explanatory Memorandum describe adequately the purpose of **items 11** to **15.**

Clause 14 of the Schedule to the PRRTAA 1987 contains the assumptions on which amounts are to be worked out. Clause 14 defines a 'notional project' as a petroleum project, to which a production licence relates, as consisting only of that licence. Clause 16 elaborates on the amounts to be worked out in relation, for example, to the exploration permit and the assessable year. Paragraph 16(c) defines 'notional exploration expenditure' as the total of exploration expenditure actually incurred in relation to the notional project during the period starting on 1 July 1990 and ending at the end of the assessable year. **Item 16** amends paragraph 16(c) so that in relation to a notional project, uplifted frontier expenditure is included and the current definition of designated frontier expenditure is excluded.

Application

Clause 2 of the Bill provides that **Schedule 5** will commence on the day on which this proposed Act receives the Royal Assent. **Item 17** of **Schedule 5** provides that generally the amendments apply in respect of any exploration expenditure incurred (whether before or after this Schedule commences) where the eligible exploration or recovery area is a designated frontier area.

Schedule 6—Consolidation regime – providing greater flexibility

The consolidation regime was introduced with effect from 1 July 2002. The basic concepts underlying the consolidation regime are outlined in the ATO publication *Consolidation in brief - taxing wholly-owned corporate groups as single entities*.[31]

On 4 December 2003, Senator the Hon. Helen Coonan, the then Minister for Finance and Assistant Treasurer, announced that the Government, after listening to the concerns of business on the consolidation regime, will implement further measures to give taxpayers greater flexibility and certainty as they move into the new consolidation regime.[32]

The issues raised by business which have been accepted by Government are listed in the Attachment to the Press Release. Some of the measures in that Attachment have been included in the Tax Laws Amendment (2004 Measures No. 6) Bill 2004.[33]

The outline of the changes proposed in Schedule 6 to the current Bill, as stated in the Explanatory Memorandum page 85, paragraph 6.1 is set out below.

Schedule 6 to this Bill:

- ensures that certain liabilities taken into account when an entity leaves a consolidated group that correspond to liabilities brought into a consolidated group with a joining entity have the same value at the leaving time that the liabilities had at the joining time;
- ensures that there is no double reduction in working out step 3 of the allocable cost amount (ACA) on entry;
- ensures that when debts which have had a connection with a consolidated group are written off, the claimant can claim a bad debt deduction; and
- clarifies the taxation consequences for life insurance companies and general insurance companies that join or leave a consolidated group.

The amendment in dot point 2 above was not previously announced.[34]

The amendments proposed in the various parts of **Schedule 6** will now be considered.

Summary of the new law

The Explanatory Memorandum at pages 86 to 88, paragraphs 6.5 to 6.9, sets out succinctly a summary of the effect of the proposed changes to the consolidated regime in **Schedule 6** as follows:

> **Value of certain liabilities when an entity leaves a consolidated group**
>
> 6.5 Part 2 of Schedule 6 to this Bill ensures that certain liabilities taken into account when an entity leaves a consolidated group (in working out the head company's cost for membership interests in the leaving entity) that correspond to liabilities brought into a consolidated group with a joining entity have the same value at the leaving time that the liabilities had at the joining time.
>
> **Ensuring no double reduction in step 3 of the allocable cost amount calculation on entry**
>
> 6.6 Part 3 of Schedule 6 to this Bill ensures that there is no double reduction in working out step 3 of the ACA where an entity joins a consolidated group by removing the requirement to reduce accrued undistributed profits to the extent that they have recouped particular sorts of losses.
>
> **Bad debts**

6.7 Part 4 of Schedule 6 to this Bill inserts bad debt rules to ensure that an entity can deduct a bad debt that has been for a period owed to a member of a consolidated group, and has for another period been owed to an entity that was not a member of that group.

Life insurance companies

6.8 Part 5 of Schedule 6 to this Bill will clarify the taxation consequences for life insurance companies that join or leave a consolidated group by ensuring that:

- no taxation distortions arise when risk policy liabilities are transferred to or from the head company when a life insurance company joins or leaves a consolidated group;
- any complying superannuation class tax losses and net capital losses from virtual pooled superannuation trust assets held by a life insurance company that joins a consolidated group are transferred to the head company and retain their character;
- losses held by a subsidiary of a life insurance company that joins a consolidated group where all the membership interests of the subsidiary are virtual pooled superannuation trust assets can, provided certain conditions are satisfied, be transferred to the head company and will become either:
- complying superannuation class tax losses of the head company; or
- net capital losses from virtual pooled superannuation trust assets of the head company;
- losses held by a subsidiary of a life insurance company that joins a consolidated group where all the membership interests of the subsidiary are segregated exempt assets cannot be transferred to the head company;
- franking surpluses held at the joining time in the franking account of a subsidiary of a life insurance company that is a member of the consolidated group are applied to the benefit of the head company in a way that is consistent with the outcome that would arise if the group did not consolidate;
- the head company will be taxed appropriately if it has excess assets in its segregated exempt assets because another member of the consolidated group holds an immediate annuity contract with a life insurance company that is a member of the group; and
- the tax cost setting rules that apply when a life insurance company leaves a consolidated group are modified to specify the value of certain assets and the value of policyholder liabilities.

General insurance companies

6.9 Part 5 of Schedule 6 to this Bill will also clarify the taxation consequences for general insurance companies that join or leave a consolidated group by ensuring that:

- if a general insurance company that has demutualised joins a consolidated group, the goodwill asset of the company is a retained cost base asset for tax cost setting purposes; and

- no taxation distortions arise when outstanding claims liabilities and unearned premiums are transferred to or from the head company when a general insurance company joins or leaves a consolidated group.[35]

Application

Item 1 of **Part 1** of **Schedule 6** states that the amendments made by this Schedule apply on or after 1 July 2002, when the consolidated regime commenced.

Schedule 7—Simplified tax system roll-over relief for depreciating assets

It was indicated above in the comments on the amendments made by **Schedule 2** to this Bill that Division 328 of the ITAA 1997, provides the legislative framework for the STS and offers eligible small businesses the choice of using the modified accounting, capital allowance and trading stock regimes.

STS taxpayers have a special capital allowance regime in Subdivision 328-D of the ITAA 1997, whereas other taxpayers are entitled to capital allowances under the uniform capital allowances regime in Division 40 of the ITAA 1997. The amendments proposed in **Schedule 7** relate to the capital allowance regime applicable to STS taxpayers. In a Joint Press Release of the Treasurer and the Minister for Small Business on 11 May 2004 in connection with the 2004 Budget, it was indicated that the Government will extend the optional roll-over relief in relation to STS depreciating asset pools to ensure consistent treatment between taxpayers that operate under the uniform capital allowances regime and taxpayers that operate under the STS capital allowance regime.[36] Budget Measures 2004–05 (Budget Paper No. 2) was more specific on the purpose of the measure. It stated:

> Currently, roll-over relief is available in the STS only in limited circumstances involving partial changes in the membership of an existing partnership. The measure will ensure that all roll-over relief currently available for partial changes in partnerships under the uniform capital allowances regime is also available in relation to STS depreciating asset pools.[37]

Section 328-240 of the ITAA 1997 provides roll-over relief for assets arising from changes in partnerships. This section is repealed by **item 9** of **Schedule 7** and subsection 328-243(1) is repealed and substituted by **proposed subsection 328-243(1)** by **item 11** of **Schedule 7** to widen the availability of roll-over relief to assets that are partnership assets either before or after a balancing adjustment event. **Proposed paragraph 328-243(1)(d)** requires that the condition in subsection 328-243(2) is met. This subsection requires that all of the depreciating assets that, just before the balancing adjustment event, were held by the transferor and allocated to either the transferor's general STS pool or long life STS pool must be held by the transferee just after those events occurred.

Application

Item 20 of **Schedule 7** provides that the amendments made by this Schedule apply to assessments for the income year following the income year in which the proposed Act receives the Royal Assent and later income years.

Schedule 8—Family trust elections and interposed entity elections

A trust is a 'family trust' at any time when a family trust election under Subdivision 272-D in Schedule 2F to the ITAA 1936 is in force. Subsection 272-80(3) requires the election to specify an individual as the individual whose family group is to be taken into account in relation to the election. The election must also contain such other information as the Commissioner requires. If the trust does not pass the family control test in section 272-87 at the end of the specified income year, the trustee must not make the election.

Subsection 272-85(1) in Schedule 2F provides that if the trustee makes a family trust election, an interposed entity such as a company, partners of a partnership or the trustee of any other trust may make an election called the 'interposed entity election' that the company, partnership or trust is to be included at all times after a specified date in a specified income year in the family group of the individual specified in the family trust election.

Certain concessions are available under the company and trust loss provisions as well as the imputation rules to entities covered by family trust elections and interposed entity elections.

In addition if:

- the trustee of a trust makes a family trust election or a company, the partners in a partnership or the trustee of a trust makes an election to be included in a family group in relation to the family trust, and
- the company, partnership or trust concerned confers a present entitlement to, or distributes income or capital other than to a specified individual or members of his or her family group

a special tax called 'the family trust distribution tax' is payable under Division 271 of the ITAA 1936.

In a Joint Press Release of the Treasurer and the Minister for Small Business on 11 May 2004 in connection with the 2004 Budget, it was announced that the Government will respond to concerns raised by tax professional bodies that the current requirements to make a valid family trust election are too inflexible.[38]

The Explanatory Memorandum too states that the amendments in **Schedule 8** to the Bill modifies the rules for making family trust elections and interposed entity elections in response to concerns that the requirements to make a valid family trust election are too inflexible.[39]

A comparison of the key features of the proposed law and the current law as stated in the Explanatory Memorandum is set out below.[40]

New law	*Current law*
Entities may make written family trust elections and interposed entity elections at any time in relation to an earlier income year.	Family trust elections can only be made for the earliest year for which a tax return has not yet been lodged. The election cannot be made for the specified income year if it is made after the entity's return for that year has been furnished.

The conditions for making a family trust election are currently set out in subsection 272-80(2) in Schedule 2F to the ITAA 1936. **Item 1** of **Schedule 8** repeals subsection 272-80(2) and substitutes it with **proposed subsection 272-80(2)** where the only condition is that the election must be made in writing and in the approved form. **Item 2** of **Schedule 8** inserts **proposed subsection 272-80(4A)** to provide that an earlier year than the year in which the election is made may be the specified year if the entity had acted as though it were a family entity during that earlier year.

The conditions for making an interposed entity election are currently set out in subsection 272-85(2) in Schedule 2F. **Item 3** of **Schedule 8** repeals subsection 272-85(2) and substitutes it with **proposed subsection 272-85(2)** where the only condition is that the election must be made in writing and in the approved form. **Item 4** of **Schedule 8** inserts **proposed subsection 272-85(4A)** to provide that an earlier year than the year in which the election is made may be the specified year if the entity passes the family control test and any conferral of present entitlement to or distributions of income or capital during the earlier year was to an individual specified in the family trust election or members of that individual's family group.

Application

Item 5 of **Schedule 8** provides that the amendments made by **Schedule 8** apply to elections specifying the income year in which the proposed Act receives the Royal Assent or a later income year.

Schedule 9—Non-commercial loans

Subdivision EA was inserted into Division 7A of Part III of the ITAA 1936 by *Tax Laws Amendment (2004 Measures No. 1) Act 2004* and deals with certain loans, payments and forgiven debts by a trustee to a shareholder (or their associate) of a private company. Broadly, a deemed dividend will arise under Subdivision EA where a private company is presently entitled to income of the trust but that income has not been paid and the trustee shifts value from the trust to a shareholder of the private company in the form of a payment, loan or a forgiven debt. The modifications in section 109XC in Subdivision EA have effect for the purposes of the operation of this Subdivision. Subdivision EA generally applies to payments, loans and debts forgiven on or after 12 December 2002.

The background to the insertion of Subdivision EA is set out in the Bills Digest to the Tax Laws Amendment (2004 Measures No. 1) Bill 2004. Its genesis is in the attempt to tax trusts like companies which was abandoned in 2002.[41] The measures in Subdivision EA were the Government's response to the recommendations in the report titled *Taxation of Discretionary Trusts* (November 2002) of the Board of Taxation.[42] The Board of Taxation considered ways in which the tax treatment of trusts could be improved and in particular the operation of section 109UB of the ITAA 1936. In a Press Release dated 12 December 2002, the Treasurer whilst releasing the report of the Board of Taxation on the *Taxation of Discretionary Trusts* announced that the Government would legislate with effect from 12 December 2002 to introduce new provisions in place of section 109UB of the ITAA 1936 dealing with distributions from trusts to give effect to the recommendations of the Board.[43]

In a Joint Press Release of the Treasurer and the Minister for Small Business on 11 May 2004 in connection with the 2004 Budget, it was announced that the Government will modify the non-commercial loan rules to allow private companies until the due date of lodgement of their tax returns, to repay loans or put loans on a commercial footing.[44] This will ease the compliance burden for these private companies as those loans will not be deemed dividends.

The amendment proposed in **Part 1** of **Schedule 9** modifies the operation of section 109D of the ITAA 1936 in its application to Subdivision EA. **Item 1** of **Part 1** of **Schedule 9** inserts **proposed subsection 109XC(2A)** into the ITAA 1936 to provide that a loan that is made during a year of income of a trust estate is taken to have been fully repaid at the end of the year for the purposes of paragraph 109D(1)(b) if it is fully repaid before the earlier of:

- the due date for lodgment, and
- the date of lodgment

of the trustee's return of trust income for that year of income of the trust.

Section 109D in Subdivision B of Division 7A of the ITAA 1936 deals with loans treated as dividends where the loans have not been repaid at the end of the current year as stated in paragraph 109D(1)(b). **Item 3** of **Part 2** of **Schedule 9** amends paragraph 109D(1)(b) to change the requirement from any loan not repaid at the end of the current year to any loan not repaid before the lodgment day for the current year. **Item 6** of **Schedule 9** defines lodgement day for the purposes of Division 7A. It states that the 'lodgment day' is the earlier of:

- the due date for lodgment, and
- the date of lodgment

of the private company's return of income for that year of income.

Subsection 109D(2) states that the amount of the loan that has not been repaid at the end of the current year is the amount of the deemed dividend.

The effect of this amendment is to allow a loan from a private company to a shareholder (or his or her associate) to be repaid or put on a commercial footing before the private company's 'lodgment day' for that income year to avoid the loan being treated as a deemed dividend.

Application

Item 2 of **Schedule 9** provides that the amendment made by **Part 1** applies to loans made on or after 12 December 2002.

Item 13 of **Schedule 9** provides that the amendments generally apply in relation to loans made in years of income that begin after the commencement of **item 13**. According to **item 4** in the table in **subclause 2(1)** of the Bill this will be the date on which the proposed Act receives the Royal Assent.

Schedule 10—Technical corrections and amendments

The Explanatory Memorandum to the Bill states that:

> Schedule 10 to this Bill makes technical corrections and amendments to the taxation laws but generally does not make any substantive changes.[45]

The nature of the technical corrections in **Schedule 10** fall into the following categories according to the Explanatory Memorandum:

- deleting a definition where the same term is defined twice
- merging multiple definitions of one term or similar terms into single definitions
- deleting an unnecessary definition
- fixing incorrect references to provisions
- fixing incorrect terminology
- inserting missing asterisks before defined terms

- fixing a technical defect
- deleting asterisks from terms which do not require an asterisk
- updating references to repealed law
- fixing incorrect numbering of provisions and Divisions
- changing an inappropriate heading
- fixing grammatical errors
- updating non-operative guide material, notes and examples
- repealing link notes
- updating terminology where an Act uses an outdated term
- misdescribed amendments
- applying a definition in the *Fringe Benefits Tax Assessment Act 1986*
- updating a definition in the *Income Tax Assessment Act 1936*
- minor consequential amendments resulting from Parliamentary amendments to substantive provisions, and
- technical amendment to an application provision

The reader is referred to the Explanatory Memorandum, paragraphs 10.5 to 10.51, on pages 164 to 175, for a detailed explanation of the amendments proposed in **Schedule 10**.[46]

Application

Generally, the technical amendments proposed by **Schedule 10** will commence and apply from Royal Assent under **item 4** of the table in **subclause 2(1)** of this Bill.

The reader is referred to the Explanatory Memorandum, paragraphs 10.52 to 10.65, on pages 175 to 178, for the exceptions to this application date.[47]

Schedule 11—Minor amendment to the refundable film tax offset

Division 376 of the ITAA 1997 gives a film production company a refundable tax offset for certain Australian production expenditure the company incurs on the film but only if that expenditure exceeds a certain amount and the Arts Minister has issued a certificate to the company for the film under section 376-15. Paragraph 376-15(1)(f) provides that the qualifying Australian production expenditure must be at least $15 million. If the film's qualifying production expenditure is between $15 million and $50 million, the producers are required to spend a minimum of 70 per cent of the total production expenditure on film production activity in Australia under paragraph 376-15(1)(g). Where the film production expenditure is $50 million or more in Australia, the film automatically qualifies for the tax offset under paragraph 376-15(1)(h).

The amount of the tax offset under section 376-10 is 12.5 per cent of the total of the company's qualifying Australian production expenditure on the film.

However, subsection 376-5(2) provides that the company is not entitled to the tax offset if:

(a) the company or someone else claims a deduction in respect of the film under Division 10B of Part III of the ITAA 1936, or

(b) a provisional or final certificate for the film has been issued at any time under Division 10BA of Part III of the ITAA 1936, whether or not the certificate is still in force.

Investors are entitled to a 100 per cent deduction for capital expenditure incurred on Australian films under Division 10BA of Part III of the ITAA 1936. Under Division 10BA, projects must be certified to enable the investors to claim the tax concession and certification takes place in two stages, namely, provisional and final. Section 124ZAB in Division 10BA, titled Provisional Certificates, provides that a person may apply to the Minister for a certificate stating that a proposed film will, when completed, be a qualifying film for the purposes of the Division. The issue of a provisional certificate will enable Australian investors to claim the tax deduction as and when expenditure is incurred on the film.

Subsection 124ZAB(6) provides that the Minister may revoke a provisional certificate where the Minister is satisfied that:

(a) the proposed film when completed will not be a qualifying Australian film for the purposes of Division 10BA, or

(b) if the proposed film has been completed, it is not a qualifying Australian film for the purposes of Division 10BA.

This subsection also states that on revocation, the certificate shall for all purposes of the ITAA 1936, be deemed never to have been in force.

In a Joint Press Release on 15 August 2003, Senator Helen Coonan, the then Minister for Revenue and Assistant Treasurer, and Senator Rod Kemp, the Minister for the Arts and Sport, foreshadowed certain changes that will allow films to access the film tax offset where provisional film certification has been granted under Division 10BA but investors have not claimed any benefits under that division.[48] The Joint Press Release added that to access the refundable tax offset film producers will have to also satisfy the Minister for Arts and Sport that they have the correct certification and that the film has not received finance from the Film Finance Corporation Australia.

The amendments in **Schedule 11** give effect to these changes. **Item 1** of **Schedule 11** inserts **proposed subsection 124ZAB(6A)** into Division 10BA of the ITAA 1936 to enable the Minister to revoke provisional certificates issued under Division 10BA where an application for revocation is made by the person who applied for the certificate and where the person signs a statutory declaration stating that:

(a) no taxpayer has claimed a deduction under Division 10BA in respect of the film

(b) a final certificate in respect of the film has not been issued under Division 10BA

(c) a taxpayer intends to claim a tax offset under Division 376 of the ITAA 1997 in respect of the film, and

(d) financial assistance has not been provided by the Film Finance Corporation Australia Limited in respect of the film.

Item 4 of **Schedule 11** repeals paragraph 376-5(2)(b) of the ITAA 1936 and substitutes **proposed paragraph 376-5(2)(b)** which has the effect that provisional certificates revoked under **proposed subsection 124ZAB(6A)** will not be a bar to claiming the tax offset.

The Explanatory Memorandum succinctly summarises the impact of the changes in maintaining the mutual exclusivity of the various tax concessions for films and assistance for films from the Film Finance Corporation as follows:

> The broad overall intent behind the film tax concessions is to preserve mutual exclusivity between the Division 376, Division 10BA and Division 10B concessions. Additionally, the intent is also to maintain mutual exclusivity between Film Finance Corporation Australia Limited funding and the Division 376 offset.[49]

Application

The amendments proposed by **Schedule 11** will commence on the day on which the proposed Act receives the Royal Assent (as set out in **item 24** of the table in **subclause 2(1)** of this Bill).

Item 5 of **Schedule 11** states that the amendments made by this Schedule apply to any expenditure incurred in respect of a film whether before or after this Schedule commences.

Concluding Comments

Financial impact of measures in the Bill

The thrust of the comments made on pages 3 to 11 of the Explanatory Memorandum as to the financial impact of the measures in the Bill are set out in the following table.

<table>
<tr><th>Measures in the Bill</th><th>Financial impact</th></tr>
<tr><td>Schedule 1—The 25% entrepreneurs' tax offset</td><td>This measure will cost the revenue $400 million in 2006–07 and $390 million in 2007–08.</td></tr>
<tr><td>Schedule 2—Extending the simplified tax system</td><td><table><tr><td>2004–05</td><td>2005–06</td><td>2006–07</td><td>2007–08</td></tr><tr><td>Nil</td><td>$15 million</td><td>$125 million</td><td>$130 million</td></tr></table></td></tr>
<tr><td>Schedule 3—Roll-over of income taxing point for shareholders in employee share schemes</td><td>The cost to revenue of this proposal is unquantifiable but expected to be small.</td></tr>
<tr><td>Schedule 4—Fringe benefits tax exemption thresholds for long service award benefits</td><td>The cost to revenue will be less than $1 million per year.</td></tr>
<tr><td>Schedule 5—Petroleum exploration incentive</td><td>This measure is estimated to cost $17 million over the period 2004–05 to 2007–08.</td></tr>
<tr><td>Schedule 6—Consolidation – providing greater flexibility</td><td>These amendments are not expected to impact on the revenue.</td></tr>
<tr><td>Schedule 7—Simplified tax system roll-over</td><td><table><tr><td>2004–5</td><td>2005–6</td><td>2006–7</td><td>2007–8</td></tr><tr><td>Nil</td><td>$6 million</td><td>$5 million</td><td>$5 million</td></tr></table></td></tr>
<tr><td>Schedule 8—Family trust and interposed entity elections</td><td>Nil.</td></tr>
<tr><td>Schedule 9—Non-commercial loans</td><td>Nil.</td></tr>
<tr><td>Schedule 10—Technical corrections and amendments</td><td>Nil.</td></tr>
<tr><td>Schedule 11—Minor</td><td>The financial impact of the amendment is expected to be</td></tr>
</table>

Measures in the Bill	**Financial impact**
amendment to the refundable film tax offset	negligible.

Commitment to improve the quality of the taxation laws

The Explanatory Memorandum states on page 163, paragraph 10.2, that the technical corrections and amendments to taxation laws in **Schedule 10** are intended to improve the quality of taxation laws:

> These minor corrections and amendments to the taxation laws are part of the Government's ongoing commitment to improve the quality of the taxation laws. They fix technical errors such as duplications of definitions, missing asterisks from defined terms, incorrect numbering and referencing and outdated guide material that detract from the readability of the taxation laws and sometimes confuse or mislead readers.[50]

The ongoing commitment of the Government to improve tax law by further technical corrections and amendments is welcome. However, in a self-assessment regime where penalties and interest attach to misinterpreting tax laws, it will be disturbing to taxpayers to know that some of these errors in taxation laws, which have yet to be corrected could mislead them. The Treasury's *Report on Aspects of Income Tax Self Assessment* (August 2004) notes that there has been a significant growth in the length and comprehensiveness of tax laws over the last 25 years. It notes that the proportion of individual taxpayers seeking professional advice to complete tax returns has risen from approximately 20 per cent in 1980 to around 76 per cent in 2002.[51] This is a measure of the increasing complexity of tax laws.

In a Press Release on 16 December 2004, the Treasurer indicated that the Government had accepted the administrative and legislative changes recommended in the Treasury's *Report on Aspects of Income Tax Self Assessment*. The Treasurer indicated that the acceptance of the most important recommendations in this report will offer the following relief to taxpayers:

- improve certainty through providing for a better framework for the provision of Tax Office advice and introducing ways to make that advice more accessible and timely, and binding in a wider range of cases;
- improve certainty by reducing the periods allowed for the Tax Office to increase a taxpayer's liability in a wide range of situations (this will mean that approximately 8 million individual taxpayers and over 745,000 very small businesses will have a shorter period of review);
- mitigate the interest and penalty consequences of taxpayer errors arising from uncertainties in the self assessment system;
- provide for future improvements through better policy processes, law design and administrative approaches. [52]

A full list of legislative and administrative recommendations can be found at Attachment A to the Press Release.

Petroleum exploration incentive

The additional incentive which the Bill provides to undertake exploration in high-risk areas seems small compared with the potential costs of exploration. According to the 2004–05 Budget, the revenue foregone will amount to $2 million in 2005–06, $6 million in 2006–07 and $9 million in 2007–08.[53] A question that arises is how much additional exploration expenditure the measure will encourage. Given that the incentive is targeted at relatively high-risk and high-cost areas, the Government is probably concerned to limit the cost of the incentive to the taxpayer.

The measures proposed in this Bill relate to the supply side of crude oil. But taxes on petroleum products affect demand for those products. On 1 March 2001, the Government announced the abolition of all future indexation of the excises on petroleum fuels. This decision was taken in the context of the introduction of the GST and rising world petrol prices, giving rise to concern that the interaction of the two would push petrol prices even higher. The effect of this decision has been to reduce the real value of excise, that is, the value of the excise taking inflation into account. The fall in the real value of excise is likely to have encouraged the use of petroleum fuels. It could be argued that if the policy goal is to slow the rate at which Australia is increasing its dependence on imported crude oil, demand side measures should be taken that complement supply-side measures.

Endnotes

1 Explanatory Memorandum to the Tax Laws Amendment (2004 Measures No. 7) Bill 2004. This Bills Digest draws extensively from the Explanatory Memorandum.

2 ibid., p. 3.

3 ibid., p. 4.

4 ibid., p. 5.

5 ibid., p. 6.

6 ibid., p. 6.

7 ibid., p. 7.

8 ibid., p. 8.

9 ibid., p. 9.

10 ibid., p. 9.

11 ibid., p. 10.

12 ibid., p. 11.

13 The Hon John Howard, Prime Minister, 'Promoting an Enterprise Culture', Statement, 26 September 2004.

14 Explanatory Memorandum, op.cit., p. 32, paragraph 1.50.

15 John Howard, op. cit.

16 House of Representatives Standing Committee on Employment, Education and Workplace Relations, *Shared Endeavours: Inquiry into employee share ownership in Australian enterprises*, September 2000, available at: http://www.aph.gov.au/house/committee/ewr/eso/Report/ReportFront.pdf .

17 The Hon Peter Costello MP, the Treasurer and the Hon Tony Abbott MP, the then Minister for Employment and Workplace Relations 'Government Response to Nelson Report on Employee Share Ownership' Press Release No. 014 of 23 March 2003.

18 Explanatory Memorandum, op. cit. pp. 45 to 60, paragraphs 3.8 to 3.61.

19 Budget Measures 2004–05, Budget Paper No. 2, p. 26.

20 Department of Industry, Australian Petroleum Statistics, November 2004.

21 A. Dickson, K. Donaldson, L. Tedesco and S. Thorpe, *Australian Energy Projections to 2019–20*, Australian Bureau of Agricultural and Resource Economics, Research Report 01.11, Canberra, 2001, p. 61.

22 Australian Bureau of Statistics, *Mineral and Petroleum Exploration, Australia*, catalogue 1301.0, 2004.

23 Budget Strategy and Outlook 2004–05, Budget Paper No. 1, pp. 5–6.

24 House of Representatives Standing Committee on Industry and Resources, *Exploring: Australia's Future*, 15 September 2003.

25 Budget Measures 2004–05, Budget Paper No. 2, p. 30.

26 Hon. Peter Costello, Treasurer, and the Hon. Ian Macfarlane, Minister for Industry, Tourism and Resources, *Offshore Petroleum Exploration Incentive*, joint press release, 11 May 2004.

27 Anthony Hughes, 'Incentive for intrepid oil drillers', *Sydney Morning Herald*, 12 May 2004.

28 Explanatory Memorandum, op. cit., p. 74, paragraph 5.21.

29 ibid., pp. 70–71, paragraphs 5.13 to 5.17.

30 ibid., pp. 76–77, paragraphs 5.28 to 5.32.

31 Consolidation in brief- taxing wholly owned corporate groups as single entities - NAT 6081-02.2004.

32 Senator the Hon Helen Coonan, the then Minister for Revenue and Assistant Treasurer, 'Consolidation: Greater flexibility given', Press Release No. C116/03, 4 December 2004.

33 The reader is referred to the Explanatory Memorandum to the Tax Laws Amendment (2004 Measures No. 6) Bill 2004 and Bills Digest no. 88, 2004–05 for details of the consolidation regime amendments.

34 Explanatory Memorandum, op. cit., p. 8.

35 ibid., pp. 86 to 88, paragraphs 6.5 to 6.9. The reader is referred to pp. 92 to 141, paragraphs 6.10 to 6.165 for a detailed explanation of the proposed law.

36 The Hon Peter Costello MP, the Treasurer, and the Hon Joe Hockey, the Minister for Small Business, 'Small Business Tax Simplification', Press Release No. 036, 11 May 2004.

37 Budget Measures 2004–05, Budget Paper No. 2, p. 33.

38 op. cit.

39 Explanatory Memorandum, op. cit., p. 153, paragraph 8.4.

40 ibid., p. 154, paragraph 8.5.

41 B., Pulle, 'Tax Laws Amendment (2004 Measures No. 1) Bill 2004, *Bills Digest*, no. 117, Parliamentary Library, Canberra, 2003–04.

42 Board of Taxation, *Taxation of Discretionary Trusts, A Report to the Treasurer and the Hon Minister for Revenue and Assistant Treasurer*, Canberra, 2002.

43 The Hon Peter Costello MP, the Treasurer, 'Taxation of Discretionary Trusts', Press Release No. 81, 12 December 2002.

44 The Hon Peter Costello MP, the Treasurer and the Hon Joe Hockey, the Minister for Small Business, 'Small Business Tax Simplification', Joint Press Release No. 036, 11 May 2004.

45 Explanatory Memorandum, op. cit., p. 163, paragraph 10.1.

46 ibid., pp. 164 to 175, paragraphs 10.5 to 10.51.

47 ibid., pp. 175 to 178, paragraphs 10.52 to 10.65.

48 Senator the Hon Helen Coonan, the then Minister for Revenue and Assistant Treasurer, and Senator the Hon Rod Kemp, Minister for the Arts and Sport, 'Refundable Tax Offset for Large Scale Films', Joint Press Release CO80/03, 15 August 2003.

49 Explanatory Memorandum, op. cit., p. 180, paragraph 11.7.

50 ibid., p. 163, paragraph 10.2.

51 The Treasury, *Report on Aspects of Income Tax Self Assessment,* Canberra, August 2004, p. 7, paragraph 2.1.

52 The Hon Peter Costello MP, the Treasurer, 'Outcome of the Review of Aspects of Income Tax Self Assessment', Press Release No.106, 16 December 2004.

53 Budget Measures 2004–05, Budget Paper No. 2, p. 30.

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2469.