



ACIS Administration Amendment (Unearned Credit Liability) Bill 2007

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Law and Bills Digest Section

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ACIS Administration Amendment (Unearned Credit Liability) Bill 2007

Date introduced: 7 February 2007

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: The Act commences on the day it receives Royal Assent, however the amendments made by the Act have effect from 1 January 2006.

Purpose

To confirm the circumstances under which the Commonwealth can issue an Unearned Credit liability (UCL) to include cases where the registered Automotive Competitiveness and Investment Scheme (ACIS) participant has received credits to which it is not entitled.

Background

Basis of policy commitment

As part of Australia's commitment to trade liberalisation, tariffs on automotive imports were reduced from 15 to 10 per cent in 2005, and will further reduce to five per cent in 2010. To assist the Australian automotive industry with these tariff reductions, in 1998 the government announced a transitional assistance package, the Automotive Competitiveness and Investment Scheme (ACIS). Stage 1 of the ACIS, from 2001 to 2005, comprised \$2.8 billion in transitional assistance directed towards encouraging new investment and innovation in the Australian automotive industry. In December 2002 the government announced stages 2 and 3 of the ACIS, costing \$4.2 billion, running from 1 January 2006 to the end of 2015. The government has stated that all industry-specific support will cease on 31 December 2015.¹

The benefits under ACIS are in the form of import duty credits that can be used to offset customs duty on eligible imports. These credits can also be sold or transferred. Claims are lodged quarterly by ACIS participants, and these are paid by AusIndustry, with a 'subsequent rigorous audit process' employed to verify their validity.²

Where the audit process identifies credits that have been issued in relation to ineligible claims, the Commonwealth recovers credits via the issue of an Unearned Credit liability (UCL). AusIndustry provides the following definition:

An UCL is a credit that should not have been issued under ACIS for the following reasons:

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- an error in calculating duty credit or a mistake of fact
- incorrect or incomplete information provided to AusIndustry
- a clerical error or mistake in the ledger
- a transaction where the parties are not at arm's length, or
- a person is found to not be entitled to the duty credit as the result of audit or compliance processes.

If it is determined that a customer has an unearned credit liability they will be liable to have the excess credits removed from their ACIS ledger account or repay the cash equivalent to the Commonwealth.³

A recent AAT decision, [*Spicer Axle Structural Components Australia Pty Ltd and Secretary, Department of Industry, Tourism and Resources*](#) (November 2006), called into question the existing system of recovering credits when they are found to have been issued incorrectly. The AAT found that while AusIndustry was administering the ACIS as a self-assessment scheme, the *ACIS Administration Act 1999* did not specifically impose a self-assessment regime. In relation to the credits claimed by Spicer Axle for their investment in equipment, the AAT found that, as they were not specifically covered by Sections 94 or 95 of the Act, AusIndustry did not have the power to issue an UCL for those credits.⁴

The implication of the AAT decision was that AusIndustry may be compelled to audit claims for duty credits when they were lodged (ie prior to payment), rather than the current practice of self-assessment by industry and then audit of claims after payment.⁵

According to the Minister, the up-front assessment of all claims would result in lengthy delays in the issuing of duty credits – imposing significant financial hardship on members of the automotive industry.⁶

In response to the AAT decision, this bill makes amendments to the ACIS Administration Act in order to clarify the circumstances in which an UCL may be issued.

Position of interest groups

There has been no comment specifically on the bill. With declining sales of domestically manufactured cars, GM Holden, Ford, Mitsubishi and Toyota are reportedly lobbying the government for a freeze in tariff reductions beyond 2010 and an increase in the ACIS scheme.⁷

Financial implications

The Explanatory Memorandum states that the bill will have no financial impact.

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Main provisions

Schedule 1 to the bill makes amendments to the ACIS Administration Act (the Act).

Item 1 adds one more circumstance to the list of cases in which a claimant is not entitled to a duty credit. **New Section 94 (1A)** provides that a claimant who has or had a duty credit is not entitled to the credit if the credit was issued in respect of an investment that was not an 'eligible investment'. 'Eligible investments' are defined in the Section 6 of the Act.

Item 2 repeals Section 95 of the Act and replaces it with a **new Section 95** which provides 'automatic liability' on the part of ACIS participants if they receive duty credits to which they were not entitled under Section 94 of the Act, or any other reason.⁸ The previous Section 95 gave the Secretary of the Department of Industry, Tourism and Resources the discretion to determine whether an ACIS participant had incurred a credit liability as a result of a breach of Section 94 of the Act.

Item 3 amends Section 114 of the Act, which deals with AAT appeal provisions. Existing Subsections 114 (j) and (k) are no longer needed as the Secretary's discretion under existing section 95 is being removed (see above). Item 3 inserts **new Subsection 114 (j)**, which ensures that the AAT may review a decision to issue a notice for an Unearned Credit liability.

Item 4 applies the amendments retrospectively, from the beginning of Stage 2 of the ACIS (1 January 2006).

Endnotes

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1. Hon. Ian Macfarlane, MP, Minister for Industry, Tourism and Resources, Press Release: *A decade of certainty for the automotive industry*, 13 December 2002, available at: <http://www.minister.industry.gov.au/index.cfm?event=object.showContent&objectID=E6FC3195-EA41-423A-9A42F76DD664D09B>, accessed 12 February 2007.
 2. Explanatory Memorandum: ACIS Administration Amendment (Unearned Credit liability) Bill 2007, p. 1.
 3. AusIndustry, *ACIS Customer Guidelines, Section 1: Introduction*, November 2006, available at: <http://ausindustry.gov.au/library/Section1IntroductionGuidelines20061106042437.pdf>, accessed 12 February 2007.
 4. *Spicer Axle Structural Components Australia Pty Ltd and Secretary, Department of Industry, Tourism and Resources* [2006] AATA 1004 (24 November 2006), paragraph 144.
 5. Adrian Rollins, 'Legal win boosts car parts manufacturers', *Australian Financial Review*, 12 December 2006, p. 13.

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6. Hon. Ian Macfarlane, MP, Minister for Industry, Tourism and Resources, 'Second reading speech: ACIS Administration Amendment (Unearned Credit liability) Bill 2007', House of Representatives, *Debates*, 7 February 2007, p. 2.
7. Steve Lewis and Patrick Walters, 'Car firms plead for bailout', *The Australian*, 20 December 2006, p. 1.
8. Explanatory Memorandum, op. cit, p. 3.

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