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Introduction

Referral of the Bill

1.1 On 24 May 2012 the Selection Committee referred the following Bills to the committee for inquiry and report:

- the Tax Laws Amendment (2012 Measures No. 2) Bill 2012;
- the Pay As You Go Withholding Non-compliance Tax Bill 2012;
- the Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012; and
- the Passenger Movement Charge Amendment Bill 2012.

1.2 The first Bill has four schedules. The second and third Bills complement the first Bill and relate to its first and fourth schedules. These Bills are separate from it because of the constitutional requirements in relation to imposing tax. Overall, the Bills represent five issues, each of which the committee examined during the inquiry:

- making company directors personally liable for unpaid superannuation guarantee amounts of their company’s employees (Schedule 1 and the Pay as You Go Withholding Non-compliance Tax Bill 2012);
- amending the taxation of financial arrangement (TOFA) provisions to ensure that the tax treatment of financial arrangements that are part of a joining/consolidation event is consistent with the TOFA tax timing rules (Schedule 2);
- modifying the consolidation tax cost setting and rights to future income rules so that the tax outcomes for consolidated groups are more

consistent with the tax outcomes are more consistent with the tax outcomes that arise when assets are acquired outside the consolidation regime (Schedule 3);

- increasing the Managed Investment Trust (MIT) final withholding tax from 7.5 per cent to 15 per cent (Schedule 4 and the Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012); and
- increasing the Passenger Movement Charge (PMC) from $47 to $55 and indexing it through the consumer price index (the Passenger Movement Charge Amendment Bill 2012).

Pay as You Go withholding non-compliance tax

Contrived corporate insolvency

1.3 There are cases where company directors or management who have deliberately sought to avoid paying liabilities, including taxation liabilities, wages, superannuation and leave entitlements and a variety of other responsibilities, such as supplier accounts, through the use of contrived company liquidation.

1.4 In cases where such activity involves the evasion of superannuation liabilities, it deprives workers of their financial security in old age, potentially contributes towards the creation of otherwise unnecessary welfare dependence and frustrates the efforts of successive governments to ensure the highest possible standard of living for Australians in their retirement.

1.5 The failure of companies to pay employees' entitlements or tax liabilities enables them to offer lower prices for goods and services. They can either reinvest money that compliant businesses would have to allocate to tax and superannuation payments or simply disburse this as profit or wages to the principals behind the phoenix scheme.

1.6 In some cases, companies that have liquidated in order to avoid liabilities literally rise from the ashes and resume trading through a new company structure controlled by the same person or group of individuals. Such action is known as phoenix activity and may be described as the use of the process of sequential company registration, liquidation and re-registration as a means of corporate fraud or tax evasion. A phoenix company may even be used to intentionally accumulate debts that the directors never intended to repay.

1.7 On occasion, phoenix operators may use family members or other associates to gain further benefits, such as inflated incomes or credit claims. There are cases where a family member or associate of a phoenix company director may be the commanding or controlling agent behind the company.

1.8 Contrived insolvency, including repeat phoenix activity, is conducted for personal enrichment or gaining an unfair competitive advantage. It invariably constitutes a gross and unprincipled abuse of the corporate form and the long established privilege of limited liability which is of essential importance to our economic system. It undermines the integrity of corporate regulation. It deprives the Commonwealth of revenue. It reduces public trust in the economic system, lowers the reputation of business and potentially deters investors. It also confers an unlawful benefit on those who evade the law and a disadvantage to those who comply with it.

Reports and reviews

1.9 Almost a decade ago, the Royal Commission into the Building and Construction Industry (The Cole Commission) was concerned about the frequency of phoenix activity in the building industry. The Commission made a number of recommendations addressing this issue, including that:

> The Commonwealth, after consultation with the Australian Securities and Investments Commission, consider the need for an increase in the maximum penalties provided in the *Corporations Act 2001(C'wth)* for offences that may be associated with fraudulent phoenix company activity.[1]

1.10 The Commission also called on the Commonwealth to consider the need to amend existing legislation in order to disqualify company directors guilty of fraudulent phoenix activity.[2]

1.11 Several years ago, Treasury estimated that phoenix activity cost the federal revenue approximately $600 million per annum.[3]

1 *Final Report of the Royal Commission into the Building and Construction Industry,* February 2003, 'Summary of Findings and Recommendations', Recommendation 108, p. 110.

2 *Final Report of the Royal Commission into the Building and Construction Industry,* February 2003, 'Summary of Findings and Recommendations', Recommendation 108, p. 111.

3 Mr Nick Sherry (then Assistant Treasurer), *Crackdown on Phoenix Activity*, Media Release No. 90 of 13 November 2009.

1.12 The subject of phoenix activity has been pursued by Parliament on a number of occasions in recent years. For example, the Joint Committee on Public Accounts and Audit were advised in 2009 by the ATO that the incidence of phoenix activity was increasing. Since 2008 the ATO employer obligations program had identified 6 013 companies as being a high-risk of defaulting on their obligations; of these over 4 600 had not complied with their PAYG withholding obligations and almost 3 000 had not met their super guarantee obligations.[4]

1.13 At that time the ATO explained the difficulty of prosecution because:

> ...in the early-2000s we obtained a number of high profile successful prosecutions, but after a few years we found that the penalties that were imposed on people who were successfully prosecuted became ineffective. We went from people getting custodial sentences to people getting home detention, which included a provision that allowed them out during daylight hours to conduct business, so there was essentially no penalty. I think that led to a loss of confidence and a loss of interest, to some extent. When you are dealing with the court system and the Director of Public Prosecutions, they have an enormous caseload of very serious cases. It is hard to get cases up when their assessment is that the penalty is likely to be a slap on the wrist.[5]

1.14 In March 2010 the Inspector-General of Taxation (IGT) published a report, *The Review into the ATO's administration of the Superannuation Guarantee Charge*. In this report he found that insolvent employers were responsible for approximately $600.8 million owed to the ATO under the superannuation guarantee charge (SGC) and that most of this debt had been written-off as lost employee retirement savings.[6]

1.15 The report also found that the groups most affected by the problem were employees of micro businesses, contracted and casual employees, younger employees; and employees in particular sectors — the arts and recreation services; the transport, postal and warehousing sectors; accommodation and food services; and the agriculture, forestry and fishing sector. The

4 Mr Mark Konza, Deputy Commissioner, Small and Medium Enterprises, ATO, Joint Committee of Public Account and Audit, Biannual Hearing with the Commissioner of Taxation: Hansard, 23 October 2009 pp. 8-9 and Mr Bruce Quigley, Second Commissioner, ATO, ibid, pp. 26-27.

5 Mr Mark Konza, Deputy Commissioner, Small and Medium Enterprises, ATO, Joint Committee of Public Account and Audit, Biannual Hearing with the Commissioner of Taxation: Hansard, 23 October 2009, p. 24.

6 The Inspector-General of Taxation (IGT), *Review into the ATO's administration of the Superannuation Guarantee Charge: A report to the Assistant Treasurer*, March 2010, p. 3.

mean salary and wages across each of these high risk segments is less than $30,000 a year, which indicated that those most at risk of having insufficient superannuation contributed on their behalf by employers were low-income employees.[7]

1.16 There was also anecdotal evidence to suggest that many employees are concerned that, if they query their employer about their superannuation guarantee entitlement or lodge a complaint with the ATO, then they could either lose their job or no longer be given work.[8] Finally, the IGT noted that:

> A delay in triggering ATO audit activity significantly increases the likelihood of non-payment of SGC debt (requiring more costly debt recovery action) and irrecoverability through insolvency. It also hampers the ATO's and government's efforts to maintain a level playing field amongst employers and ensure that compliant employers do not face a financial disadvantage against non-compliant competitors.[9]

1.17 The IGT recommended that the Government consider making company directors personally liable for the unpaid superannuation guarantee charge liabilities of their companies.[10]

The Government's 2009 proposals paper

1.18 On 14 November 2009 the Government released a proposals paper containing options to address contrived company liquidations.[11] The paper outlined a number of possible amendments to address the problem. These included the following actions in relation to taxation law:

- amending the director penalty regime to remove the ability of directors engaged in fraudulent phoenix activity to avoid personal liability for Pay As You Go (Withholding) (PAYG(W)) liabilities by placing the company into voluntary administration or liquidating the company;

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7 The IGT, *Review into the ATO's administration of the Superannuation Guarantee Charge,* March 2010, p. 4.

8 The IGT, *Review into the ATO's administration of the Superannuation Guarantee Charge,* March 2010, p. 5.

9 The IGT, *Review into the ATO's administration of the Superannuation Guarantee Charge,* March 2010, p. 6.

10 The IGT, *Review into the ATO's administration of the Superannuation Guarantee Charge,* March 2010, p. 14.

11 See *Action against fraudulent phoenix activity: Proposals Paper,* November 2009, available at: <http://archive.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1647>.

- expanding the director penalty regime to apply to superannuation guarantee (SG) liabilities and other taxation liabilities such as indirect tax liabilities and a company's own income tax liability;
- amending the promoter penalty regime to ensure that the promoter penalty regime is able to target those individuals promoting fraudulent phoenix activity;
- expanding anti-avoidance provisions in the taxation law (either through an expansion of the existing general anti-avoidance rule (GAAR) or through the creation of a specific provision) to effectively negate any taxation benefit derived from fraudulent phoenix activity;
- reinstating the 'failure to remit' offence that would make it an offence for an entity not to remit the required PAYG(W) amounts;
- denying directors of companies (and potentially close relatives) from being able to access PAYG(W) credits in relation to their own income where amounts withheld have not been remitted (to the ATO) by the company;
- introducing an offence for claiming non-remitted PAYG(W) credits by making it an offence for directors to claim credits in relation to their own income for PAYG(W) amounts that have not been remitted by the company of which they are a director; and
- providing the Commissioner of Taxation with the discretion to require a company to provide an appropriate bond (supported by sufficient penalties) where it is reasonable to expect that the company would be unable to meet its tax obligations and/or engage in fraudulent phoenix activity.[12]

1.19 The paper also identified the following options in the corporations law:

- expanding the scope for disqualification of directors by giving a Court or the Australian Securities and Investment Commission (ASIC) a discretion to disqualify a person from being a director if the relevant company has been wound up and the conduct of the person, as a director of that company, makes them unfit to be concerned in the management of a company;
- restricting the use of a similar name or trading style by successor company and making directors personally liable for the debts of a

12 Australian Government, *Action against fraudulent phoenix activity: Proposals Paper,* November 2009, pp. 12-21.

liquidated company in circumstances where a 'new' company adopts the same or similar name as its previous incarnation; and

- adopting the doctrine of inadequate capitalisation by allowing the corporate veil to be lifted where a company sets up a subsidiary with insufficient capital to meet the debts that could reasonably be expected.[13]

The Government's 2011 Bills

1.20 Schedule 3 of the Tax Laws Amendment (2011 Measures No. 8) Bill 2011 sought to amend the *Taxation Administration Act 1953* (TAA 1953) by:

- extending the director penalty regime to make directors personally liable for their company's unpaid superannuation guarantee amounts;
- allowing the Commissioner of Taxation (Commissioner) to commence proceedings to recover director penalties three months after the company's due day where the company debt remains unpaid and unreported after the three months passes, without first issuing a director penalty notice; and
- in some instances making directors and their associates liable to pay as you go (PAYG) withholding non-compliance tax where the company has failed to pay amounts withheld to the Commissioner.

1.21 The tax on directors and their associates to deny their credits was sought to be imposed by the Pay As You Go Withholding Non-compliance Tax Bill 2011.

1.22 The proposed amendments were designed to provide disincentives for directors to allow their companies to fail to meet their existing obligations, particularly obligations to employees. They did not introduce new obligations on the company but, rather, penalised company directors who fail to ensure that their companies meet their obligations under the existing director penalty scheme.

1.23 The tax laws require companies to withhold amounts from certain payments they make, such as wages to employees and fees to directors. The withheld funds must be paid to the Commissioner or, where applicable, to pay estimates of those funds.

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13 Australian Government, *Action against fraudulent phoenix activity: Proposals Paper,* November 2009, pp. 12-21.

1.24 The director penalty regime has always made directors of non-compliant companies personally liable for the amount that the company should have paid, through imposition of a penalty. While the existing director penalty regime makes directors liable to a penalty, at the end of the day the company is left with the responsibility to meet its obligation.

1.25 Furthermore, as the existing regime allows directors 21 days notice of the penalty before the Commissioner is able to commence proceedings to recover the liability, directors inclined to do so are free to extinguish their personal liability by placing the company into voluntary administration or liquidation within that notice period and before the Commissioner can sue to recover their personal liability. The 21 days notice is, in effect, an invitation to liquidate. This often means that the full amount of PAYG withholding liabilities is never recovered.

1.26 To compound matters further, company directors are currently able to claim PAYG withholding credits (for amounts withheld from payments to them by the company) in their individual tax returns, even when the company has failed to pay some or all of its PAYG withholding liability to the Commissioner.

1.27 It is also critical to note that while the director penalty regime addresses non-payment of PAYG withholding amounts to the Commissioner, non-payment of employee entitlements such as superannuation cannot be addressed through the regime. Thus, the Commonwealth has effectively established one standard for its debtors, while leaving other lawful creditors with less effective means of redress.[14]

The committee's report on the 2011 Bills

1.28 The committee reported on the Bills in November 2011. An objection to the Bills raised by industry was that they reversed the onus of proof and assumed the guilt of company directors, rather than extend the presumption of innocence.

1.29 The committee did not find this argument compelling and was not convinced that the Bills reversed the onus of proof or undermined established principles of natural justice. They simply extended the penalty provisions that already apply to PAYG to superannuation.

1.30 The ATO also pointed out that the existing regime has defences for directors so that they are not inadvertently swept up. These defences

14 Discussion drawn from the Explanatory Memorandum for the Tax Laws Amendment (2011 Measures No. 8) Bill 2011 and the Pay As You Go Withholding Non-compliance Tax Bill 2011.

would have remained available to directors under the Bills. For example, the defences for director penalties include illness or some other reason such that it would be unreasonable to expect a director to take part in the management of a company at the relevant time, or if the director took all reasonable steps to ensure that a company complied with its obligations.

1.31 However, given the concerns expressed by industry at the hearings in relation to how the defences would operate in practice, the committee took the view that it would be worthwhile for the Government to investigate this matter further and determine whether it would be possible to expand and strengthen the defences for company directors.

1.32 Another concern raised by industry was that the Bills potentially applied to the broad range of directors whether engaged in phoenix activity or not. The committee concluded that the Government should investigate whether it is possible to tighten the provisions of the Bills to better target phoenix activity.

1.33 The committee stated that these provisions should be held pending while the Government re-assessed the issues raised in the inquiry. The committee's recommendations were:

> The Government explore whether to expand and strengthen the defences for company directors available in the Bills.
>
> The Government investigate whether it is possible to amend the Bills to better target phoenix activity.[15]

The current Bills

1.34 The current Bills are similar to the previous proposals in that they extend the director penalty regime to make directors personally liable for their company's unpaid superannuation amounts. They also make directors and their associates liable, in some circumstances, to PAYG withholding non-compliance tax where the company has failed to pay amounts withheld to the Commissioner.

1.35 The three main differences are that:

- the current Bills do not allow the Commissioner of Taxation to commence proceedings to recover director penalties without first issuing a director penalty notice. Instead, the Bills provide that directors

15 House of Representatives Standing Committee on Economics, *Advisory report on the Tax Laws Amendment (2011 Measures No. 8) Bill 2011 and the Pay As You Go Withholding Non-compliance Tax Bill 2011,* November 2011, Recommendations 1 and 2, pp. 27 and 30.

cannot discharge their director penalties by placing a company into administration or liquidation when the super guarantee remains unpaid and unreported three months after the due date;

- the ATO may issue a director penalty notice with a director's tax agent, instead of personally on the director; and
- there are additional defences for company directors and the timing rules also offer them some protection. For example:
  - ⇒ a new director is not liable for a director penalty for company debts until 30 days after they become a director;
  - ⇒ the limitation on directors not being able to discharge their director penalties by placing a company into administration or liquidation where the super guarantee remains unpaid and unreported three months after the due date only applies after they have been a director for three months; and
  - ⇒ a director is not liable for a director penalty if they took reasonable care in the matter and applied the superannuation legislation in a reasonable way.

1.36 The defences in the previous Bills also remain, such as where a director was ill or had some other good reason for not being involved in the management of the company. Another defence is where a director took all reasonable steps to ensure the directors caused the company to meet its super obligations or for an administrator to be appointed or for the company to be wound up.[16]

1.37 In summary, the Government has largely responded to concerns raised about the initial proposals. This is confirmed by the response paper to stakeholder concerns that the Government recently released. It lists five concerns, of which the Government states that four have been addressed and these are discussed above. The one outstanding matter relates to the proposal to target the amendments to phoenix activity, which the Government has declined to implement.[17]

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16 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, pp. 9-44.

17 Department of the Treasury, Summary Document, 'Amendments to the director penalty regime,' <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Amendments-to-the-director-penalty-regime>, viewed 30 May 2012.

Revenue impact

1.38 The provisions are expected to generate additional revenue, shown in the table below. These amounts would be used to pay employees their superannuation entitlements.

Table 1.1 Revenue impact of proposed legislation

Year	2011-12	2012-13	2013-14	2014-15	2015-16
Amount	$10m	$40m	$95m	$95m	$60m

Source Explanatory Memorandum, p. 3.

Consolidation and TOFA

Background

1.39 On 1 July 2002 a consolidated income tax regime was introduced, which allows wholly-owned corporate groups to choose to consolidate and operate as a single entity for tax purposes. The objective was to reduce compliance costs for business and improve the integrity of the tax system. The head company lodges a single tax return for the group, and the subsidiaries lose their individual income tax identities. The consolidation regime affects large businesses. Most small businesses and sole trader activities do not come under the regime.

1.40 Taxation of financial arrangements (TOFA) reforms were first announced in 1992 and have involved the implementation of various stages of arrangements in the ensuing years. The TOFA arrangements aim to reduce the influence of tax considerations on how financial arrangements are structured, emphasising other factors, such as risk, when making financing decisions.

1.41 The TOFA rules provide for the tax treatment of gains and losses on financial arrangements. The rules are contained in Division 230 of the *Income Tax Assessment Act 1997* (ITAA), and apply to those with large tax payment obligations. Division 230, representing stages three and four of the TOFA reforms, was introduced by the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*. The rules include methods for calculating gains and losses from financial arrangements, and the time at which these gains and losses will be brought to account.

1.42 The TOFA rules generally apply to financial arrangements for financial years commencing on or after 1 July 2010, unless the taxpayer elected to apply the TOFA provisions from the previous financial year. TOFA transitional provisions allow a tax payer to elect to apply TOFA provisions to existing financial arrangements that started before the taxpayer's first TOFA year (referred to as 'ungrandfathering'). A transitional balancing adjustment is then made for these financial arrangements, based on calculations using the 'primary' or 'alternative' method. If the transitional balance is positive a quarter of the amount is included in the taxpayer's assessable income for the first year that Division 230 applies and for each of the next three years. If it is negative, then a deduction for a quarter of the amount is allowed over that four year period.[18]

1.43 TOFA consolidated interaction provisions are designed to ensure appropriate interaction between the consolidated and TOFA regimes.

1.44 When introduced, the Government foreshadowed that monitoring and further legislative refinements would be required. Following the enactment of Divisions 230, consultation with the industry and Australian Tax Office revealed technical deficiencies in the consolidation interaction provisions and how they interact with the TOFA transitional provisions.[19]

1.45 On 25 November 2011 the then Assistant Treasurer, the Hon Bill Shorten MP, announced that the Government would amend the TOFA consolidated interaction and transitional provisions to ensure that the tax treatment of financial arrangements that are part of the assets and liabilities in a consolidation (joining) event, are consistent with the TOFA tax timing rules and takes into account changes in value of financial arrangements that are liabilities.[20]

1.46 Treasury consulted on exposure draft legislation and related explanatory material in April 2012. Stakeholders expressed concern that the amendments would apply retrospectively from the commencement of the TOFA provisions, and that they may not be able to amend prior income tax assessments affected by the amendments. Concerns were also raised about the application of the amendments to financial arrangements that

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18 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, p. 69.

19 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, p. 69.

20 The Hon Bill Shorten MP, *Changes to the income tax law affecting consolidated groups*, Media Release No. 159 of 25 November 2011.

are part of a tax consolidation of a wholly owned group and of chosen transitional entities.

1.47 In response to these concerns raised during the consultation, Treasury indicated that the following changes had been made to the proposed legislation:

- tax payers will be able to amend prior assessment within two years of the commencement of the amendments;
- financial arrangements of a chosen transitional entity will be carved out of the application of the amendments; and
- a head company's deemed assumption value for liabilities that are part of a pre-TOFA formation will be changed from the liability's accounting value to its tax carrying value.[21]

1.48 However, the retrospective application of these changes was retained. Treasury observed that it 'is consistent with prior Government announcements regarding amendments to the TOFA provisions and the retrospective application of all other amendments to the TOFA provisions.'[22]

1.49 The Tax Laws Amendment (2012 Measures No. 2) Bill 2012 was introduced in the House of Representatives on 24 May 2012, to address the problems raised by the 2010 amendments, and make improvements to consolidation and TOFA arrangements and interaction.

21 Department of the Treasury, *TOFA consolidation interaction and TOFA Transitional Balancing adjustment amendments: Summary of consultation process*, pp. 1-2, available at <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Changes-to-the-income-tax-law-affecting-consolidated-groups/TOFA>.

22 Department of the Treasury, *TOFA consolidation interaction and TOFA Transitional Balancing adjustment amendments: Summary of consultation process*, p. 2, available at <http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2012/Changes-to-the-income-tax-law-affecting-consolidated-groups/TOFA>.

Schedule 2—Consolidaton and TOFA

1.50 Schedule 2 of the Tax Laws Amendment (2012 Measures No. 2) Bill 2012 amends the *Income Tax Assessment Act 1997* and the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009.* It deals with the interaction between the consolidation regime and the TOFA rules. The Government anticipates that these amendments will 'clarify the operation of the TOFA consolidation interaction and TOFA transitional provisions', providing 'more certainty for consolidated groups.'[23]

1.51 The provisions in this schedule are to provide consistency in the tax treatment of financial arrangements that are part of a consolidation or joint event, and the TOFA tax timing rules. The amendments to the ITAA 1997 are to:

> ...ensure that, for consolidated groups applying Division 230 of the ITAA 1997 in relation to their financial arrangements, the head company is deemed to have received an amount for assuming an accounting liability that is, or is part of, a financial arrangement as part of a joining/consolidation event. This amount is deemed to be the accounting liability's accounting value at the joining time.[24]

1.52 The amendments to the TOFA transition provisions ensure that the TOFA consolidation interaction will apply in the following circumstances:

- a joining/consolidation event occurred prior to a consolidated group starting to apply the TOFA provisions in relation to its financial arrangements; and
- the head company has made an election to apply the TOFA provisions to its existing financial arrangements.[25]

1.53 The Assistant Treasurer, the Hon David Bradbury MP, stated that:

> ...this bill ensures the tax treatment of the financial arrangement is consistent with the TOFA tax timing rules, which recognise gains and losses from financial arrangements on an accruals basis as opposed to a realisation basis.

23 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, p. 5.

24 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, p. 67.

25 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, p. 5.

> The changes also recognise the fact that, like financial assets, the value of a financial liability can change other than from the repayment of the liability.[26]

1.54 The provisions are expected to protect a significant amount of revenue over the forward estimates and generate a revenue gain of $253 million over that period.

Table 1.2 Revenue impact of proposed changes to TOFA consolidation interaction arrangements

Year	2012-13	2013-14	2014-15	2015-16
Amount	$66m	$46m	$61m	$80m

Source *Explanatory Memorandum, p. 5.*

1.55 The amendments will have effect from the commencement of stages three and four of the TOFA reform, which was 26 March 2009. TOFA consolidation interaction provisions will apply to the consolidated group from their first TOFA applicable income year. The TOFA transitional provision amendments will also apply retrospectively.

Consolidation

Background

1.56 The consolidation regime allows the head company of a consolidated group to lodge tax returns on behalf of all the entities in the group. It was introduced to reduce tax compliance costs. However, deficiencies in the consolidation regime were identified in the years following its introduction.

1.57 One area identified for improvement was in how the cost of an asset is recognised when acquired by a company. When a consolidated group acquires a company, the joining company's shares cease to be recognised for tax purposes and become assets of the head company. The tax costs of these assets are reset at an amount that reflects their respective share of the group's cost of acquiring the joining company. This amount is based on the relative market values of those assets. Some assets, such as cash, retain their original tax cost.

26 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 24 May 2012, p. 17.

1.58 This led to amendments in 2010 enacted by the *Tax Laws Amendment (2010 Measures No. 1) Act 2010*. The Act broadened the scope of the residual tax cost setting rule and introduced the rights to future income rule. These changes had retrospective effect from the commencement of the consolidation regime in 2002. Consolidated groups were able to make claims for tax deductions based on the rights to future income and residual tax cost setting rules from the 2002-2003 financial year.

1.59 The objectives of the 2010 changes were to reinstate the original intention of the consolidation regime and 'remove uncertainty in the law by clarifying that, for some assets, the reset tax cost of the asset (rather than its original tax cost) is used when a taxing point later arises for the asset.'[27] However, there were unintended consequences and a negative impact on revenue.

1.60 When the measures in the 2010 amendments were introduced they were expected to have an 'unquantifiable but significant' revenue impact. However, the Government did not anticipate that by 2011 there would be in excess of $30 billion dollars in claims, with further claims likely to be made.[28]

1.61 The Assistant Treasurer, the Hon David Bradbury MP, stated that:

> Shortly after passage of those amendments, it became clear that the new rules could result in the recognition of the tax costs of some assets being brought forward in an unanticipated way.[29]

1.62 On 30 March 2011 the Government asked the Board to Taxation to:

- examine the operation of the rights to future income and residual tax cost setting rules with a view to clarifying their scope; and
- propose changes to limit the scope of the rules, if necessary, and advise on the date of effect of those proposed changes (including whether they should apply retrospectively).[30]

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27 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, p. 102.

28 The Board of Taxation, *Review of the Consolidation Rights to Future Income and Residual Tax Cost Setting Rules: A report to the Assistant Treasurer*, May 2011, p. 3.

29 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 24 May 2012, p. 17.

30 The Board of Taxation, *Review of the Consolidation Rights to Future Income and Residual Tax Cost Setting Rules: A report to the Assistant Treasurer*, May 2011, p. 1.

1.63 The Board of Taxation reported in May 2011, concluding:

> ...the scope of the rights to future income and residual tax cost setting rules, as enacted, is broader than what was intended at the time of their original announcement in 2005. The Board considers that, as a general principle, consolidated groups should not be able to claim types of deductions that are not available to taxpayers outside of consolidation. However the rights to future income and residual tax cost setting rules allow consolidated groups to access potential deductions which are not available under the general tax law outside of the consolidation regime. The Board has concluded that the rules could be improved so that they do not advantage consolidated groups over taxpayers outside consolidation.[31]

1.64 On 25 November 2011 the then Assistant Treasurer, the Hon Bill Shorten MP, announced that the Government would implement the Board of Taxation's recommendations for future consolidations. The Government indicated its intention to change the way consolidated groups can deduct the costs allocated to some assets following a corporate acquisition. It was anticipated that the changes would 'help protect potential threats to revenue by putting a limit on the scope of [the 2010] amendments', and ensure that consolidated groups could not continue to claim tax deductions that are not available to non-consolidated businesses.[32]

Schedule 3

1.65 Schedule 3 of the Tax Laws Amendment (2012 Measures No. 2) Bill 2012 amends the ITAA 1997 to modify the consolidating tax cost setting and rights to future income rules so that the tax outcomes for consolidated groups are more consistent with the tax outcomes that arise when assets are acquired outside the consolidated regime.

1.66 The Assistant Treasurer, the Hon David Bradbury MP, stated that:

> The changes in this bill take away the unintended retrospective benefits arising from the 2010 amendments and are necessary to protect a significant amount of revenue that would otherwise be at

31 The Board of Taxation, *Review of the Consolidation Rights to Future Income and Residual Tax Cost Setting Rules: A report to the Assistant Treasurer*, May 2011, p. vii.

32 The Hon Bill Shorten MP, *Changes to the income tax law affecting consolidated groups*, Media Release No. 159 of 25 November 2011.

> risk. These changes demonstrate the government's commitment to maintaining the equity, fairness and integrity of the tax system.[33]

1.67 In referring the Bill to the committee, the Selection Committee noted the 'retrospective application of tax charges' in the changes to the consolidation measures as an issue for consideration.[34]

1.68 The EM outlined that as the 2010 amendments had retrospective application, the amendments in Schedule 3 would need to have effect back to 2002. Provision is made in the Bill for a range of different circumstances. How the proposed changes will affect specific consolidated groups will depend on the time at which acquisitions were made in relation to the announcement of the changes on 12 May 2010 and the announcement on 30 March 2011 that the rules would be subject to review. Schedule 3 proposes three distinct categories of rules:

- Pre-rules (prior to the announcement of the changes on 12 May 2010);
- Interim rules (between 12 May 2010 and 30 March 2011); and
- Prospective rules (after 30 March 2011).

1.69 The key changes affecting corporate acquisitions under the consolidation arrangements are outlined below:

> The pre-rules, which apply broadly to the period before 12 May 2010, will restore the original tax cost setting rules that operated prior to the 2010 amendments, with modifications to:
>
> - limit deductions for rights to future income to unbilled income assets;
> - ensure that a deduction is allowed for the reset tax costs for consumable stores; and
> - treat certain assets as goodwill.
>
> The interim rules, which apply broadly to the period between 12 May 2010 and 30 March 2011, will restore the current 2010 residual tax cost setting and rights to future income rules, with modifications to:
>
> - treat certain assets as goodwill;
> - ensure that no value is attributed to certain contractual rights to future income; and
> - ensure that the reset tax costs for consumable stores are deductible.

33 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 24 May 2012, p. 17.

34 House of Representatives Selection Commission, *Report No. 53*, 24 May 2012, p. 4.

The prospective rules, which apply broadly to the period after 30 March 2011, will:

- restrict the operation of the tax cost setting rules to CGT assets, revenue assets, depreciating assets, trading stock and Division 230 financial arrangements;
- apply a business acquisition approach to the residual tax cost setting rule;
- ensure that the reset tax costs for rights to future income that are WIP amount assets and consumable stores are deductible; and
- treat rights to future income, other than WIP amount assets, as retained cost base assets.[35]

1.70 Provision is also made for groups that have private rulings from the ATO, including written advice under advance compliance agreements. Actions taken in these situations will stand.[36]

1.71 While these provisions are not expected to generate revenue, it is anticipated that they will protect a 'significant amount of revenue' by restricting the scope of tax deductions by consolidated groups.

Managed investment trusts

Introduction

1.72 The Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012 amends the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* to increase the managed investment trust (MIT) final withholding tax from 7.5 per cent to 15 per cent on fund payments made in relation to income years that commence on or after 1 July 2012.[37] This applies to distributions from managed investments to residents of a country with which Australia has a tax information exchange agreement.[38]

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35 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, pp. 105-106.

36 The Hon Bill Shorten MP, *Changes to the income tax law affecting consolidated groups*, Media Release No. 159 of 25 November 2011.

37 Explanatory Memorandum, Tax Laws Amendment (2012 Measures No. 2) Bill 2012; Pay As You Go Withholding Non-compliance Tax Bill 2012; Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2012, p. 133.

38 An information exchange country is a country listed in the Taxation Administration Amendment Regulations 2008 (No. 2).

1.73 Managed investment trusts are typically used to invest in infrastructure and property projects. Trustees of Australian managed investment trusts may be required to withhold an amount from a fund payment where they are authorised to make a payment to a place outside Australia or where the recipient has an address outside Australia.[39]

1.74 This measure is estimated to have a gain to revenue of $260 million over the forward estimates period, as shown below.[40]

Table 1.3 Revenue impact of the amendments to MIT final withholding tax

Year	2011-12	2012-13	2013-14	2014-15	2015-16
Amount	-	$50m	$65m	$70m	$75m

Source *Explanatory Memorandum, p. 7.*

Background to the managed investment final withholding tax

1.75 During the 2007 election campaign, the Australian Labor Party committed to lower the rate of MIT withholding tax from 30 to 15 per cent on distributions to foreign residents.

1.76 The *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* was enacted following an announcement by the Government as part of the 2008-09 Budget that the rate would eventually be lowered from 30 to 7.5 per cent.[41]

1.77 Prior to the introduction of this Act, trustees of Australian managed investment trusts were required to withhold at a rate of 30 per cent on the fund payment part of managed fund distributions to foreign resident investors. Those investors were then subject to the normal Australian income tax rules on their distributions. As the amount withheld was of a non-final nature, the foreign resident recipients of the payments were still required to lodge Australian tax returns.[42]

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39 Australian Tax Office, *New withholding arrangements for managed fund distributions to foreign residents*, 18 December 2008, <http://www.ato.gov.au/taxprofessionals/content.aspx?menuid=0&doc=/content/00174238.htm&page=1&H1 >, viewed 30 May 2012.

40 Australian Government, *Budget Measures: Budget Paper No 2: 2012-13*, Commonwealth of Australia, Canberra, 2012, p. 31.

41 L Nielson, *Budget Review 2012-13: Increase in Managed Investment Final Withholding Tax*, Parliament of Australia, Canberra, 2012.

42 Australian Tax Office, *New withholding arrangements for managed fund distributions to foreign residents*, 18 December 2008, <http://www.ato.gov.au/taxprofessionals/content.aspx?menuid=0&doc=/content/00174238.htm&page=1&H1>, viewed 30 May 2012.

1.78 The 2008 Act replaced the non-final withholding regime with a new final withholding tax regime which relieved foreign investors of the compliance burden of filing Australian tax returns on those distributions.[43]

1.79 These previous recent changes also incorporated an undertaking by the Government to cut the rate of the withholding tax from 30 per cent to 7.5 per cent in three stages:

- 22.5 per cent for the 2008-09 income year
- 15 per cent for the 2009-10 income year
- 7.5 per cent for the 2010-11 and subsequent income years.

1.80 Because of this staged approach to the lowering of the MIT Withholding Tax, the 7.5 per cent rate has only been in place for distributions made since the 2010-11 financial year.

1.81 The Bill will return the withholding tax for managed investment trusts to the level of the original 2007 election commitment of 15 per cent.[44]

1.82 In his second reading speech, the Hon David Bradbury MP, stated that the increase to the final withholding tax ensures that 'Australia receives a fair return on profits generated in Australia' and that the 15 per cent rate remains 'competitive with rates in other countries.'[45]

1.83 Withholding Tax regimes on foreign investors are common within the Organisation for Economic Cooperation and Development (OECD). With an increase in the withholding rate to 15 per cent, Australia would be similar to the rates in like countries in the OECD.[46]

Industry reaction

1.84 Industry reacted with concern to the announcement of an increase in the MIT withholding tax rate. Managed investment trusts expressed surprise at the announcement and warned that the sudden reversal of recent policy to lower the rate would cause concern among foreign investors about stability of Australia's investment environment. Mr Christian Holle, tax

43 Australian Tax Office, *New withholding arrangements for managed fund distributions to foreign residents*, 18 December 2008, <http://www.ato.gov.au/taxprofessionals/content.aspx?menuid =0&doc=/content/00174238.htm&page=1&H1 >, viewed 30 May 2012.

44 Australian Government, *Budget Measures: Budget Paper No 2: 2012-13*, Commonwealth of Australia, Canberra, 2012, p. 31.

45 The Hon David Bradbury MP, Assistant Treasurer, *House of Representatives Hansard*, 24 May 2012, p. 18.

46 L Nielson, *Budget Review 2012-13: Increase in Managed Investment Final Withholding Tax*, Parliament of Australia, Canberra, 2012.

partner of PricewaterhouseCoopers has criticised the lack of warning from the Government on its intention to increase the tax rate arguing that people have made investments in Australia based on an expectation of an ongoing 7.5 per cent rate and that there should be a transition period.[47]

1.85 Reported reactions from other industry representatives have warned that the tax rate rise could potentially jeopardise investment in crucial infrastructure and undermine efforts to develop asset management in Australia.[48]

1.86 However, others in the industry admitted the withholding tax rate is not the sole consideration for investors. While the existing 7.5 per cent rate was welcomed by the industry as making Australia more competitive in the region, other factors such as Australia's stable government and application of the rule of law, proximity to Asia and strength of the economy were also recognised as making Australia an attractive investment destination.[49]

Passenger Movement Charge

Introduction

1.87 The Passenger Movement Charge Amendment Bill 2012 (the Bill) will increase the Passenger Movement Charge (PMC) from $47 to $55 per person from 1 July 2012 and enable automatic indexation, based on the Consumer Price Index (CPI), from 1 July 2013.[50]

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47 F Chong, 'Tax Flip sends 'an appalling message', *The Australian,* 10 May 2012, <http://www.theaustralian.com.au/business/property/tax-flip-sends-an-appalling-message-to-foreign-investors/story-fn9656lz-1226351333214>, viewed 30 May 2012.

48 J Keho and J Wiggins, 'Industry slams rise in withholding levy', *Australian Financial Review,* 10 May 2012, p. 13; F Chong, 'Tax Flip sends an appalling message', *The Australian,* 10 May 2012, < http://www.theaustralian.com.au/business/property/tax-flip-sends-an-appalling-message-to-foreign-investors/story-fn9656lz-1226351333214>, viewed 30 May 2012; P Hopkins, 'Property investment to suffer', *Sydney Morning Herald,* 14 May 2012, <http://www.smh.com.au/business/property/property-investment-to-suffer-20120513-1ykry.html>, viewed 30 May 2012.

49 P Hopkins, 'Property investment to suffer', *Sydney Morning Herald,* 14 May 2012, <http://www.smh.com.au/business/property/property-investment-to-suffer-20120513-1ykry.html>, viewed 30 May 2012.

50 Explanatory Memorandum, Passenger Movement Charge Amendment Bill 2012, p. 5.

1.88 Over the forward estimates the measure will deliver an additional $610 million.[51] The Government has allocated $61 million of this over four years to the Asia Marketing Fund. This fund will promote Australian tourism and business opportunities in Asia. The tourist industry has been critical of the proposed increase to the PMC, and argues it will discourage international visitors.[52] However, previous modelling by the Sustainable Tourism Cooperative Research Centre (STCRC) has indicated that an increase to the PMC could increase gross national income and would have a small negative effect on the tourism sector.[53] In contrast to the current proposal, an assumption in the modelling was that none of the funds collected would be directed back to the tourism sector.

Background to the Passenger Movement Charge

1.89 The Passenger Movement Charge was introduced in July 1995 (replacing departure tax) and is imposed on a person departing from Australia, whether or not the person intends to return.[54] The PMC is levied under the *Passenger Movement Charge Act 1978* and collected under the *Passenger Movement Charge Collection Act 1978*. It is administered by the Australian Customs and Border Protection Service (Customs and Border Protection).

1.90 Commonly, carriers moving passengers through Australian customs enter into formal remittance arrangements with Customs and Border Protection. The carrier then levies the PMC at the time a ticket is sold and remits the PMC to Customs and Boarder Protection within an agreed timeframe.

1.91 Where a person departs without a ticket, or equivalent authority, the PMC is collected by Customs and Border Protection officers directly from the passenger, captain or agent at the point of departure. This generally applies to people on private flights and sea craft. There are a number of exemptions to the PMC, including:

- passengers under 12 years of age;
- 'traditional inhabitants' travelling to the Torres Strait or Papua New Guinea;

51 Australian Government, *Budget Measures: Budget Paper No 2: 2012-13*, Commonwealth of Australia, Canberra, 2012, p. 11.

52 Tourism & Transport Forum, *Australia to New Zealand: 'We're Sorry'*, 17 May 2012, <http://www.ttf.org.au/Content/mediareleases.aspx>, viewed 30 May 2012.

53 P Forsyth, S Hoque, L Dwyer, T D Pham and R Spurr, *The Impacts of the Passenger Movement Charge on Tourism Output and the Economy*, 15 March 2011, Sustainable Tourism CRC – The Centre for Economics and Policy, p. 4.

54 Australian Customs and Boarder Protection Services, *Passenger Movement Charge*, <http://www.customs.gov.au/site/page6068.asp>, viewed 30 May 2012.

- on-duty foreign defence personnel, and their spouse and children;
- crew members, and their spouse and children;
- transit passengers;
- emergency passengers;
- certain consular and diplomatic officers;
- protective service officers; and
- passengers travelling to the External and Indian Ocean Territories.[55]

1.92 The PMC has been set at $47 per passenger since 1 July 2008. The Government announced the $8 increase, and subsequent indexation, to the PMC in the 2012-13 budget.[56] The measure is estimated to increase revenue by $610 million over the forward estimates period.

Table 1.4 Revenue impact of the Passenger Movement Charge

Year	2011-12	2012-13	2013-14	2014-15	2015-16
Amount	-	$85m	$140m	$175m	$210m

Source *Budget Paper 2012-13, Part 1: Revenue Measures, p. 11.*

1.93 The Government has flagged the Asia Marketing Fund as the recipient of $61 million over four years of the funds raised by the PMC. According to Budget Papers:

> The fund will support the promotion of Australia to growing markets in Asia and is intended to encourage investment by the private sector, and State and Territory governments.[57]

1.94 The Minister for Home Affairs, the Hon Jason Clare MP, stated in his second reading speech that the Asia Marketing Fund will promote Australia 'as a premium holiday and business travel destination.'[58]

1.95 Industry groups have expressed the concern that the increase to the PMC will act as a barrier to entry for international passengers and reduce

55 Australian Customs and Boarder Protection Services, *Passengers Exempt from the Passenger Movement Charge*, <http://www.customs.gov.au/webdata/resources/files/PMCExemptions-Final-March2009.pdf>, viewed 30 May 2012.

56 Australian Government, *Budget Measures: Budget Paper No 2: 2012-13*, Commonwealth of Australia, Canberra, 2012, p. 11.

57 Australian Government, *Budget Measures: Budget Paper No 2: Expense Measures No. 2: 2012-13*, Commonwealth of Australia, Canberra, 2012, p. 1.

58 The Hon Jason Clare MP, Minister for Home Affairs, *House of Representatives Hansard*, 23 May 2012, p. 13.

international visitor numbers.[59] Indeed, during a press conference, Mr John Lee, the CEO of Tourism and Transport Forum Australia (TTF), apologised to New Zealand visitors for the imposition of this cost. Mr Lee went on to argue:

> The PMC was introduced to cover the cost of passenger processing at Australia's international gateways and massively over-collects on that task. Delivering the Australian government around $300 million more each year than it spends on passenger processing.
>
> The rise – and the future indexation of the PMC to inflation – will give the government an extra $610 million over the next four year – all coming out of the pockets of tourists.[60]

1.96 In 2011 the STCRC undertook modelling to predict the impact of a 20 per cent rise in the PMC ($9.40 in current terms) on 'tourism output' and the economy more broadly.[61] The researchers looked at a range of economic indicators and reviewed the impost on foreign and domestic travellers. It was postulated that 'contrary to conventional wisdom' increasing the PMC would increase the gross national income by $49 million but decrease tourism output by $7 million.[62] It was conceded that the tourism industry could be negatively impacted particularly where it relied on international tourism. The study concluded that:

> ...the PMC works, in effect, as a transfer payment from tourism to non-tourism industries, as most of the total economic positive effects accrue to the non-tourism industries. This effect magnified as there is no tourism-specific use of the extra Government revenue benefit...[63]

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59 See for example: Travel Blackboard, 'Budget: Help or hinder for tourism industry', <http://www.etravelblackboard.com/article/131480/budget-help-or-hinder-for-tourism-industry>, viewed 30 May 2012; Lisa Allen, 'Shocked operators bag passenger charge hike', *The Australian*, <http://www.theaustralian.com.au/business/shocked-operators-bag-passenger-charge-hike/story-e6frg8zx-1226351431849>, viewed 30 May 2012.

60 Tourism and Transport Forum, *Australia to New Zealand: 'We're Sorry'*, 17 May 2012, <http://www.ttf.org.au/Content/mediareleases.aspx>, viewed 30 May 2012.

61 P Forsyth et al, *The Impacts of the Passenger Movement Charge on Tourism Output and the Economy*, 15 March 2011, Sustainable Tourism CRC – The Centre for Economics and Policy, Queensland, pp. 1-49.

62 P Forsyth et al, *The Impacts of the Passenger Movement Charge on Tourism Output and the Economy*, 15 March 2011, Sustainable Tourism CRC – The Centre for Economics and Policy, Queensland, p. 18.

63 P Forsyth et al, *The Impacts of the Passenger Movement Charge on Tourism Output and the Economy*, 15 March 2011, Sustainable Tourism CRC – The Centre for Economics and Policy, Queensland, p. 18.

1.97 The modelling assumed that no funds would be put back into promoting Australia's tourism sector. However, as discussed, the Government has committed to putting $61 million into promoting Australian tourism in Asia.

Key features of the Passenger Movement Charge Bill

1.98 Section 6 of the Bill repeals the PMC from $47 and substitutes $55 beginning 1 July 2012.[64] Subsection 6(1) states that a person pays the rate of PMC based on when they purchase a ticket, not when they actually travel. Subsections 6(2)(3) set out the formula to calculate the rate of PMC after 1 July 2013, rounded down to two decimal places (i.e. former rate of charge x indexation factor).

1.99 Section 7 ensures that the measures outlined above are consistently implemented for passengers not using a commercial ticket or equivalent authority.

1.100 Section 8 sets out the formula for determining the indexation factor.[65] Section 8(1) provides that the indexation factor is based on a comparison of the March indexation number for the year indexation occurs and the previous March quarter. The index number is the CPI number published by the Australian Statistician for the March quarter. If the indexation factor is less than or equal to 1, the rate of PMC will not change (Subsection 8(3)). The indexation factor is calculated in a method similar to other taxes and levies subject to indexation.[66]

1.101 An application provision provides that amendments outlined above can be applied after 1 July 2012, and it also ensure that persons who purchase tickets prior to this date do not pay the increase.

Objectives and scope of the inquiry

1.102 The objective of the inquiry is to investigate the adequacy of the Bills in achieving their policy objectives and, where possible, identify any unintended consequences.

1.103 In referring the Tax Laws Amendment (2012 Measures No. 2) Bill 2012, Income Tax (Managed Investment Trust Withholding Tax) Amendment

64 Explanatory Memorandum, Passenger Movement Charge Amendment Bill 2012, p. 5.

65 Explanatory Memorandum, Passenger Movement Charge Amendment Bill 2012, p. 6.

66 Explanatory Memorandum, Passenger Movement Charge Amendment Bill 2012, p. 7.

Bill 2012, and Pay As You Go Withholding Non-compliance Tax Bill 2012, the Selection Committee stated:

> REASONS FOR REFERRAL/PRINCIPAL ISSUES FOR CONSIDERATION: In relation to the managed investment trust withholding tax—doubling of tax, impact on investment in Australia, sovereign risk issues and impact on long term infrastructure investment. In relation to consolidation measures—retrospective application of tax charges.

1.104 In relation to the Passenger Movement Charge Amendment Bill 2012, the Selection Committee stated:

> REASONS FOR REFERRAL/PRINCIPAL ISSUES FOR CONSIDERATION: The government told the industry that they were not going to increase the passenger movement charge—the industry did not have an adequate consultation process prior to it being flagged. It will likely have an adverse effect on the tourism sector and would be worthwhile allowing stakeholders to have input.

Conduct of the inquiry

1.105 Details of the inquiry were placed on the committee's website. On 25 May 2012 the Committee Chair issued a media release announcing the inquiry and seeking submissions.

1.106 Thirty submissions were received on the various bills being considered. Submissions are listed in Appendix A.

1.107 A public hearing was held in Canberra on Monday 4 June 2012. A list of the witnesses who appeared at the hearing are available at Appendix B. The submissions and transcript of evidence are available on the committee's website at: www.aph.gov.au/economics.htm.