

Submission to:

Senate Economics Legislation Committee

Title:

Tax and Superannuation Laws Amendment
(2014 Measures No 6) Bill 2014

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1. About the Australian Trucking Association

The Australian Trucking Association (ATA) is the peak body that represents the trucking industry. Its members include state and sector based trucking associations, some of the nation's largest transport companies and businesses with leading expertise in truck technology.

2. Summary of recommendations

Recommendation 1

The Senate should pass the Tax and Superannuation Laws Amendment (2014 Measures No 6) Bill 2014.

Recommendation 2

The Senate should amend the Bill to remove schedule 4, item 4.

3. Introduction

Schedule 4 of the Tax and Superannuation Laws Amendment (2014 Measures No 6) Bill 2014 would, if passed, change the *Fuel Tax Act 2006* to protect trucking businesses and other fuel tax credit claimants from the side effects of reintroducing fuel tax indexation.

The Government announced the reintroduction of fuel tax indexation in the 2014-15 Budget. The Government announced that the fuel tax rate would increase twice a year in line with the consumer price index, starting on 1 August 2014. The decision was forecast to raise an additional \$2.2 billion in revenue over the next four years.¹

On 30 October, the Government gave effect to its decision by tabling Excise Tariff Proposal (No 1) 2014 and Customs Tariff Proposal (No 1) 2014. As a result of these proposals, the fuel tax rate increased from 38.143 cents per litre to 38.6 cents per litre on 10 November 2014. In addition, the tariff proposals:

- index the fuel tax rate on 1 February and 1 August
- introduce a system for rounding the fuel tax rate to one decimal point in cents to simplify fuel tax credit calculations. The ATA has previously welcomed this rounding arrangement.²

Under the *Fuel Tax Act 2006*, businesses that operate trucks with a Gross Vehicle Mass (GVM) of more than 4.5 tonnes on public roads can claim fuel tax credits for each litre of fuel they buy for use in those vehicles. The trucks must meet one of four environmental criteria.

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

The road user charge is currently 26.14 cents per litre, and is set in conjunction with state registration charges with the aim of recovering this cost. They more than do this. The government body responsible for recommending these charges concluded this year that the trucking industry would be overcharged by more than \$200 million in 2014-15, because of the way they are calculated.³

The fuel tax credits system is based on the tax policy principle that intermediate business inputs like fuel should only be taxed to correct externalities – in this case, the cost of the industry's use of the roads.

¹ 2014-15 Budget Paper No 2, p17.

² Senate Economics Legislation Committee, Committee Hansard, 2 July 2014, p4. The Fuel Indexation (Road Funding) Bill 2014 would have also rounded the road user charge to one decimal place in cents. The current bill does not include these amendments.

³ National Transport Commission, *2014 heavy vehicle charges determination: regulatory impact statement*, February 2014, p59. The most important problem with the charging model is that it greatly underestimates the number of trucks and trailers on the road.

The system also reduces freight costs for the industry's customers. Because the trucking industry is highly competitive, the fuel tax credit rate is factored into contracts, freight surcharges and cost calculators. For a trucking business, its ability to claim fuel tax credits is an essential part of how it does operates.

The drafters of the *Fuel Tax Act* did not envisage that fuel tax would be reindexed. They certainly did not foresee that the rate would be changed via tariff proposals. As a result, there need to be amendments to the Act to ensure that trucking operators can continue to claim fuel tax credits at the correct rate and are not overcharged.

The Tax and Superannuation Laws Amendment (2014 Measures No 6) Bill would make those amendments. **The bill does not ratify or implement the Government's tariff proposals in legislation.**

It should be noted that trucking businesses could still need to make changes to their systems to handle the side effects of fuel tax indexation, despite the bill.

Businesses would need to have systems to divide their fuel purchase records into pre- and post-indexation date categories. They would claim fuel tax credits on those purchases at different rates.

For example, a quarterly BAS payer would claim fuel tax credits at 12.003 cents per litre for purchases made between 1 October and 9 November 2014, and then at 12.46 cents per litre (ie: 38.6 cents per litre minus the road user charge, 26.14 cents per litre) for fuel purchases between 10 November and 31 December.

Businesses with bulk fuel tanks or who pre-pay for fuel that is then delivered as needed would face additional record-keeping issues.

4. Determining the fuel tax rate

Under the *Fuel Tax Act*, eligible businesses can claim for the 'fuel tax amount' they paid on the fuel when they acquired it (s43-5) minus the road user charge (s43-10(3)).

'Fuel tax' is defined in s110-5 of the Act in the following terms:

fuel tax means duty that is payable on fuel under:

- (a) The *Excise Act 1901* and the *Excise Tariff Act 1921*; or
- (b) The *Customs Act 1901* and the *Customs Tariff 1995*;

other than any duty that is expressed as a percentage of the value of fuel for the purposes of section 9 of the *Customs Tariff Act 1995*.

As the explanatory memorandum for the Bill points out, tariff proposals do not amend the excise and customs law, but rather give notice of the Government's intention to introduce legislation into Parliament.⁴

In other words, the tariff proposals do not increase the industry's entitlement to fuel tax credits, even though they effectively increase the fuel tax rate. During 2015, the fuel tax credit rate would remain fixed at 38.143 cents per litre minus the road user charge, even though the fuel tax rate has increased to 38.6 cents per litre and will increase further on 1 February and 1 August.

Table 1 on page 5 sets out the impact of this drafting issue on three representative trucking operators. A representative single truck owner driver could have to pay an extra \$750 in fuel tax (an underpayment of fuel tax credits is an increase in effective fuel tax). A small fleet operator could have to pay an extra \$4,100, with a large operator with 160 trucks paying an additional \$41,900.

⁴ Explanatory Memorandum, p43.

Table 1: impact of indexation via tariff proposal on representative operators

	Owner-driver	Small fleet	Large operator
Number of trucks	1	4	160
Yearly fuel consumption (litres)	90,000	500,000	5,024,000
10 November 2014 to 31 January 2015 (82 days)			
Fuel tax rate (cents per litre)	38.6		
Fuel tax paid (\$)	7,805	43,359	435,670
Claimable fuel tax credits (\$)	2,427	13,483	135,475
Correct fuel tax credits (\$)	2,519	13,996	140,633
Underpayment to operator (\$)	92	513	5,158
1 February 2015 to 31 July 2015 (180 days)			
Fuel tax rate (cents per litre)	39.0		
Fuel tax paid (\$)	17,310	96,164	966,260
Claimable fuel tax credits (\$)	5,327	29,596	297,385
Correct fuel tax credits (\$)	5,708	31,710	318,618
Underpayment to operator (\$)	380	2,113	21,233
1 August 2015 to 30 October 2015 (90 days)			
Fuel tax rate (cents per litre)	39.4		
Fuel tax paid (\$)	8,744	48,575	488,085
Claimable fuel tax credits (\$)	2,664	14,798	148,693
Correct fuel tax credits (\$)	2,943	16,348	164,264
Underpayment to operator (\$)	279	1,550	15,572
Total underpayment to operator (\$)	752	4,176	41,963

Source: ATA analysis. Modelling assumptions: (i) fuel is consumed evenly throughout the year; (ii) the road user charge is 26.14 cpl; and (iii) the inflation rate is 2.0 per cent.

Provided parliament passes the legislation needed to validate the customs and excise tariff proposals, trucking operators would, in the end, be able to correct these underpayments and claim their missed fuel tax credits back from the tax office.⁵

Until the legislation is passed, however, they would have to bear the cashflow burden of the underpayments. This would be especially problematic for owner-drivers and small fleet operators.

Schedule 4, item 2 would address the problem by adding a new section to the *Fuel Tax Act* (s43-6). The new section would ensure that tariff proposals are taken into account in working out the amount of fuel tax credits that businesses can claim.⁶

5. Impact on quarterly BAS payers

At present, the *Fuel Tax Act* requires businesses to calculate their fuel tax credits based on the rate of fuel tax that applied on the day they acquired or imported the fuel (s43-5(2A)). As a result, an increase in the fuel tax rate due to indexation would immediately flow through to operators' fuel tax credits, provided the tariff proposal issue discussed in section 4 of this submission is fixed.

For fuel acquired, manufactured or imported from 1 July 2015, businesses will be required to calculate their fuel tax credits based on the tax rate that applied on the **first day of the tax period to which the credit is attributable** (s43-5(2A) row 3).

⁵ As a result of the *Fuel Tax: Correcting Fuel Tax Errors Determination 2013*, they would be able to correct the errors in a single claim rather than seeking revisions to multiple activity statements.

⁶ EM, p46

The effect of this method change would be as follows:

Monthly BAS payers	No effect. The 1 February and 1 August fuel tax indexations would apply on the first day of their February and August tax periods.
Quarterly BAS payers	Quarterly BAS payers would not be able to claim fuel tax credits at the higher rate until two months after the indexation occurred (ie: 1 April and 1 October instead of 1 February and 1 August).

This would obviously be undesirable. It would mean that quarterly BAS payers (businesses with a GST turnover of less than \$20 million) would be subject to a higher effective tax rate than monthly BAS payers.

Schedule 4, item 1 of the Bill would replace the table in s43-5(2A) of the *Fuel Tax Act* to remove the 1 July 2015 changeover. As a result, businesses would continue to calculate their fuel tax credits based on the fuel tax rate applying on the day they acquired or imported the relevant fuel. This amendment would take effect for tax periods starting on or after 1 July 2014 (schedule 4, item 6).

6. Reducing the number of fuel tax credit adjustments in a year

As this submission points out, many fuel levies, contracts and cost calculators used in the trucking industry incorporate the fuel tax credit rate. The reintroduction of fuel tax indexation would mean they would need to be altered up to three times a year: on 1 February and 1 August due to indexation and on 1 July in some years due to adjustments to the road user charge. The Australian Government did not adjust the road user charge in 2014.⁷

To reduce the red tape burden on the industry, the ATA considers it would be appropriate for the Government to adjust the road user charge on 1 August rather than 1 July in those years where the road user charge needs to be altered.

To enable this to occur, there would need to be a technical amendment to section 43-10(6) of the *Fuel Tax Act*. This section provides that a business's entitlement to fuel tax credits is reduced by the road user charge that applied at the **beginning of the tax period to which is the credit is attributable**.

If the Government adjusted the road user charge on 1 August, monthly BAS payers would be subject to the adjusted rate immediately. Quarterly BAS payers would not become subject to the adjusted rate until 1 October (the start of their next tax period).

To make a 1 August road user charge adjustment date work, the section would need to be amended to provide that road user charge adjustments take effect immediately.

Schedule 4, item 3 would change how businesses would determine the relevant road user charge rate. They would use the road user charge rate in force on the day prescribed by the amended table in s43-5(2A).

For the reasons set out in sections 4, 5 and 6 of this submission, the ATA recommends:

Recommendation 1

The Senate should pass the Tax and Superannuation Laws Amendment (2014 Measures No 6) Bill 2014.

7. Fuel tax adjustments if tariff proposals are not ratified

Schedule 4, item 4 would establish a mechanism for dealing with the possibility that parliament could fail to ratify the tariff proposals used as the basis for calculating a business's fuel tax credits.

⁷ Transport and Infrastructure Council communique, 9 May 2014. Accessible at www.transportinfrastructurecouncil.gov.au.

Under item 4, fuel tax credit claimants would have a 'fuel tax adjustment' under section 44-5 of the *Fuel Tax Act*, which would be the difference between the fuel tax credits they claimed and the amount they would have been entitled to claim if the tariff proposals had never been put forward.⁸

The fuel tax adjustment would need to be made in the tax period the business became aware of the need for an adjustment.⁹

The practical effect of item 4 in the current situation would be that trucking businesses would be required to pay back the extra fuel tax credits they received as a result of this bill, if legislation ratifying the tariff proposals was not passed before 30 October 2015.

The underpayment figures in table 1 show the amounts that representative trucking operators would be required to repay. A representative owner driver could be required to pay back some \$750. A small fleet operator could be required to pay back an extra \$4,100; a larger trucking business could be required to return more than \$41,900.

The problem is that these operators received their extra fuel tax credits to offset the extra fuel tax they paid throughout the year when they made their fuel purchases. They would not have the money to hand it back.

Requiring operators to pay back their extra fuel tax credits would only make sense if they could also claim back the extra fuel tax they paid. But as the Minister for Finance, Senator Cormann, pointed out:

The money would have to go back to those that have paid the duty, that have paid the excise: it will go back to fuel manufacturers and to fuel importers who would essentially have a windfall gain. There is no obligation on those fuel importers or fuel manufacturers to remit that money to users.¹⁰

Accordingly, the ATA recommends:

Recommendation 2

The Senate should amend the Bill to remove schedule 4, item 4.

⁸ EM, p47; proposed subsection 44-5(1).

⁹ *Fuel Tax Act*, s65-10.

¹⁰ Cormann, M. (Minister for Finance) Transcript of press conference, 28 October 2014.