



AUSTRALIAN INSTITUTE OF PETROLEUM

General Manager  
Indirect Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Ms Berkeley

**CONSULTATION ON DRAFT LEGISLATION & REGULATIONS – DEFERRED SETTLEMENT OF EXCISE  
& EXCISE EQUIVALENT CUSTOMS DUTY**

I am writing in response to the Treasury's recent request for industry comment on the draft legislation and regulations relating to 'Deferred Settlement of Excise & Excise Equivalent Customs Duty'.

AIP was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards. AIP's four core member companies are BP Australia Pty Ltd, Caltex Australia Limited, Mobil Oil Australia Pty Ltd and The Shell Company of Australia Ltd, and this submission is provided on their behalf.

As you are aware from previous AIP submissions, AIP member companies play a very significant role in the transport fuel supply chain. This includes in relation to conventional petroleum fuels (supplying around 90% of the transport fuel market with bulk liquid fuels), gaseous fuels (around 2/3 of the market) and in relation to biofuels (the largest suppliers of ethanol blended fuels and blended biodiesel). Thus, AIP member companies supply the vast majority of transport fuels, of all types, to the market.

As a result of this role, AIP member companies are also very significant excise/duty collectors for the Government (totalling around \$15-\$16 billion pa), have total assets valued at over \$16 billion dollars, and typically invest around \$1 billion each year to keep fuel reliably supplied to the Australian market. This ongoing industry investment in fuels supply infrastructure underpins Australia's high level of supply security and the reliable and competitively priced supply of transport fuels.

We note that in relation to our significant excise payments to Government, the ATO 'risk differentiation framework' has categorised AIP member companies for excise purposes as 'key' excise payers with a lower risk of non-compliance, given their long history of excise compliance supported by robust controls, data systems and reporting arrangements within each AIP member company.

Against this background, AIP member companies have a very strong interest in any changes to fuel taxation and its associated administration. This is because fuel tax and administration changes have direct financial and business implications for AIP member companies, including an impact on their future excise and customs obligations and thereby on their future cash flow and working capital requirements. These cash flow and working capital impacts are significantly greater for AIP member companies than for other fuels suppliers in the Australian market.

## AIP's Overall Views on the Draft Legislation & Regulations

AIP considers that the exposure draft legislation and regulations generally achieve the objectives announced by Government throughout the recent consultation process on Alternative Fuels Taxation and align with the new legislation and regulation framework. They also deliver on the Government's May 2008 announcement to codify the deferred (monthly) excise settlement arrangements for eligible 'small businesses'.

However, as AIP has clearly stated in a number of our submissions to Treasury on alternative fuels taxation, AIP supports the principle that all fuel for transport use - including liquid fuels and gaseous fuels - should be taxed on a comprehensive and neutral basis, to ensure the most efficient, equitable and robust tax system for road transport fuels.

AIP therefore supports an excise system, including underpinning administrative arrangements, for road transport fuels that: (i) is efficient (causes minimum distortions), equitable (fair) and simple (easily understood); (ii) is practical/workable and minimises compliance and administration costs for business and government; and (iii) supports clarity, consistency and stability in policy settings relevant to the transport fuels industry.

We do not consider that deferred settlement arrangements applying to eligible small businesses and to gaseous fuel suppliers (6 Day delayed settlement) meet some of these criteria, particularly in terms of neutral treatment across fuels and Australian fuel suppliers, minimising compliance costs to all businesses and in terms of administrative simplicity. We are also strongly opposed to excise administration arrangements that confer commercial advantages on some businesses within a competitive market but not others, as both of these proposals do.

### **BACKGROUND:**

*By way of background, the accounting systems of AIP member companies are currently designed to capture all excisable sales made during each specified period and reconciliation processes are designed to ensure that the correct excise has been captured and paid for the period. So, through the current weekly settlement process on each Monday, AIP member companies are assured that all excisable fuels transactions are reconciled and cleared on a weekly basis. The excise liabilities triggered from the movement of products from a licensed site are typically posted to the one General Ledger account.*

*Introducing the settlement of excise at a different time for gaseous fuels like LPG, will cause significant reconciliation problems as there will be uncleared balances with the ATO resulting in less certainty and visibility that everything is cleared for excisable fuels each week. To overcome these issues, a separate process will need to be designed by AIP member companies to ensure compliance with excise remittance for gaseous fuels. In addition, the process of preparing the excise reports will have to be done twice instead of once a week.*

### **Cash Flow Impacts of Current Weekly Settlement**

As we have previously advised Treasury, under the current weekly excise settlement for excisable petroleum fuels, AIP member companies experience negative cash flow and working capital burdens on a much more significant scale than small business and gaseous fuel suppliers (see box below).

**CASH FLOW EXAMPLE:**By way of example:

- an LPG Distributor purchases a bulk LPG load excise inclusive from an AIP member company on the 1 or 2 December 2011;
- the AIP member company would pay excise to the ATO on 5 December;
- the LPG Distributor would typically have 7-14 days from the end of the month (ie. 7-14 January 2012) to recover the bulk LPG supply costs from their own customers and then settle their invoice with the AIP member company; and
- the LPG Distributor would subsequently be able to claim Fuel Tax Credits (FTCs) on 21 January 2012 for eligible non-transport uses of LPG.

Therefore, the potential cash flow impact for the LPG Distributor is short lived (eg. 1-2 weeks between payment of supplier and FTC claims) and would be further reduced if the LPG Distributor renegotiated trading terms with their bulk supplier to more closely align with the FTC cycle. There will also be no cash flow impact for the Distributor where LPG is supplied under the Government's remission arrangements.

**Importantly, the potential cash flow impact for the LPG Distributor contrasts starkly with the long time-lag between AIP member companies paying weekly excise to the ATO and subsequent payment to them by their customers (which can be up to 5-6 weeks later).**

AIP also notes that the cash flow and working capital burdens for AIP member companies have increased substantially over time with the increase in fuel excise from the initial 9 cents per litre to the current 38 cents per litre.

Hence we believe the deferred settlement arrangements to assist the LPG sector and small business should be applicable across all excisable liquid and gaseous fuels and for all businesses, particularly given the contribution of AIP member companies to meeting the lion's share of the transport fuel task. This approach was strongly supported by the Productivity Commission in their 2008 Report (see below).

**Monthly Excise Settlement**

AIP has been a longstanding advocate of **monthly excise settlement**, as the most simple, equitable and efficient solution to fully meet AIP's core principles for a robust excise system with a level playing field across the transport fuels market. It would also provide significant potential benefits and efficiencies to both industry and government.

These benefits include:

- an overall substantial reduction in 'red tape' for the fuels industry;
- a very significant reduction in administration and compliance costs for both industry and government; the requirement to only lodge/collect 12 excise returns per year, rather than 52 (as noted in Treasury's Explanatory Memorandum) represents a massive reduction in the administrative task for both industry and the ATO/Customs;
- a simpler and more efficient tax system, including through the alignment of excise liability with other indirect taxes paid on a monthly cycle (and additional efficiencies could also be realised through reporting excise liabilities through the BAS as originally intended); and
- providing scope for more efficient cash flow and working capital management by the fuels industry to better support its significant infrastructure investment task to maintain Australia's ongoing fuel supply and energy security into the future (and the competitiveness of the sector more broadly).

Importantly, AIP member companies do not consider that the proposed monthly excise settlement arrangements or permissions applying to them would raise compliance and revenue protection issues for Government, including against the background of the ATO's 'risk differentiation framework' and the ATO's ongoing and rigorous excise audit program.

We note that monthly excise settlement and its benefits is supported in the September 2008 Productivity Commission (PC) *'Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades'*.

In this Report, the PC recommended "excise duty on a monthly basis should be extended to all businesses". In making this recommendation, the PC noted that *"if the proposed changes to reporting time frames for small businesses (monthly excise settlement) were extended to all businesses, the reduced compliance burden as well as administrative costs for government should outweigh revenue considerations, particularly if revenue administration is consolidated within the ATO. As with other areas of taxation, compliance with monthly reporting requirements could be sufficiently monitored through audit processes"*.

AIP notes the Government rejected this recommendation in its response to the PC Report in March 2009, noting that *"the risks to the revenue at this time outweigh the potential benefits of the proposal."*

**AIP recommends the Government revisit this decision now, in light of:**

- **significant reforms and improvements to excise administration since 2009 (eg. the ATO's 'risk differentiation framework' and the streamlined excise/EEG administration arrangements now applying to fuels);**
- **robust excise compliance and audit performance since 2008 (ie. a lower risk environment); and**
- **more experience now with the GST and BAS arrangements.**

We believe a cost benefit analysis by the Government of monthly excise settlement (including the utilisation of BAS reporting as recommended by the PC) will clearly demonstrate that the reduced compliance burden and administrative costs for government outweighs any revenue considerations.

### **Implementation of Monthly Excise Settlement**

Importantly, we consider that 'monthly excise settlement' could be readily implemented in the context of the current excise legislation and regulations framework.

For example, a monthly excise settlement arrangement for all relevant transport fuels or producers could be implemented through:

- codification in the legislation and regulations (eg. through the extension of 'prescribed' goods or producers in the regulations to relevant liquid and gaseous fuels or producers); or
- providing ongoing 61C permission under the Excise Act as a 'general rule' when parties apply (in the same way as proposed for gaseous fuels from 1 December 2011 until this draft legislation would apply); such permissions would apply until revoked by the Collector and would be subject to the current general conditions of permission extended to eligible small business and other reasonable conditions to ensure the proper accounting of goods that are dutiable, the timely payment of duty to the government, and minimisation of revenue risk to government.

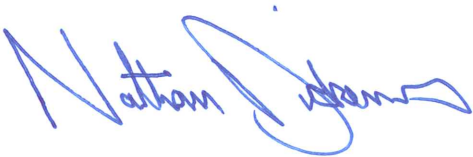
We also note that collection of fuel excise duties using the BAS would assist the implementation of a deferred (monthly) excise scheme, and provide additional streamlining and efficiencies as noted by the PC.

AIP would be happy to discuss this recommendation further with Treasury and relevant Ministers' Offices.

Individual AIP member companies may also make submissions to this consultation process based on their own commercial activities and detailing the cash flow and working capital implications of excise settlement arrangements.

Thank you for the opportunity to contribute to this consultations process. AIP is happy for our submission to be made publicly available on the Treasury website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nathan Dickens', with a stylized flourish at the end.

Nathan Dickens  
**General Manager - Policy**

*28 October 2011*