AUSTRALIAN INSTITUTE OF PETROLEUM

Ms Jessica Mohr
A/g Manager
Small Business and Indirect Taxes Unit
Small Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Mohr

CONSULTATION ON THE EXPOSURE DRAFT OF THE EXCISE REGULATION 2015

I am writing in response to the Treasury's invitation for interested organisations to make submissions on the exposure draft of the *Excise Regulation 2015* which remakes the *Excise Regulations 1925* which are due to sunset on 1 April 2015.

Thank you for the opportunity to provide our views to the Treasury through this Submission on behalf of the Australian Institute of Petroleum (AIP) and its core member companies:

BP Australia Pty Ltd
Caltex Australia Limited
Mobil Oil Australia Pty Ltd
Viva Energy Australia Ltd.

AIP member companies operate across all or some of the liquid fuels supply chain including crude and petroleum product imports, refinery operations, fuel storage, terminal and distribution networks, marketing and retail. As a result, AIP member companies play a very significant role in delivering the majority of bulk fuel supply to the Australian market.

- In relation to conventional petroleum fuels, AIP member companies operate all major petroleum refineries in Australia and supply around 90% of the transport fuel market with bulk petroleum fuels.
- In relation to gaseous fuels, AIP member companies are the major suppliers of bulk LPG to the domestic market, representing around two thirds of the market.
- In relation to biofuels, AIP member companies are the largest suppliers of ethanol and biodiesel blend fuels to the Australian market.

AIP member companies are also very significant fuel excise/duty collectors for the Government, totalling over $16 billion per year.

Given this background and their significant role in the Australian fuels supply chain and broader economy, AIP member companies have a very strong interest in taxation regulations, legislation and broader policy settings which can directly impact on the downstream petroleum industry, including the industry's ongoing operation, competitiveness and transparency, and also on the costs of doing business in Australia.

AIP FUEL TAX PRINCIPLES

From a tax policy perspective, AIP supports a tax system for transport fuels that:

- is efficient (causes minimum distortions), equitable (fair) and simple (easily understood);
- is practical/workable and minimises compliance and administration costs for business and government;
- supports clarity, consistency and stability in policy settings relevant to the transport fuels industry.

AIP also supports relief from the burden of excise being provided for 'business inputs' to production, and has therefore supported the policy intent of the *Fuel Tax Credits* system.

Overall, AIP supports the principle that all fuel used for transport use - including liquid fuels (conventional fuels and biofuels) and gaseous fuels (LPG, LNG and CNG) - should be taxed on a comprehensive and neutral basis, to ensure the most efficient and robust tax system for road transport fuels.

- AIP supports all road transport fuels being brought within the fuel excise system (as they are now) so that all fuels (equitably) need to meet compliance obligations underpinning the integrity of the fuel excise system and also comply with relevant fuel quality and environmental performance standards.
- AIP supports energy content as an appropriate and neutral basis for taxing all transport fuels, and so as to not distort the allocation of resources and producer or consumer choices.
- AIP supports the principle that the point at which excise/duty should be imposed should be at the highest point in the supply chain to ensure the most compliant fuel excise system.

AIP COMMENTS ON THE EXPOSURE DRAFT REGULATION (EDR)

AIP notes that the stated objectives of the EDR and the remaking of the *Excise Regulations 1925* is to *"make significant improvements to the existing provisions by repealing redundant provisions, simplifying language and restructuring provisions that have become difficult to navigate due to multiple amendments"*. The intention of this 'streamlining' is not to change the operation of the equivalent provisions in the *Excise Regulations 1925*.

AIP considers that these objectives are largely satisfied in the EDR which is indeed simpler, and removes a range of content that is outdated or no longer relevant or utilised. However, there is one draft revision in the EDR which appears to unintentionally change the operation of the existing regulation and would create a new, potentially significant, compliance burden for the petroleum industry.

Schedule 1 (circumstances for remissions, rebates and refunds) **Item 7(a) and (b)** of the EDR limits refund claims to product *"returned to the manufacturer of the goods …"* and *"destroyed or mixed with other products so that their identity is lost"*. For the fuels sector, this is not the operation and intent of the current provision at Regulation 50(1)(v), which states that a refund entitlement arises where product *"..in whole or in part is returned to a manufacturer or to a warehouse".* Thus, this Item in the EDR conflicts with the objectives of the remaking of the regulations (ie. to not change the operation of the equivalent provisions in the *Excise Regulations 1925*).

- In relation to **Item 7(a),** we recommend that *"returned to the manufacturer of the goods"* be changed to *"returned to a licensed premises"* to preserve the original intent and operation.
    - Due to the high cost of fuels infrastructure and the geographically disperse population in Australia, fuel is regularly sold between industry participants (including distributors and third parties) to meet local fuel supply requirements. This includes the purchase and movement of excise-paid stock.

- Limiting any 'return to bond' refund claim to the 'manufacturer' of the product before a refund entitlement arises, would materially limit the application of this provision, is not consistent with current arrangements, and would create significant costs to industry participants in terms of both systems, commercial and administrative changes required, as well as increased working capital costs.

- In relation to **Item 7(b)** of the EDR, AIP notes that this is a matter related to the Tobacco sector in the *Excise Regulations 1925.* To preserve the original intent and operation of the regulation, AIP recommends that this be made explicit in Item 7(b) or be redrafted if it is to apply more generally to all excisable products/sectors, to ensure there are no unintended consequences and additional obligations and compliance costs for the fuels sector. For example, Item 7(b) could be changed to *"destroyed, manufactured, produced or stored"* to achieve this and which is in line with excise licenses that are available.

More broadly, the EDR is also set against the background of the Government's deregulation agenda and reducing compliance costs for business, and proposes revisions beyond 'updates' to support this objective.

AIP notes that while simplification and greater clarity in regulation will be welcomed by the industry and is good practice, one provision in the existing regulation is out-of-step with the approach for other taxes (and indeed other provisions in the regulation itself), and this is not addressed in the EDR.

Specifically, Section 11 of Division 3 of the EDR deals with time periods for making an application for a refund or rebate of excise duty. In the existing regulation, refunds in certain circumstances are restricted to a 12 month time limit (in most instances from when excise was paid) for making an application for a refund of excise duty. Where an adjustment to the excise amount does not fall within the circumstances detailed within the regulations imposing the 12 month limit, no time limit applies. Both the imposition of a 12 month limit and an open period for assessment is fundamentally unfair and is out of step with other taxes (where a 4 year period is typical) and may unfairly disadvantage excise payers compared to other taxpayers. The EDR does not currently propose to extend the 12 month time limit to 4 years to bring it in line with other taxes.

Consistent with AIP's longstanding fuel tax principles, AIP recommends the extension of the abovementioned time limit to 4 years in the final *Excise Regulations 2015*, to align this fuel excise timeframe with other taxes and ensure simplicity, fairness and consistency across various taxing arrangements. This time limit should apply to the correction of the 'net' excise amount, consistent with other taxes.

This is one of many examples reinforcing that the fuel excise arrangements are unique, highly complex, and out of step with other domestic taxing and international approaches. It adds significant red-tape, complexity, cost and operational implications for excise paying companies operating within Australia. As a consequence, highly customised accounting systems are required to be built and maintained at significant cost to meet unique excise compliance obligations.

This issue is compounded by the obligation for weekly settlement periods. The current weekly settlement of excise is out of step not only with the majority of comparable international fuel excise systems, but also other indirect tax timetables in Australia and natural business systems and reporting by companies. In particular, the requirement to lodge 52 excise returns a year represents a major administrative task for Australian companies and adds significant red-tape versus international approaches (typically monthly settlement) and also approaches for other Australian taxes (eg. deferred monthly settlement for GST).

Thank you for the opportunity to provide our views to the Treasury through this AIP Submission. If you have any further questions in relation to AIP's Submission, you can contact me on (02) 6247 3044.

AIP is happy for our submission to be made publicly available on the Treasury website.

Yours sincerely

Nathan Dickens
General Manager – Policy

13 February 2015