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Standing Committee on Economics
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Dear Committee Members

Tax Laws Amendment (2011 Measures No.8) Bill 2011

The Business Council of Australia (BCA) has considered aspects of the *Tax Laws Amendment (2011 Measures No.8) Bill 2011* (the 'Bill') which was introduced by the Government into the House of Representatives on 13 October 2011 and referred to the House Standing Committee on Economics for review.

The Bill includes an amendment to the *Petroleum Resources Rent Tax Assessment Act 1997* (the 'PRRT Act') which is to have retrospective effect from 1 July 1990.

The BCA would like to raise two matters for the consideration of the committee.

The first matter is the retrospective nature of the amendment – a characteristic the BCA considers to be inconsistent with good regulation making process.

It is clear from the Senate standing orders, which include a presumption against the passage of retrospective tax law, that such an approach will have adverse impacts and add to uncertainty and increased risk to the investment climate in Australia.

This view has also been reinforced in two recent reviews. The *Better Tax Law Design and Implementation* report of the Tax Design Panel in 2008 noted:

"3.17 that tax measures announced by the Government should generally operate prospectively (ie. take effect only after they are enacted). This would enable taxpayers to structure their affairs according to the enacted law and respect the role of Parliament to make laws."

"3.19, "[w]hile it may occasionally be appropriate to announce measures that apply before the legislation is enacted, these should be kept to a minimum. Where amendments apply before the legislation is enacted, the announcement should clearly state why retrospective application is necessary."

The 2004 *Review of Income Tax Self-Assessment - Report on Aspects of Income Tax Self-Assessment* noted:

“While ideally, tax measures imposing new obligations should apply prospectively, retrospective start dates may be appropriate where a measure;

- *corrects ‘unintended consequences’ of a provision and the Tax Office or taxpayers have applied the law as intended*
- *address a tax avoidance issue*
- *might otherwise lead to significant behavioral change that would create undesirable consequences, for example bringing forward or delaying the acquisition or disposal of assets”*

In reviewing the announcement of the proposed amendment in the 2011 budget papers and the explanation for the amendment released with the draft bill, it is not apparent that the proposed amendment is in response to any of the matters identified above.

Further, the BCA has been unable to identify a precedent for the introduction of retrospective tax law where there is an ongoing dispute between government and an individual taxpayer involving a debate as to the meaning of the law.

The second matter of concern to the BCA relates to one of the outcomes of the Bill. The Bill will result in removing the right for a business to have its appeal heard on a legislative matter that has been in the courts for several years.

The committee and parliament must consider the implications of passage of this Bill. It appears that the parliament is being asked to intervene in what is a long standing legal case as it comes to the stage of a final appeal. This intervention by the parliament will in effect prevent such an appeal. This would appear to be creating a grave precedent and should be resisted.

Both the matters raised in this letter have the potential to create substantial uncertainty in the business environment, with repercussions for investor perceptions of the investment climate in Australia.

For this reason the BCA is asking the committee to recommend to parliament that it reject the retrospective elements of the bill.

Yours sincerely

Jennifer Westacott
Chief Executive

Cc: The Hon W Swan MP, Deputy Prime Minister and Treasurer
The Hon M J Ferguson AM MP, Minister for Resources, Energy & Tourism