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Submitted by email to LGC@treasury.gov.au

Consultation Reference: Large-Scale Generation Shortfall Charge Payment Refunds

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission to the Treasury Laws Amendment exposure draft clarifying treatment of a refund of Large-Scale Generation (LGC) shortfall charges for the assessment of income tax.

The Energy Council is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The Energy Council supports the legislative change proposed by the Treasury, which confirms that income tax does not apply to a refund of LGC shortfall charges. This will reduce uncertainty as to the symmetry of the tax treatment of shortfall charges and refunds. We suggest however a number of small additions below that could be included for greater industry confidence.

The Energy Council also recognises that renewable targets also exist in State and Territory legislation. As such, it suggests broadening the scope of the provision to ensure that this income tax law amendment applies to refunds under the *Renewable Energy (Electricity) Act 2000* as well as similar Federal, State or Territory legislation. By doing so, we want to ensure that any refund of shortfall charges is treated similarly for income tax purposes, regardless of the legislation it is covered by.

With respect to the explanatory materials, we suggest the wording at the bottom of page 3 does not correctly reflect the status quo, in that it suggests refunds are presently assessable. More correctly, there is uncertainty regarding their assessability, as stated at page 5 of the explanatory materials.

As such, we propose the following changes to be considered in the Exposure Draft and Exposure Draft Explanatory Materials:

1. Exposure Draft, Schedule 1, section 59-100:
 - a. (1) to replace “Renewable Energy (Electricity) Act 2000” with “Renewable Energy (Electricity) Act 2000 and similar Federal, State or Territory legislation”
 - b. (2) to replace “within the meaning of the Renewable Energy (Electricity) Act 2000” with “within the meaning of the Renewable Energy (Electricity) Act 2000 and similar Federal, State or Territory legislation”

2. Exposure Draft Explanatory Materials:

- a. In section 1.3, replace “The REE Act operates to” with “The REE Act and other State and Territory legislation”
- b. In section 1.4 and 1.7, replace “section 3 of the REE Act” with “section 3 of the REE Act and any applicable law under State and Territory legislation”
- c. In section 1.7, replace “section 95 of the REE Act” with “section 95 of the REE Act and any applicable law under State and Territory legislation”
- d. In section 1.7, replace “Currently, a refund of shortfall charges is assessable income for income tax purposes” with “Currently, there was uncertainty as to whether a refund of shortfall charges constitutes assessable income for income tax purposes”

Any questions about our submission should be addressed to Sylwia Kautz, Finance Manager by email to Sylwia.Kautz@energycouncil.com.au or by telephone on (03) 9205 3104.

Yours sincerely,



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