Name: Fortescue

Submission date: 18/06/2025

1. Support business investment through corporate tax reform

1. What features of the Australian business environment have encouraged or restrained investment over the past 10 years?

Under the Fuel Tax Act 2006, taxes on liquid fuels (including diesel and petrol), are credited to certain business users. The rate of the fuel tax credit is currently 50.8c/L (indexed to CPI) for off road users, while heavy vehicle users on public roads receive a credit of 20.3c/L. Light vehicle commercial users and households receive no fuel tax credit.
In the Australian Government Budget, the credits under the Fuel Tax Act 2006 are listed as a budget expense rather than a decrease in revenue. In 2025-26, the budget expense is forecast to total $10.805 billion. This is forecast to rise to $13.107 billion in 2028-29, while total fuel taxes collected will rise from $27.3 billion to $30.3 billion. According to Treasury, the increase in fuel tax credits largely reflects an expected increase in the use of fuels that are eligible for the credits.
The mining industry – specifically metal ore miners – are the single largest industry beneficiaries of fuel tax credits. In 2022-23, 256 metal ore mining entities claimed $1.4 billion in tax credits. The remainder of the credits are claimed by more than 180,000 individual entities. The mining industry at large (including coal) claims approximately 47 per cent of tax credits, with 19 per cent claimed by the transport, postal and warehousing industry; and 12 per cent for the agriculture, forestry and fishing industries.
Within the mining industry some large miners, like Fortescue, have announced whole or partial decarbonisation of their mining activities. However, the fuel tax credits scheme (including the DFTC) is a significant disincentive to decarbonise diesel fuel assets. This disincentive does not support Australia's goal of reaching net zero by 2050.
Reducing the cost of diesel for the mining industry incentivises its ongoing use and disincentivises investment in decarbonisation. Using cheap diesel dramatically impacts the internal rate of return (IRR) on any investment in decarbonisation.
For example, if a large mine consumes 150ML of diesel per year at $1.50/L, the DFTC would provide roughly $75 million per year (150ML at $0.5/L rebate). This means that a mine investing $1.5 billion in eliminating diesel consumption, loses $75 million per year from its projected savings, increasing the payback period by 2.5 years, as illustrated below in Figure 1. (Figure one is missing - see attachment)

The leading policy intended to incentivise decarbonisation by heavy industrial emitters is the Safeguard Mechanism. Under that policy, Safeguard Facilities (heavy industry with emissions exceeding 100,000t CO2-e per annum) are required to reduce their emissions in line with legislated targets known as baselines.
A Safeguard Facility must manage any emissions above its baseline by surrendering Australian Carbon Credit Units (ACCU's), with each ACCU representing 1t CO2-e. Under reforms introduced in 2023, a Safeguard Facility that reduces emissions below its baseline can earn Safeguard Mechanism Credits (SMC's) with each representing 1t CO2-e below the baseline. SMC's can be surrendered, traded or retained for future use. ACCU's can currently be purchased for approximately $35.00 each, while the first SMC's

were issued in early 2025 and traded at a slight discount to the ACCU spot price. This price equates to approx. $0.10/L of diesel. In other words, the $0.50/L fuel tax credit received for burning diesel is approximately 5 times the cost of exceeding an emissions baseline under the Safeguard Mechanism, or the incentive for keeping or reducing emissions below the baseline.

(Figure 2 is missing - see attachment)

Fortescue believes all policies should be aligned with the goal of reducing emissions. Until that is the case, proponents will not achieve the targets set by the Government. However, we recognise that most of the 180,000 fuel tax claimants are small and medium sized businesses that may be adversely affected by a sudden change in costs. Fortescue is not asking for the DFTC to be abolished or phased out for all users and recognises that the Government has said it will not remove the DFTC.

However, reform is essential to incentivise investment in decarbonisation.

Our preferred option for reform is the proposal put forward by Clean Energy Finance to introduce a $50 million cap on the DFTC paid to consolidated groups. All additional funds should be converted to a Transition Tax Incentive paid to the taxpayer but which can only be invested in mine electrification and decarbonisation in Australia. This budget neutral approach would improve the internal business case for decarbonisation projects and effectively convert a decarbonisation headwind into a tailwind.

The $50 million cap would still return $500 million per annum in DFTC, collectively, to the ten largest emitters. The $50 million cap would ensure no farmers, fishers, truckies or smaller miners are affected. The large companies would be able to implement their decarbonisation plans at the same time as creating opportunities for Australian businesses to supply equipment and expertise. A Transition Tax Incentive would improve the internal business case for these companies by removing the distorted signals sent by the DFTC when considering the internal case for decarbonisation

2. What elements of the corporate tax system encourage and/or discourage investment and risk-taking?

The Australian tax system has significant complexity. Although some aspects of the tax system theoretically encourage inbound investment (e.g. Conduit Foreign Income rules and participation exemptions), in practice, the volume of other 'baggage' and compliance required for multinational groups means that it is very difficult to attract external foreign investors via an Australian holding structure (or even for homegrown Australian-headquartered multinationals to expand business overseas to generate additional dividend streams returning to Australia).

For instance, in recent years taxpayers now need to consider the Diverted Profits Tax (DPT), Hybrid Mismatch provisions, Pillar Two global minimum tax, Consolidated Entity Disclosure Statement, new Thin Capitalisation rules (including Debt Deduction Creation rules), in addition to new ATO guidance that in a number of instances are out of step with global practice on various topics including taxation of intangibles, embedded royalties, and migration of intellectual property, among others. Legislation continually evolves on the taxation of foreign direct investment with the tax net progressively being widened (e.g. successive amendments to the non-resident capital gains tax rules and FIRB tax conditions) which does not provide stability and certainty of the tax rules and the constantly shifting goal posts increases sovereign risk and is unhelpful in attracting global capital into frontier Australian projects such as in renewable energy development.

The ATO's approach in relation to cross-border tax risk areas often appears quite aggressive and counter-productive, often taking conservative and unreasonable positions in published guidance. This may be driven by their funding approach (e.g. ‘Tax Avoidance Taskforce’ which sets targeted tax assessment outcomes to be achieved) and media narrative about multinationals failing to pay their ‘fair share’ in tax. Where the ATO achieves success in a court case, it makes media releases celebrating their success. By contrast, where the ATO has a loss in court, it remains silent or seeks to confine the judicial precedent to the case’s ‘unique’ fact pattern, worst still, legislation is subsequently introduced to statutorily override the judicial interpretation handed down by the courts. This, combined with the volume of additional tax compliance obligations imposed in recent years, contributes to a landscape where some taxpayers may be hesitant to be open with the ATO about their affairs, and foreign investors may be inclined to regard Australia as ‘too hard’ from an investment perspective. For example, in the recent Alcoa transfer pricing case which has been the subject of dispute between the parties for six years (and which the ATO has now decided not to appeal, effectively conceding its position taken at tax audit), the ATO failed to consider the broader commercial implications and characterisation of business arrangements, instead taking an overly narrow approach.

Unlike certain countries, the Australian tax system does not currently provide sufficient incentives for major investment in new renewable or decarbonisation projects. As a result, investors may look to other countries to undertake such projects. These incentives could be provided, for example, by way of immediate write-offs, accelerated depreciation measures and/or investment tax allowances beyond those currently provided through the capital allowances provisions which have not had a substantive review in recent years to reflect and align with contemporary and growing/much-needed areas of significant capital investment. For example, commercial scale green iron plants, with associated renewable energy generation and production are extremely costly and would be incentivised by the above suggested tax reforms, creating valuable new value-added industry for Australia, defending demand for Australia’s iron ore and reducing global emissions. Temporary full expensing measures are currently limited to smaller businesses, increasing the compliance burden and analysis required for large corporate groups which generate turnover and taxes many multiples over if they are incentivised to make or increase new greenfield capital investments or improvements to existing brownfield capital assets.

The A$150 million limit on the Research and Development (R&D) tax incentive for large businesses to some extent disincentivises undertaking large-scale R&D activities in Australia, compared to other jurisdictions, in tackling issues and initiatives around clean energy and emissions reduction that are heavily driven by cutting edge technology solutions. The dual-administrative approach (between AusIndustry and the ATO) adds additional complexity and the substantiation requirements to make a claim are extremely onerous. There is a lack of information sharing between the two administrators, and clearer and more transparent timeframes for reviews to be undertaken should be provided. The recommendations outlined by the Board of Taxation in their report dated November 2021 should be actioned.

3. Which parts of the corporate tax system do you find the hardest, or most time or cost-intensive to comply with? How could the compliance burden of the business/company tax system be reduced?

Corporate tax residence:

• The failure of the government to enact corrective legislation in relation to corporate tax

residence has necessitated a significant escalation in overseas executive travel for board meetings of foreign subsidiaries that are otherwise low-risk. This is inefficient, costly, environmentally damaging and causes business delays.
• Administrative approaches from the ATO are inadequate and not legally robust.
• The Government should enact the legislative amendments previously proposed to the tax residence rules with regard to the recommendations suggested by the Board of Taxation in July 2020.

Controlled Foreign Company (CFC) rules:
• The CFC rules are outdated and extremely convoluted in their drafting and application, such that it would be difficult for the average taxpayer to understand and apply them without expensive specialist input.
• The CFC rules rely on a 'white list' of countries (the 'listed countries') which were considered low-risk jurisdictions with comparable tax systems to Australia. However, the group of 'listed countries' (of only 7 in total) has not changed in a long time/ever, and omits key 'low-risk' trading partners.
• Around 15 years ago, the CFC rules were proposed to be replaced with more modern rules, but the initiative was abandoned – this should be reconsidered.

Reportable Tax Position and International Dealings schedules - the data and analysis required to address and substantiate the disclosures for these schedules continues to increase and add significant time to the tax return preparation process. Questions should be reviewed and simplified/streamlined with regard to practical usefulness of the information to the ATO and key material risk areas based on previous reviews and experience.

Country-by-country reporting – multiple iterations of the same report (ATO / private, public and Global Sustainability Reporting GRI standards) with differing disclosure criteria adds significantly to the compliance burden of tax functions. Reports should be consolidated into a single report to be lodged annually with only a single set of criteria / disclosures to meet OECD requirements.

Fringe Benefits Tax (FBT) – the compliance burden imposed on large corporate employers in complying, reporting and paying FBT, is excessive and highly disproportionate, involving extensive time and resources, on an inefficient tax which does not encourage employers to provide sustainable working conditions and supporting benefits to employees to attract and retain exceptional talent. A more simplified approach should be considered, with higher, more meaningful de minimis thresholds, broader and more clearly defined scope of exempted benefits, and additional optional safe harbours such as a prescribed rate to value the total fringe benefits per employee (based on industry benchmarking), should be introduced.

2. Reduce the impact of regulation on business dynamism

1. What areas of regulation do you see as enhancing business dynamism and resilience? What are the reasons for your answer?

No response.

2. How has your regulatory burden changed over time?

No response.

3. What regulations do you find time-consuming, overly complex or otherwise constraining business dynamism and resilience? What are the reasons for your answer?

   Fortescue is currently constructing our US$50 million pilot Christmas Creek Green Metal Plant Project in the Pilbara that will produce a high-purity pig iron (~95% Fe) using green hydrogen. Developing this project, including the previously constructed gaseous and liquid hydrogen production project on site, has involved Fortescue navigating a nascent State regulatory environment in the hydrogen industry. Many of the regulations applied to this project are not fit for purpose and carried over from other sectors. Governments should proactively assess regulatory needs for green industries on the pathway to net-zero to ensure regulations arrive before projects to ensure they can be constructed and operated safely.

   Foreign investment is critical to establishing a green iron industry in Australia. Long-term relationships with foreign partners with common commercial interests are also needed to support the achievement of Australia's emissions targets, global emissions reduction and Australia's continued economic prosperity. An Australian green iron metal industry will require technology and capital from partner countries like China. China has the manufacturing capacity, innovation, capital and interest in partnering with Australia to make a green iron supply chain a reality. We encourage the Australian Government to find the right balance regarding national interest considerations and continuing to support foreign investment and trade where it brings significant economic and emissions reductions opportunities to Australia.

   Decarbonisation and emissions reducing diversification requires the Federal Government to reaffirm that Australia is open to Chinese investment, as concerns persist among Chinese investors and FIRB approvals indicate Chinese investment is at record low points.

4. Can you share any specific examples of where you think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses and why?

   No response.

Cover sheet: Supporting document #1

Australian Government
Productivity Commission

pc.gov.au

Pillar 1

Creating a more dynamic and resilient economy

Consultation questions | May 2025

Section 2. Support business investment through corporate tax reform

1. What features of the Australian business environment have encouraged or restrained investment over the past 10 years?

Under the Fuel Tax Act 2006, taxes on liquid fuels (including diesel and petrol), are credited to certain business users. The rate of the fuel tax credit is currently 50.8c/L (indexed to CPI) for off road users, while heavy vehicle users on public roads receive a credit of 20.3c/L.[1] Light vehicle commercial users and households receive no fuel tax credit.

In the Australian Government Budget, the credits under the Fuel Tax Act 2006 are listed as a budget expense rather than a decrease in revenue. In 2025-26, the budget expense is forecast to total $10.805 billion.[2] This is forecast to rise to $13.107 billion in 2028-29, while total fuel taxes collected will rise from $27.3 billion to $30.3 billion.[3] According to Treasury, the increase in fuel tax credits largely reflects an expected increase in the use of fuels that are eligible for the credits.[4]

The mining industry – specifically metal ore miners – are the single largest industry beneficiaries of fuel tax credits. In 2022-23, 256 metal ore mining entities claimed $1.4 billion in tax credits.[5] The remainder of the credits are claimed by more than 180,000 individual entities. The mining industry at large (including coal) claims approximately 47 per cent of tax credits, with 19 per cent claimed by the transport, postal and warehousing industry; and 12 per cent for the agriculture, forestry and fishing industries.

Within the mining industry some large miners, like Fortescue, have announced whole or partial decarbonisation of their mining activities. However, the fuel tax credits scheme (including the DFTC) is a significant disincentive to decarbonise diesel fuel assets. This disincentive does not support Australia's goal of reaching net zero by 2050.

Reducing the cost of diesel for the mining industry incentivises its ongoing use and disincentivises investment in decarbonisation. Using cheap diesel dramatically impacts the internal rate of return (IRR) on any investment in decarbonisation.

For example, if a large mine consumes 150ML of diesel per year at $1.50/L, the DFTC would provide roughly $75 million per year (150ML at $0.5/L rebate). This means that a mine investing $1.5 billion in eliminating diesel consumption, loses $75 million per year from its projected savings, increasing the payback period by 2.5 years, as illustrated below in Figure 1.

[1] From 1 July 2024 to 30 June 2025 | Australian Taxation Office
[2] Budget Paper No. 1 p 136
[3] Budget Paper No. 1 p 103
[4] Budget Paper No. 1 p 136
[5] ts22excise04ftcbyindustryyear.xlsx

Figure 1: Impact of the DFTC on Return on Investment in Decarbonisation

Hypothetical example

Payback analysis, AU$	DTFC	DTFC removed
Diesel usage p.a.	~ 150M litres	
Diesel price[1]	$1.0/L	$1.5/L
Diesel savings p.a.	**~$150m**	**~$225m**
Example investment	$1.5b	
Implied payback (post-tax, real)	**~12.4yrs**	**~9.9yrs**
IRR (post-tax, real)[2]	**5.5%**	**10.4%**

1. Assuming DFTC rate is held constant – in reality, DFTC is expected to increase over time.
2. Internal rate of return - simple calculation considering upfront investment of $1.5 billion in yr0, and flat annual recurring tax-adjusted savings per the two cases, assuming no other benefits or costs associated with decarbonisation.

The leading policy intended to incentivise decarbonisation by heavy industrial emitters is the Safeguard Mechanism. Under that policy, Safeguard Facilities (heavy industry with emissions exceeding 100,000t CO2-e per annum) are required to reduce their emissions in line with legislated targets known as baselines.

A Safeguard Facility must manage any emissions above its baseline by surrendering Australian Carbon Credit Units (ACCU's), with each ACCU representing 1t CO2-e. Under reforms introduced in 2023, a Safeguard Facility that reduces emissions below its baseline can earn Safeguard Mechanism Credits (SMC's) with each representing 1t CO2-e below the baseline. SMC's can be surrendered, traded or retained for future use.

ACCU's can currently be purchased for approximately $35.00 each, while the first SMC's were issued in early 2025 and traded at a slight discount to the ACCU spot price.[6] This price equates to approx. $0.10/L of diesel.[7] In other words, the $0.50/L fuel tax credit received for burning diesel is approximately 5 times the cost of exceeding an emissions baseline under the Safeguard Mechanism, or the incentive for keeping or reducing emissions below the baseline.

[6] Safeguard Mechanism - DCCEEW
[7] 1 litre of diesel produces 2.7kg CO2-e: Federal Register of Legislation - National Greenhouse and Energy Reporting (Measurement) Determination 2008, Schedule 1, Part 3 (Item 40)

Figure 2

Hypothetical example

Carbon price analysis, *AU$ p.a.*	**Example**
Diesel usage	~1.0b litres
DTFC rate[1]	$0.508/L
DTFC value	**~$508m**
Carbon emissions from diesel usage	2.7Mt CO_2e
Carbon disincentive (DTFC value)[2]	**~$188/t CO_2e**
ACCU price[3]	**$35/t CO_2e**
Carbon disincentive: ACCU price	*5.3 x*

1. Current rate published by the ATO. DTFC rate expected to increase twice per year with CPI.
2. $508 million value divided by the 2.7Mt CO_2-e emissions related to the diesel usage.
3. Current ACCU price.

Fortescue believes all policies should be aligned with the goal of reducing emissions. Until that is the case, proponents will not achieve the targets set by the Government.

However, we recognise that most of the 180,000 fuel tax claimants are small and medium sized businesses that may be adversely affected by a sudden change in costs.

Fortescue is not asking for the DFTC to be abolished or phased out for all users and recognises that the Government has said it will not remove the DFTC.

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2. What elements of the corporate tax system encourage and/or discourage investment and risk-taking?

[8] Fuel Tax Credit Scheme Report Response by Matt Pollard, Clean Energy Finance

The Australian tax system has significant complexity. Although some aspects of the tax system theoretically encourage inbound investment (e.g. Conduit Foreign Income rules and participation exemptions), in practice, the volume of other ‘baggage’ and compliance required for multinational groups means that it is very difficult to attract external foreign investors via an Australian holding structure (or even for homegrown Australian-headquartered multinationals to expand business overseas to generate additional dividend streams returning to Australia).

For instance, in recent years taxpayers now need to consider the Diverted Profits Tax (DPT), Hybrid Mismatch provisions, Pillar Two global minimum tax, Consolidated Entity Disclosure Statement, new Thin Capitalisation rules (including Debt Deduction Creation rules), in addition to new ATO guidance that in a number of instances are out of step with global practice on various topics including taxation of intangibles, embedded royalties, and migration of intellectual property, among others. Legislation continually evolves on the taxation of foreign direct investment with the tax net progressively being widened (e.g. successive amendments to the non-resident capital gains tax rules and FIRB tax conditions) which does not provide stability and certainty of the tax rules and the constantly shifting goal posts increases sovereign risk and is unhelpful in attracting global capital into frontier Australian projects such as in renewable energy development.

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Section 3. Reduce the impact of regulation on business dynamism

4. What areas of regulation do you see as *enhancing* business dynamism and resilience? What are the reasons for your answer?

No response.

5. How has your regulatory burden changed over time?

No response.

6. What regulations do you find time-consuming, overly complex or otherwise constraining business dynamism and resilience? What are the reasons for your answer?

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7. Can you share any specific examples of where you think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses and why?

No response.