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Options for Expanding the Purpose of Existing Energy Levies

BusinessNZ is pleased to have the opportunity to provide a submission to the Ministry of Business, Innovation and Employment ('MBIE') on its consultation document entitled 'Options for expanding the purpose of existing energy levies', released 17 May 2016.[1]

Introduction

BusinessNZ does not support the expansion of the purposes of any of the existing energy levies covered by the consultation document. As such, BusinessNZ supports the status quo until such time as some reasonable minimum level of information has been provided to adequately justify a change such as specific information about what the increase in levy funding will be used for.

Specific Remarks

BusinessNZ has the following specific remarks on the detail of the consultation document:

- BusinessNZ supports the broad underlying intention of the consultation document – to ensure that EECA is strategically aligned with the direction of government policy and is suitably funded – but this is not what is actually covered in the consultation document. Rather than walk potential submitters through a logical rationale of EECAs strategic focus, how it intends to achieve that (i.e. its various programmes), how it currently funds what it does, and how it will fund its new activities (i.e. will it be met from general taxation or other mechanisms, or some mix) and what the most appropriate 'other' mechanisms are, we are instead

[1] Background information on BusinessNZ is attached in Appendix One.

provided with a narrow choice of funding mechanisms with no prior information on application;

- other than broad generalities:

> "The intention is to enable levy funding of a wider range of activities that encourage, promote and support energy efficiency, energy conservation and the use of renewable sources of energy."[2]

and the desire for the government to provide itself with maximum flexibility:

> "The objective of this proposal is to provide more flexibility in the allocation of funding so that activities can focus on areas that will have the greatest impact, such as transport."[3]

there is no information on what the expanded levies will *actually* be spent on. This cuts to the very heart of BusinessNZ's concerns. In the absence of a better understanding about what is being purchased, it is simply impossible to establish who benefits and who should pay and therefore what the best funding mechanism might be;

- understanding what will be funded is critical to determining the extent to which the outputs being funded are private or public goods. A rigorous approach to funding first requires the nature of the services – in this case energy efficiency services – to be determined. If the services in question can be defined as public goods (which include non-rivalry in consumption and non-excludability), they are generally best funded out of general taxation. With private goods (where the benefits and costs are largely of a private nature, with few externalities or spillovers), clearly the cost should be funded as much as possible by means of user charges. Individuals and businesses will then be encouraged to undertake effective and efficient risk minimisation strategies based on known risks.

  Given many of the desired energy efficiency outcomes, it is evident that the services are carried out to protect the wider public interest of the New Zealand economy, its citizens and the environment. The benefit is to all New Zealanders, not just selective (private) groups or particular sectors of the economy but New Zealand-inc. The emphasis therefore is clearly on energy efficiency activities being a public good. This is especially relevant as the consultation acknowledges that:

> "Energy efficiency can also reduce emissions for better environmental and health outcomes."[4]

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[2] Ministry of Business, Innovation and Employment consultation document entitled 'Options for expanding the purpose of existing energy levies', dated 17 May 2016, paragraph 1, page 5.

[3] Ministry of Business, Innovation and Employment consultation document, *op cit*, paragraph 3, page 1.

and

"These outcomes will benefit all New Zealanders……"[5]

These and other such statements suggest a strong prima facie case for the consideration of other non-levy based forms of funding;

- our concerns remain regardless of the statement that attempts to reassure by saying:

  "This proposal considers alternative ways to recover similar levels of funding using existing levies."[6]

  as even this statement implies an increase from the current level of levy funding of $13 million to the Cabinet pre-approved level of $17.5 million – an increase of $4.5 million, let alone the strong upside funding risks;

- using levies - enabled by broader levy definitions - to fund non-contestable activities brings with it a number of downside risks. A significant issue which cuts across all government services is what an appropriate charging regime is where there is no contestability in service provision. In normal competitive markets, individuals will make trade-offs between price and quality of service, along with a host of other factors. This issue is significantly different when legislation provides that in order to go about daily living (or in this case turning on a light switch or driving a car), it is necessary to meet certain requirements set by Government and that the only provider of certain services happens to be a government department or agency.

  The danger with monopoly rights provided to government departments in respect to service provision appear to be threefold and are similar to the case of potential monopolies in the private sector, being:

  a) that the price of service will exceed that which would occur had the provision of service been made contestable (i.e. the private business or in this case government department) potentially making monopoly profits;

  b) the potential for the government department to provide a poor service (in terms of any of the dimensions of quality, quantity, or timeliness) in the knowledge that there are no other competitors in the market; and

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4 Ministry of Business, Innovation and Employment consultation document, *op cit*, paragraph 8, page 6.

5 Ministry of Business, Innovation and Employment consultation document, *op cit*, paragraph 45a, page 12.

6 Ministry of Business, Innovation and Employment consultation document, *op cit*, paragraph 17, page 7.

c) (a corollary to (b) above), is the potential for government departments to provide a "gold plated" service in the knowledge that any increased costs can be simply passed on to private sector businesses and individuals. The incentives on government departments (namely public sector employees) to provide a gold-plated service may well be driven by their desire to protect their own current employment prospects in a particular sector.[7]

It should be noted that the above is in no way intended to be critical of the current New Zealand public service or indeed to infer that such activity is widespread. What it is intended to do is show that there must be incentives on employees in government departments with large regulatory functions (and the ability to pass on the costs associated with those regulatory burdens to the private sector) to ensure that those burdens remain reasonable;

- in the absence of an understanding of what will be funded, the evaluation of the options undertaken on pages 12 – 17 of the consultation document is contrived. While ostensibly cloaked in the robustness of the Treasury guidelines, one simply cannot undertake the analysis with any degree of rigour until one knows what use the funding will be put to. In particular, in this instance, BusinessNZ has concerns with the "principle" – that *"Those who generate the need for, or potentially benefit from, the activities should be contributing towards the costs of the activity"* or where it is *'practicable'* to levy third party beneficiaries or risk exacerbators. Not only is the analysis predetermined as to funding source, being:

  " …. about identifying the appropriate group of levy payers."[8]

  but in our view the key test, and perhaps the only satisfactory test, of whether a service is being provided for someone's benefit is whether they freely agree to purchase that service at the given price or whether they freely agree to be levied to fund that service. Compulsory payments extracted without the consent of those on whom they are levied indicate that the benefits of those levies are being conferred on other parties. Government actions that make payment mandatory point to the absence of a first party benefit commensurate with the cost.[9]

- we concur with the Australian Productivity Commission's view that it is a "fundamental principle that cost recovery should be implemented for

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[7] This is similar to the incentives that may be evident for departmental employees in charge of large regulatory burdens. It may be in their own interests to ensure those regulatory burdens remain in force to protect their own employment prospects and current status.

[8] Ministry of Business, Innovation and Employment consultation document, *op cit*, paragraph 45a, page 7.

[9] For an in-depth discussion on this issue of cost recovery for imposed benefits see "*Assessment of Beneficiaries and Public Good Issues Relating to Cost Recovery for Supply Chain Security and Border Protection*" (Chapter 4, p.18-27) – A paper prepared for the Travel and Trade Industry Coalition by Bryce Wilkinson, Capital Economics Ltd, January 2004.

efficiency reasons, not merely to raise revenue".[10] Where an agency seeks to recover some or all of the costs of service provision from the users or direct beneficiaries of that service, the public or individuals paying for the service need to be assured that the charges set are not excessive in relation to the costs incurred and take proper account of efficiency and equity considerations; and

- business and consumers already face significant costs in meeting EECA's existing funding requirements and increasing levy funding would come at a time when the government has just announced the removal of the partial ETS obligation resulting in a dramatically increased price of carbon (sitting at $15.25/t at the time of writing). This would place an added burden on both businesses and consumers at a time of economic fragility. Before seeking alternative sources of revenue, the Government must first identify why funding in addition to the incentive created by the higher market price of carbon is required to deliver the outcomes that would otherwise be delivered by EECA. In other words, the need to identify the residual market failure that requires an additional intervention over and above the rapidly rising price of carbon.

Summary

We suggest that MBIE start this process again. In the absence of information about the purposes to which the levy funding will be applied, this process looks like a request for a blank cheque from business and consumers.

Yours sincerely

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[10] Australian Productivity Commission, Cost Recovery by Government Agencies, Inquiry Report, August 2001, page XLII.

APPENDIX ONE: ABOUT BUSINESSNZ

Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' Chamber of Commerce Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), BusinessNZ is New Zealand's largest business advocacy body. Together with its 80 strong Major Companies Group, and the 70-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.