



29 OCTOBER 2013

AUSTRALIAN TAX UPDATE

REPEAL OF THE CARBON TAX – EASY COME EASY GO?

On 15 October 2013, the recently elected Federal Government released a Consultation Paper and exposure draft legislation to repeal the carbon pricing mechanism, otherwise known as the Carbon Tax.

The Government announced that the Carbon Tax will be repealed effective from 1 July 2014 even if the carbon tax repeal legislation is passed after that date. As the repeal legislation needs to be passed by both the House of Representatives and Senate, the Government will need the support of other parties as the Government does not currently have a majority in the Senate.

Further details of the Direct Action Plan, which is the Government's preferred method to reduce pollution, will be developed through the release of a white paper and subsequent consultation process.

Consultation Paper

The Consultation Paper summarises the following key changes:

- The carbon tax will be abolished effective from 1 July 2014.
- Entities must comply with current carbon tax liabilities, compliance and reporting arrangements up to 30 June 2014 under the carbon pricing mechanism, the fuel tax credits system, excise or excise-equivalent customs duties, or synthetic greenhouse gas levies.
- The Australian Competition & Consumer Commission will have new powers to monitor prices and take action against businesses that attempt to exploit other businesses and consumers by charging unreasonably high prices or making false or misleading claims about the effect of the carbon tax repeal on prices.
- The personal income tax cuts which were legislated to commence on 1 July 2014 and the associated amendments to the low-income tax offset will be repealed.

- Industry assistance provided under the Jobs & Competitiveness Program ("**JCP**") and the Energy Security Fund will continue in 2013-14 for the purpose of meeting carbon tax liabilities.
- The Climate Change Authority will be abolished.

The purpose of the consultation process is to:

- Identify any technical issues with the draft carbon tax repeal bills; and
- Manage transitional issues for liable businesses and other entities.

Submissions on the draft carbon tax repeal bills are due by 5 pm on Monday, 4 November 2013.

Proposed amendments to the tax legislation

The following sections deal with the Australian income tax and GST implications arising from the proposed legislation.

Part 2 of Schedule 1 of the exposure draft *Clean Energy Legislation (Carbon Tax Repeal) Bill 2013* contains amendments to the following:

- *Income Tax Assessment Act 1997*; and
- *Taxation Administration Act 1953*.

Generally, the amendments remove references to a "carbon unit" and "international emissions unit" principally from Division 420 and other related provisions of the *Income Tax Assessment Act 1997* and *Taxation Administration Act 1953*. Further, the provision stating that the unit shortfall charge is not deductible will also be repealed. On this basis, Division 420 continues to operate in respect of Australian carbon credit units ("**ACCUs**") and Kyoto units.

Income tax implications

- As we are in the fixed charge years, liable entities are unlikely to be holding carbon units or international emissions units. This is because carbon units are automatically surrendered when acquired from the regulator and the international units could not offset liabilities in the fixed charge years (refer sections 100(7) and 122(8) of the *Clean Energy Act*). Accordingly, the repeal of the tax provisions relating to these units should not itself give rise to any significant Australian tax consequences.
- In relation to the liabilities arising for the year ending 30 June 2014, the system will 'stay open' to allow entities to acquire carbon units to satisfy their 30 June 2014 obligations (which, generally, last up until 2 February 2015 as 1 February 2015 is a Sunday).
- The Government has also proposed a number of transitional provisions to wind up the carbon tax scheme. The key transitional provisions which may have tax implications are summarised as follows:
 - Refunds will be paid to an entity for any carbon units auctioned by the Regulator which the Regulator is required to cancel. Any amounts refunded should be assessable to the entity.
 - The Regulator must cancel any carbon units in an entity's Registry account after the final compliance date (currently proposed to be 9 February 2014). Whether the entity is required to include an amount in assessable income depends on if the entity is "entitled to receive" an amount in respect of the cancellation of the carbon units. This depends upon whether the unit is a carbon unit (and is immediately surrendered and therefore will not be in the entity's registry account) or is another unit at that time. It seems that the Government is of the view that the entity is not "entitled to receive" an amount on cancellation of a carbon unit and therefore, no amount should be assessable to the entity.
- A number of unresolved tax issues which arose when the scheme started, are also relevant as a result of the repeal of this legislation, including:
 - **Same business test** – whether the same business is carried on where the entity has stopped participating in the carbon tax regime.

- **Thin capitalisation** – the likely impact on balance sheets as a result of the repeal of the scheme, especially relevant for entities that are part of the JCP incentive process.
- **Timing** – issues relating to the timing of the repeal and especially where the repeal occurs retrospectively (e.g. in relation to deductions, assessable income and treatment of credits where the scheme is repealed after 1 July 2014).

GST Implications

- At present, the supply of an "eligible emission unit" is a GST-free supply and not subject to GST. The definition of an "eligible emission unit" will be amended, with effect from 1 July 2014, to exclude carbon units. Consequently, the supply of carbon units within Australia (by a GST registered supplier) will be a taxable supply after that date.
- As a transitional measure, a supply of a carbon unit that was issued prior to 1 July 2014 should continue to be GST-free after that date.
- Entities that may intend to buy or sell carbon units between 1 July 2014, and February 2015, may need to consider the GST implications of those transactions.

Other considerations

Other (non-income tax) considerations should also be taken into account, including:

- Fuel tax credits – There should be an increase of fuel tax credits from 1 July 2014 as the carbon tax is proposed to be removed from taxable fuels from this date.
- Mergers and acquisitions due diligence – the proposed repeal of the carbon tax effective from 1 July 2014 creates uncertainty for entities currently participating in this regime. This will impact the value of any carbon tax related units held by these entities.

Direct Action Plan

The Government has stated that it will implement a Direct Action Plan, which is an incentive based policy designed to support emissions reduction activities through:

- a capped government fund which will purchase "lowest cost abatement" from projects that reduce or avoid greenhouse gas emissions (Emissions Reduction Fund); and
- the imposition of financial penalties on businesses which exceed their "business as usual" emissions baselines.

The Government intends to commence its Direct Action Plan by 1 July 2014. The terms of reference for the Emission Reduction Fund have been released and can be viewed [here](#):

Submissions in relation to the Emission Reduction Fund are required by 18 November 2013. Further details of the Direct Action Plan will be developed through a white paper and consultation process.

MORE INFORMATION

For more information, please contact:



James Newnham
Partner
T +61 3 9274 5346
james.newnham@dlapiper.com

CONTACT YOUR NEAREST DLA PIPER OFFICE:

BRISBANE

Level 28, Waterfront Place
1 Eagle Street
Brisbane QLD 4000
T +61 7 3246 4000
F +61 7 3229 4077
brisbane@dlapiper.com

CANBERRA

Level 3, 55 Wentworth Avenue
Kingston ACT 2604
T +61 2 6201 8787
F +61 2 6230 7848
canberra@dlapiper.com

MELBOURNE

Level 21, 140 William Street
Melbourne VIC 3000
T +61 3 9274 5000
F +61 3 9274 5111
melbourne@dlapiper.com

PERTH

Level 31, Central Park
152–158 St Georges Terrace
Perth WA 6000
T +61 8 6467 6000
F +61 8 6467 6001
perth@dlapiper.com

SYDNEY

Level 38, 201 Elizabeth Street
Sydney NSW 2000
T +61 2 9286 8000
F +61 2 9286 4144
sydney@dlapiper.com

www.dlapiper.com

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