

TREASURY EXECUTIVE MINUTE

Minute No.

12 September 2012

Assistant Treasurer, Minister Assisting for
Deregulation

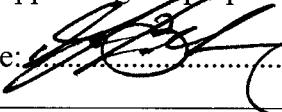
cc: Deputy Prime Minister and Treasurer

**APPROVAL OF AMENDMENTS TO THE FUEL TAX ACT 2006 AND THE EXCISE
TARIFF ACT 1921****Timing:** Friday, 14 September 2012 to enable introduction of the legislation next week.**Recommendation:** That you:

- agree to the amendments to the *Fuel Tax Act 2006* (the Fuel Tax Act) and the *Excise Tariff Act 1921* (the Excise Tariff Act) proposed by the Minister for Climate Change and Energy Efficiency, the Hon Greg Combet AM MP; and

Agreed/Not Agreed

- sign the attached letter to Minister Combet, approving his proposed amendments.

Signed/Not SignedSignature:  13/9/2012**KEY POINTS**

- Minister Combet wrote to you on 12 September 2012 (attached) seeking your agreement to make minor amendments to the Fuel Tax Act and the Excise Tariff Act, consequential to amendments to the *Clean Energy Act 2011* (the Clean Energy Act).
 - These amendments ensure that the equivalent carbon price applied to liquid fuels is equivalent to the effective carbon price under the carbon pricing mechanism, given the agreement between Europe and Australia to link their emissions trading systems.
- The proposed amendments are part of a legislation package, including the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012, which amends the Fuel Tax Act; and the Excise Tariff Amendment (Equivalent Carbon Price) Bill 2012, which amends the Excise Tariff Act. (See attached.)
 - Broadly, the amendments substitute the carbon price calculation currently based on average prices for domestic permits with a calculation based on a weighted average combination of the prices for domestic and overseas permits (including Europe).
 - There are no policy concerns with these amendments.
- Minister Combet's letter also notifies you that the creation of new carbon units by the legislation package is not intended to alter the tax treatment of carbon units, and this is stated in the explanatory memorandum accompanying the legislation package.
 - Further work by Treasury, the Australian Taxation Office and the Department of Climate Change and Energy Efficiency (DCCEE) on the tax implications, if any, of the new carbon units created by the legislation package will be further progressed once negotiations with the European Commission has concluded on the way in which the

Australian and European carbon registries will interact as a result of the linking of the trading systems. DCCEE has indicated that these negotiations should be concluded by mid-2013.

- Minister Combet intends to introduce the legislation package into the Parliament in the week beginning 17 September 2012. We recommend you sign the attached letter to Minister Combet agreeing to the proposed amendments to the Fuel Tax Act and the Excise Tariff Act.
- DCCEE was consulted in the preparation of this minute.

Manager, Indirect Tax Unit
Indirect, Philanthropy and Resource Tax Division

Contact Officer:
Ext:

ATTACHMENT A**Proposed amendments to the Fuel Tax Act 2006*****Fuel Tax Act 2006*****83 Paragraphs 43-8(2)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) is the per-tonne carbon price equivalent worked out under section 196A of the *Clean Energy Act 2011* for the 6-month period ending at the end of:
 - (i) the last May before the start of the half-year, if the half-year starts on 1 July (in 2015 or a later year); or
 - (ii) the last November before the start of the half-year, if the half-year starts on 1 January (in 2016 or a later year); and
- (b) is the first per-tonne carbon price equivalent that is worked out under that section for that 6-month period and published under that section.

Proposed amendments to the Excise Tariff Act 1921***Excise Tariff Act 1921*****1 Subsection 3(1) (definition of *average carbon unit auction price*)**

Repeal the definition.

2 Subsection 3(1)

Insert:

per-tonne carbon price equivalent for a substitution day mentioned in section 6FA or 6FB means the per-tonne carbon price equivalent that:

- (a) is worked out under section 196A of the *Clean Energy Act 2011* for the 6-month period ending at the end of:
 - (i) the last May before the substitution day, if it is 1 July (in 2015 or a later year); or
 - (ii) the last November before the substitution day, if it is 1 January (in 2016 or a later year); and
- (b) is the first per-tonne carbon price equivalent that is worked out under that section for that 6-month period and published under that section.

3 Subsection 6FA(3)

Repeal the subsection, substitute:

(3) The formula is:

Per-tonne carbon price equivalent for the substitution day \times 0.0022

Note: *Per-tonne carbon price equivalent* is defined in subsection 3(1).

4 Subsection 6FB(3)

Repeal the subsection, substitute:

(3) The formula is:

Per-tonne carbon price equivalent for the substitution day \times 0.0026

Note: *Per-tonne carbon price equivalent* is defined in subsection 3(1).



**Minister for Climate Change and Energy Efficiency
Minister for Industry and Innovation**

B12/584

The Hon David Bradbury MP
Assistant Treasurer
Minister Assisting for Deregulation
Parliament House
CANBERRA ACT 2600

Dear Minister

The European Commissioner for Climate Action, Ms Connie Hedegaard, and I announced on Tuesday 28 August 2012 that Australia and Europe will be linking their emissions trading systems.

I am writing to seek your approval to amend the *Fuel Tax Act 2006* and the *Excise Tariff Act 1921* to ensure that the equivalent carbon price applied to liquid fuels is more clearly equivalent to the effective carbon price faced by liable entities under the carbon pricing mechanism given the linking agreement.

I propose that the Government introduce the Clean Energy Legislation Amendment Package, including the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012, which amends the *Fuel Tax Act 2006*; and the Excise Tariff Amendment (Equivalent Carbon Price) Bill 2012, which amends the *Excise Tariff Act 1921*, into the Parliament in the week beginning 17 September 2012.

The Department of Climate Change and Energy Efficiency (DCCEE) has worked closely with your department to prepare bills to implement the Government's policy, as announced with the release of the draft Clean Energy Legislation Amendment (International Emissions Trading and Other Measures) Bill 2012 and associated bills on 28 August 2012.

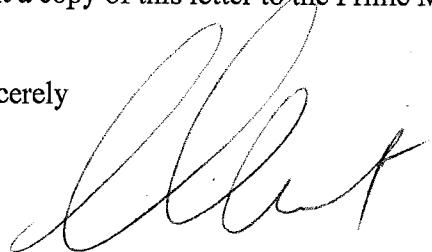
For your reference, please find attached the relevant clauses of the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 (Attachment A) and the relevant clauses of the Excise Tariff Amendment (Equivalent Carbon Price) Bill 2012 (Attachment B).

Finally, please be aware that the policy intent of my amendments to the *Clean Energy Act 2011* and associated acts that give effect to the linking arrangement is to maintain the equivalent tax treatment of carbon units in all circumstances. I have sought to articulate this in the Explanatory Memorandum accompanying my amendments, but not the amendments themselves pending clarification of any tax implications that might arise from the legislative framework established here and subordinate legislation enacted pursuant to it. Appropriate authorities will be sought in future, should amendments be necessary to this end.

To provide for the introduction of the Clean Energy Legislation Amendment Package into Parliament in the week beginning 17 September 2012, I would be most grateful for your response before Friday 14 September 2012.

I have sent a copy of this letter to the Prime Minister for her information.

Yours sincerely

A handwritten signature in black ink, appearing to read "Greg Combet".

GREG COMBET

copy: The Hon Julia Gillard MP
Prime Minister

Attachment A – *Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012*

76 After section 196

Insert:

196A Per-tonne carbon price equivalent

- (1) Within 7 business days after the end of each designated 6-month period, the Regulator must publish on its website the per-tonne carbon price equivalent for the designated 6-month period.

Note: For *designated 6-month period*, see subsection (18).

Per-tonne carbon price equivalent—basic rule

- (2) The *per-tonne carbon price equivalent* for a designated 6-month period is to be worked out to 2 decimal places (rounding up if the third decimal place is 5 or more) using the formula:

$$\text{Total of adjusted reference prices} + \left[\left(1 - \frac{\text{Total of designated limit percentages}}{\text{Average carbon unit auction price}} \right) \times \text{Average carbon unit auction price} \right]$$

where:

average carbon unit auction price means the average carbon unit auction price for the designated 6-month period.

total of adjusted reference prices means the total of the adjusted reference prices for the designated 6-month period.

total of designated limit percentages means the total of the designated limit percentages for the classes of eligible international emissions units that are subject to designated limits for the financial year in which the designated 6-month period ends.

- (3) Subsection (2) has effect subject to subsection (4).

Per-tonne carbon price equivalent—special rule

- (4) If:

- (a) no instrument is in force under subsection (6) at the end of a particular designated 6-month period; or
- (b) the per-tonne carbon price equivalent worked out under subsection (2) for a particular designated 6-month period is greater than the average carbon unit auction price for the designated 6-month period;

the *per-tonne carbon price equivalent* for the designated 6-month period is equal to the average carbon unit auction price for the designated 6-month period.

Reference prices

- (5) If:

- (a) a particular class of eligible international emissions units is subject to a designated limit for a particular financial year; and

(b) a designated 6-month period ends in the financial year; then, within 7 days after the end of the designated 6-month period, the Regulator must, by writing, declare that a specified amount is the *reference price* for the class of units for the designated 6-month period.

(6) The Minister may, by legislative instrument, determine the method that is to be used by the Regulator in making a declaration under subsection (5).

(7) In making a determination under subsection (6), the Minister must have regard to:

- prices paid (whether in or outside Australia) for eligible international emissions units included in each of the relevant classes of eligible international emissions units; and
- such other matters (if any) as the Minister considers relevant.

(8) In making a declaration under subsection (5), the Regulator must comply with a determination in force under subsection (6).

(9) The Regulator must publish a copy of a declaration under subsection (5) on the Regulator's website.

(10) A declaration made under subsection (5) is not a legislative instrument.

Adjusted reference price

(11) For the purposes of this section, if there is a reference price for a class of eligible international emissions units for a designated 6-month period, the *adjusted reference price* for the class of eligible international emissions units for the designated 6-month period is worked out using the formula:

Reference price \times Designated limit percentage

where:

designated limit percentage means the designated limit percentage for the class of eligible international emissions units for the financial year in which the designated 6-month period ends.

reference price means the reference price for the class of eligible international emissions units for the designated 6-month period.

Modifications of formula etc.

(12) If:

- there is a reference price for a class of eligible international emissions units for a designated 6-month period; and
- the reference price is higher than the average carbon unit auction price for the designated 6-month period;

then:

- the adjusted reference price for the class of eligible international emissions units for the designated 6-month period is to be disregarded for the purposes of the *total of adjusted reference prices* component of the formula in subsection (2); and
- the designated limit percentage for the class of eligible international emissions units for the financial year in which the designated 6-month period ends is to be disregarded for the purposes of the *total of designated limit percentages* component of the formula in subsection (2).

(13) If:

- (a) a class of eligible international emissions units (the *principal class*) is subject to a designated limit for a particular financial year; and
- (b) there is a class of eligible international emissions units (the *secondary class*) that:
 - (i) is included in the principal class; and
 - (ii) is subject to another designated limit for the financial year;

the designated limit percentage for the secondary class of eligible international emissions units for the financial year is to be disregarded for the purposes of the *total of designated limit percentages* component of the formula in subsection (2).

(14) If:

- (a) a class of eligible international emissions units (the *principal class*) is subject to a designated limit for a particular financial year; and
- (b) a designated 6-month period ends in the financial year; and
- (c) there is a class of eligible international emissions units (the *secondary class*) that:
 - (i) is included in the principal class; and
 - (ii) is subject to another designated limit for the financial year; and
- (d) the reference price for the secondary class of units for the designated 6-month period is greater than or equal to the reference price for the principal class of units for the designated 6-month period;

the adjusted reference price for the secondary class of units for the designated 6-month period is to be disregarded for the purposes of the *total of adjusted reference prices* component of the formula in subsection (2).

(15) For the purposes of this section, if:

- (a) a class of eligible international emissions units (the *principal class*) is subject to a designated limit for a particular financial year; and
- (b) a designated 6-month period ends in the financial year; and
- (c) there are one or more classes of eligible international emissions units (the *secondary classes*) each of which:
 - (i) is included in the principal class; and
 - (ii) is subject to another designated limit for the financial year; and
 - (iii) has a reference price for the designated 6-month period that is less than the reference price for the principal class of units for the designated 6-month period;

the *adjusted reference price* for the principal class of units for the designated 6-month period is taken to be the amount worked out using the following formula (instead of the amount worked out under subsection (11)):

$$\text{Reference price for principal class} \times \left(\text{Designated limit percentage for principal class} - \frac{\text{Total of designated limit percentages for secondary classes}}{\text{Total of designated limit percentages for secondary classes}} \right)$$

where:

designated limit percentage for principal class means the designated limit percentage for the principal class of units for the financial year.

reference price for principal class means the reference price for the principal class of units for the designated 6-month period.

total of designated limit percentages for secondary classes means the total of the designated limit percentages for the secondary classes of units for the financial year.

Interpretation

(16) For the purposes of this section, if:

- (a) a particular class of eligible international emissions units is subject to a designated limit for a particular financial year; and
- (b) a designated limit percentage is applicable to that designated limit; then:
- (c) the designated limit percentage is taken to be the designated limit percentage for the class of eligible international emissions units for the financial year; and
- (d) the class of eligible international emissions units is taken to be subject to the designated limit percentage.

(17) For the purposes of this section, listed units form a single class of eligible international emissions units.

(18) In this section:

adjusted reference price:

- (a) has the meaning given by subsection (11); and
- (b) has a meaning affected by subsection (15).

class of eligible international emissions units means:

- (a) the class mentioned in subsection (17); or
- (b) a class specified in regulations made for the purposes of subsection 123A(1).

designated 6-month period means:

- (a) the 6-month period ending at the end of May 2015; or
- (b) each later 6-month period ending at the end of May; or
- (c) the 6-month period ending at the end of November 2015; or
- (d) each later 6-month period ending at the end of November.

listed unit has the same meaning as in section 123A.

reference price has the meaning given by subsection (5).

Fuel Tax Act 2006

83 Paragraphs 43-8(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) is the per-tonne carbon price equivalent worked out under section 196A of the *Clean Energy Act 2011* for the 6-month period ending at the end of:
 - (i) the last May before the start of the half-year, if the half-year starts on 1 July (in 2015 or a later year); or
 - (ii) the last November before the start of the half-year, if the half-year starts on 1 January (in 2016 or a later year); and
- (b) is the first per-tonne carbon price equivalent that is worked out under that section for that 6-month period and published under that section.

Attachment B – Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Schedule 1—Amendments

Excise Tariff Act 1921

1 Subsection 3(1) (definition of average carbon unit auction price)

Repeal the definition.

2 Subsection 3(1)

Insert:

per-tonne carbon price equivalent for a substitution day mentioned in section 6FA or 6FB means the per-tonne carbon price equivalent that:

- (a) is worked out under section 196A of the *Clean Energy Act 2011* for the 6-month period ending at the end of:
 - (i) the last May before the substitution day, if it is 1 July (in 2015 or a later year); or
 - (ii) the last November before the substitution day, if it is 1 January (in 2016 or a later year); and
- (b) is the first per-tonne carbon price equivalent that is worked out under that section for that 6-month period and published under that section.

3 Subsection 6FA(3)

Repeal the subsection, substitute:

(3) The formula is:

Per-tonne carbon price equivalent for the substitution day \times 0.0022

Note: *Per-tonne carbon price equivalent* is defined in subsection 3(1).

4 Subsection 6FB(3)

Repeal the subsection, substitute:

(3) The formula is:

Per-tonne carbon price equivalent for the substitution day \times 0.0026

Note: *Per-tonne carbon price equivalent* is defined in subsection 3(1).



COPY

**The Hon David Bradbury MP
Assistant Treasurer
Minister Assisting for Deregulation**

The Hon Greg Combet AM MP
Minister for Climate Change and Energy Efficiency
Minister for Industry and Innovation
Parliament House
Canberra ACT 2600

Greg,
Dear Minister,

Thank you for your letter of 12 September 2012, seeking my agreement to make amendments, to the *Fuel Tax Act 2006* and the *Excise Tariff Act 1921*, that are to be set out in the Clean Energy Legislation Amendment Package (the legislation package), which includes the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012 and the Excise Tariff Amendment (Equivalent Carbon Price) Bill 2012.

I note that the legislation package includes amendments to *Clean Energy Act 2011* to ensure that the equivalent carbon price applied to liquid fuels is equivalent to the effective carbon price under the carbon pricing mechanism, given the agreement between Europe and Australia to link their emissions trading systems.

I agree with the proposed amendments to paragraphs 43-8(2)(a) and (b) of the *Fuel Tax Act 2006*; and to subsections 3(1), 6FA(3) and 6FB(3) of the *Excise Tariff Act 1921*.

Section 22

Yours sincerely

A handwritten signature in black ink, appearing to read 'DAVID BRADBURY'.

DAVID BRADBURY

13 SEP 2012