

Caucus Legislation Submission

Bill title

Excise Tariff Amendment (Tobacco) Bill 2010
Customs Tariff Amendment (Tobacco) Bill 2010
Excise Tariff Proposal (No. 1) 2010
Customs Tariff Proposal (No. 2) 2010

Minister/Portfolio

The Hon Wayne Swan MP, Treasurer (Excise)
Senator the Hon Nick Sherry, Assistant Treasurer (Excise)
The Hon Brendan O'Connor MP, Minister for Home Affairs (Customs and Border Protection)
The Hon Nicola Roxon MP, Minister for Health and Ageing (Health)

Brief outline

The Government announced an increase to the excise rate applying to 'tobacco, cigars, cigarettes and snuff', and the relevant excise-equivalent customs duty rates applying to the equivalent imported products by 25 per cent, applying on and from 30 April 2010.

Tariff Proposals

Separate Notices were gazetted to give effect to the collection of the higher excise and excise-equivalent customs duty rates on 29 April 2010.

As required by the excise and customs provision that allowed the relevant officers to publish these gazettal notices, these notices specified that it was intended to introduce Tariff Proposals into Parliament within seven sitting days of the House of Representatives after the publication of the gazettal notices.

Section 114 of the *Excise Act 1901* (and similarly section 226 of the *Customs Act 1901*) provides protection from commencement of legal proceedings for anything done by officers of the Australian Taxation Office and the Australian Customs and Border Protection Service for the protection of the revenue in relation to an Excise Tariff alteration proposed in the Parliament. This protection applies until the close of the Parliamentary session in which that tariff alteration is proposed; or before the expiration of 12 months after the alteration is proposed, whichever occurs first.

Tariff Amendment Bills

These Bills amend the Schedule to the *Excise Tariff Act 1921* and the respective Schedules to the *Customs Tariff Act 1995* to increase the excise and excise-equivalent customs duty rates for tobacco by 25 per cent from \$0.26220 to \$0.32775 per stick for cigarettes and from \$327.77 to \$409.71 per kilogram for other tobacco products with effect on and from 30 April 2010.

It is proposed that excise and Customs Tariff Proposals will be introduced into the House of Representatives at the same time as the Excise Tariff and Customs Tariff Amendment Bills.

Financial impact statement

These measures will have these revenue implications:

<i>Revenue</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>
Australian Taxation Office	205	1020	1050	1075	1120
Australian Customs and Border Protection Service	25	110	120	125	130
Impact on fiscal balance	230	1130	1170	1200	1250

These revenue impacts do not include the following estimated increased goods and services tax (GST) collections:

<i>Revenue</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>
GST	25	115	115	120	130

Caucus committee comments

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Cross portfolio consultations

The Australian Taxation Office, the Australian Customs and Border Protection Service, and the Department of Health and Ageing have been consulted in preparation of this measure.

Timing sensitivities

The higher rates of excise and excise-equivalent customs duty are being collected by the Australian Taxation Office and Australian Customs Service under provisions of the *Excise Act 1901* and the *Customs Act 1901*.

Once Parliament returns, it will be necessary, within seven sitting days of the House of Representatives, to table in Parliament the Excise and Customs Tariff Proposals after the date of the Notice in the Gazette. The Excise and Customs Tariff Proposals provide a temporary period of protection to the ATO and Customs officers to collect the excise at the higher rate until the close of the Parliamentary session in which the tariff proposal is tabled (for example, until Parliament is dissolved for an election), or for a period of 12 months after the alteration is proposed, whichever occurs first.

Legislation is required to increase the excise by 25 per cent as Tariff Proposals do not amend the rate of excise or excise-equivalent customs duty payable.

Given the limitations of the protection provided by the Tariff Proposals under section 114 of the *Excise Act 1901* (and similarly section 226 of the *Customs Act 1901*), it is prudent to introduce the Bills to change the tobacco excise rate at the same time that the Tariff Proposals are tabled in the first week of the Winter Parliamentary sittings. The Prime Minister has agreed to this timing.

Rural and regional impact

Nil.

Staff contact details

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Detailed outline

- Excise is applied to certain goods manufactured in Australia. Where excise is applied, an equivalent rate of customs duty is applied to the equivalent imported products. This is in addition to any protective customs duty that may apply. This approach ensures consistency between imported and domestically manufactured goods and aligns with Australia's international trade commitments.
- On 29 April 2010, the Prime Minister and the Minister for Health and Ageing announced a 25 per cent increase in tobacco excise and excise-equivalent customs duty with effect on and from 30 April 2010.
 - This equates to an increase from \$0.26220 to \$0.32775 for sticks of tobacco (for example, cigarettes or cigars) not exceeding 0.8 grams per stick actual tobacco content in weight, and from \$327.77 to \$409.71 per kilogram for other tobacco (for example, loose tobacco).
- The alterations to the Excise Tariff Act were announced in the *Commonwealth Government Special Notices Gazette* No. S63 of 29 April 2010 under section 160B of the *Excise Act 1901*. The alterations to the Customs Tariff Act were announced in the *Commonwealth Government Special Notices Gazette* No. S62 of 29 April 2010 under section 273EA of the *Custom Act 1901*.
 - As required by section 160B of the *Excise Act 1901*, and similarly section 273EA of the *Customs Act 1901*, the gazettal notices specified that it was intended to introduce Tariff Proposals into Parliament within seven sitting days of the House of Representative after the publication of the gazettal notices.
- Excise and Customs Tariff Proposals will be introduced into the House of Representatives at the same time as the Excise Tariff and Customs Tariff Amendment Bills.

Tariff Proposals

- The Excise Tariff Proposal (No. 1) 2010 and Customs Tariff Proposal (No. 2) 2010 will protect officers from legal action when collecting duty on 'tobacco, cigars, cigarettes and snuff' at the increased rate on and from 30 April 2010 for a period of 12 months after tabling or until Parliament dissolves.
- Tariff proposals can only be tabled in the House of Representatives by the Executive and are not voted on, neither are they disallowable (unlike Regulations). However, they can be debated and amendments moved (although the convention is not to debate the proposal until the relevant bill is introduced into the Parliament). The underlying assumption of the legislation is that in the 12 month period following tabling or before Parliament dissolves (when the statutory protection for officers to collect such revenue is available), the Parliament has the opportunity to consider Excise Tariff and Customs Tariff Amendment Bills, which formally incorporate the rates in the Tariff Proposals into the respective Excise and Customs Acts.

Tariff Amendment Bills

- The Excise Tariff Amendment (Tobacco) Bill 2010 amends Item 5 of the Schedule to the *Excise Tariff Act 1921* and the Customs Tariff Amendment (Tobacco) Bill 2010 amends Schedule 3 of the *Customs Tariff Act 1995* to increase the rates applying to tobacco by 25 per cent with effect on and from 30 April 2010. The subheadings of Schedule 3 of the *Customs Tariff Act 1995* that receive equivalent tax treatment to item 5 of the Schedule to the *Excise Tariff Act 1921* are: 2401.10.00, 2401.20.00, 2401.30.00, 2402.10.20, 2402.10.80, 2402.20.20, 2402.20.80, 2403.10.30, 2403.10.70, 2403.91.00 and 2403.99.80.
 - This amounts to an increase in excise and excise-equivalent customs duty of 6.56 cents per cigarette stick (from \$0.26220 per stick to \$0.32775 per stick) and of \$81.94 per kilogram (from \$327.77 to \$409.71) for ‘other’ tobacco including loose leaf tobacco, cigars and non-smoking tobacco such as snuff and chewing tobacco.

Views of non-government Senators (*To be completed by Revenue Group only, other Groups, please delete.*)

- Tony Abbott has stated (to Channel Nine) that he will not oppose this measure (reported in ABC news online and ninemsn on 30 April 2010).
- Previously, the Sydney Morning Herald reported that Tony Abbott proposed a 20 per cent increase in tobacco excise to pay for a crackdown in welfare payments (SMH, February 24, 2010).
 - This equates to an increase in the price of a packet of 25 cigarettes by about \$1.44, and about 5 cents extra excise per stick.
 - Treasury: this would generate a revenue increase of about \$4 billion over four years.

Talking points

- Excise and Customs Tariff Proposals will be introduced into the House of Representatives at the same time as the Excise Tariff and Customs Tariff Amendment Bills.
- The Excise Tariff Proposal (No. 1) 2010 and Customs Tariff Proposal (No. 2) 2010 will protect officers from legal action when collecting duty on ‘tobacco, cigars, cigarettes and snuff’ at the increased rate on and from 30 April 2010 until Parliament dissolves or for a period of 12 months after tabling.
- However, legislation is required to increase the excise by 25 per cent as Tariff Proposals do not amend the rate of excise or excise-equivalent duty payable.

- The Excise Tariff Amendment (Tobacco) Bill and the Customs Tariff Amendment (Tobacco) Bill 2010 amend the Schedule to the *Excise Tariff Act 1921* and the respective Schedules to the *Customs Tariff Act 1995* to increase the excise and excise-equivalent customs duty rates for tobacco by 25 per cent from \$0.26220 to \$0.32775 per stick for cigarettes and from \$327.77 to \$409.71 per kilogram for other tobacco products with effect on and from 30 April 2010.
- This one step increase in tobacco excise of 25 per cent will result in revenue of around \$5 billion over the forward estimates (including 2009-10). This revenue, along with existing revenues from tobacco, will be directly invested in better health and hospitals through the National Health and Hospitals Network Fund.
- Australian retail prices for cigarettes are moderate by international standards and taxes constitute a relatively smaller share of the retail price.
- In Australia, taxes comprised around 62 per cent of the total cost of cigarettes prior to the increase, whereas in France and the United Kingdom, taxes comprise 80 per cent and 77 per cent respectively of the total cost of cigarettes. This measure increases the percentage of tax in the retail price of a packet of 25 cigarettes from around 62 per cent to around 67 per cent. This is based on an average price of \$12.30 per packet.
- Increasing the tobacco excise rate will move Australia's tax treatment of tobacco in line with other comparable countries.
- The 25 per cent increase in the tobacco excise increases the price of a packet of 25 cigarettes by around 15 per cent (based on a price of \$12.30).
- This is expected to reduce aggregate consumption of tobacco by around 6 per cent. An excise increase of 25 per cent is expected to reduce the number of daily smokers by approximately 2 to 3 per cent or around 87,000 Australians.