

17 JULY 2014

# AUSTRALIAN TAX UPDATE

## REPEAL OF THE CARBON TAX - EASY COME EASY GO?

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The Federal Government has fulfilled its election promise when the Senate passed the carbon tax repeal legislation on 17 July 2014. The Government achieved the repeal of the carbon tax after 2 weeks of negotiations with the Palmer United Party and other crossbench senators. The repeal legislation awaits Royal Assent and will be effective from 1 July 2014.

The Government's preferred method to reduce pollution, the Direct Action Plan, was not debated in Parliament due to a lack of time.

In this Tax Update we outline the associated income tax, GST, fuel tax and other implications that will stem from the repeal of the carbon tax.

### CARBON TAX REPEAL AND RELATED LEGISLATION

The carbon tax repeal and related legislation does the following:

- abolishes the carbon pricing mechanism;
- removes the equivalent carbon price imposed through the fuel tax credit system, through excise and excise equivalent customs duties, and through synthetic greenhouse gas (SGG) levies;
- makes arrangements for the management for taxpayers of the last financial year in which the carbon tax will apply (2013-14) and the collection of any outstanding carbon tax liabilities;
- provides a clear obligation to energy retailers to pass on any cost savings related to the carbon tax repeal;
- provides new powers to the Australian Competition & Consumer Commission (ACCC) to ensure the passing through of price reductions relating to the carbon tax repeal are passed through the supply chain and on to consumers;
- abolishes the Climate Change Authority (CCA);
- abolishes the Clean Energy Finance Corporation; and

- cancels carbon tax related income tax cuts that were legislated to commence on 1 July 2015.

## 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 2014* contained 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

- The repeal of the Carbon Tax means that no new carbon tax liabilities will arise from 1 July 2014 or subsequent years.
- Liable entities are unlikely to be holding carbon units or international emissions units as we are in the fixed charge years. 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. 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 ended 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).
- The Government has also included 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 9 February 2015. 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 Jobs & Competitiveness Program incentive process.

## GST IMPLICATIONS

- The supply of an "eligible emission unit" is a GST-free supply and not subject to GST. This will continue to be the case. However, the definition of an "eligible emission unit" has been amended to exclude carbon units and prescribed international units.

- As a transitional measure, a supply of a carbon unit that was issued prior to the "designated carbon unit day" (i.e. 9 February 2015, or a later date specified by the regulation) will continue to be GST-free after that date.

## OTHER CONSIDERATIONS

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

- Fuel tax credits** - As a part of the carbon price regime, Fuel Tax Credits were reduced for eligible businesses as a way of factoring in the equivalent carbon price. These reductions will be abolished, thereby increasing the Fuel Tax Credits, with effect from 1 July 2014.
- Mergers and acquisitions due diligence** - the repeal of the carbon tax effective from 1 July 2014 creates uncertainty for entities currently participating in this regime. This will impact on the value of any carbon tax related units held by these entities.

## MORE INFORMATION

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