



Australian Government

The Treasury

Submission No. 1

Excise Tariff Amendment (Condensate) Bill 2011

Excise Legislation Amendment (Condensate) Bill 2011

22 July, 2011

File:

The Hon Dick Adams MP
Committee Chair
Standing Committee on Agriculture, Resources, Fisheries and Forestry
Parliament House
CANBERRA ACT 2600

Dear Mr Adams

RE: NEW INQUIRY - THE EXCISE TARIFF AND THE EXCISE LEGISLATION AMENDMENT (CONDENSATE) BILLS

I refer to your letter of 11 July 2011 to the Assistant Treasurer and Minister for Financial Services and Superannuation, the Hon Bill Shorten MP, regarding the commencement of an inquiry into the Excise Tariff Amendment (Condensate) Bill 2011, and the Excise Legislation Amendment (Condensate) Bill 2011.

Please find enclosed The Treasury's submission in relation to the inquiry. The contact officer for this matter is Mr James O'Toole, who may be contacted on [redacted] should the Committee require further information.

Yours sincerely

Paul McCullough
General Manager
Business Tax Division



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Standing Committee on Agriculture, Resources,
Fisheries and Forestry

**The Excise Tariff and the Excise Legislation
Amendment (Condensate) Bills**

22 July 2011

CONTENTS

INTRODUCTION	1
BACKGROUND	1
Removal of the Crude Oil Excise exemption on Condensate	1
Application of Crude Oil Excise to Condensate	2
The Rankin Trend	2
VOLWARE price determinations	3
UNCERTAINTIES TO BE ADDRESSED	3
EXCISE TARIFF AND LEGISLATION BILL AMENDMENTS	4
Definition of the Rankin Trend prescribed condensate production area	4
Clarifying VOLWARE price determination process	5

INTRODUCTION

The Excise Tariff Amendment (Condensate) Bill 2011 and the Excise Legislation (Amendment) Bill 2011 amend the Crude Oil Excise regime to clarify and confirm the application of excise to condensate. The Bills do this by addressing uncertainties that have arisen following the implementation of the Government's 2008-09 decision to remove the long standing excise exemption that had applied to condensate production.

The uncertainties referred to primarily relate to the application of Crude Oil Excise to the prescribed condensate production area known as the 'Rankin Trend', located in the North West Shelf project area, and concern two elements integral to the operation of the Crude Oil Excise regime, specifically:

- The prescription of 'prescribed condensate production areas', which are the areas the production from which Crude Oil Excise is applied; and
- The determination of Volume Weighted Average of Realised Prices (VOLWARE) prices, which are the 'prices' used to calculate the Crude Oil Excise duties payable.

Following the implementation of the 2008-09 measure, doubt has been raised regarding the validity of the by-law prescribing Rankin Trend as a prescribed condensate production area. The doubt relates to the area the Rankin Trend encompasses, with claims that it could be interpreted as being significantly larger than the area intended when it was prescribed. In relation to VOLWARE prices, it has been suggested that, in circumstances where a written notice of a VOLWARE price determination is not provided to producers, the price determination itself is not valid.

To address these uncertainties, the Excise Tariff Amendment (Condensate) Bill 2011 (Excise Tariff Bill) amends the *Excise Tariff Act 1921*, to clarify and confirm the area encompassed by the Rankin Trend condensate production. The Excise Legislation Amendment (Condensate) Bill 2011 (Excise Legislation Bill) amends the *Petroleum Excise (Prices) Act 1987*, to clarify that failure to provide petroleum producers with a written notice setting out the terms of a VOLWARE price determination does not affect the validity of the determination itself. These amendments were announced in the 2011-12 Budget¹, and will apply from 13 May 2008, consistent with the original measure, thereby removing any uncertainty about the operation of the law since it came into effect.

Together, these amendments ensure the Crude Oil Excise regime applies to condensate produced from the North West Shelf as was intended under the original 2008-09 measure. As the amendments merely confirm the current application of Crude Oil Excise to condensate production, they have no revenue impact.

BACKGROUND

Removal of the Crude Oil Excise exemption on Condensate

The Crude Oil Excise regime applies to crude oil and condensate production from coastal waters, onshore areas, and the North West Shelf project area (exploration permit areas WA-1-P and WA-28-P) situated off the coast of Western Australia. Petroleum production

¹ 2011-12 Budget, Budget Paper 2, page 19, *Crude Oil Excise - Technical Amendments*.

occurring in other Commonwealth offshore areas is subject to the Petroleum Resource Rent Tax.

In the 2008-09 Budget², the Government announced its decision to remove the Crude Oil Excise exemption that had applied to condensate production since 1977. Condensate is a light crude oil. In his press release³ of 13 May 2008, the Deputy Prime Minister and Treasurer, the Hon Wayne Swan, noted that the measure,

“will increase the return to the Australian community from allowing private interests to extract non-renewable energy resources located in the North West Shelf project area and onshore.”

The measure was implemented through the *Excise Legislation Amendment (Condensate) Act 2008*, and the *Excise Tariff Amendment (Condensate) Act 2008* with effect from midnight, 13 May 2008, and was estimated to raise \$2.5 billion over the four years to 2011-12.

Application of Crude Oil Excise to Condensate

Crude oil excise liability is determined on a monthly basis, and is calculated by applying the relevant excise rate to the volume weighted average of realised prices (the VOLWARE price) for that month.

The excise rates applying to condensate production are the same as those applicable to stabilised crude petroleum oil produced from fields discovered after 18 September 1975 (“new oil”), and are:

- zero for 500 megalitres or less of production in a financial year;
- ten percent for production between 501 and 600 megalitres in a financial year;
- fifteen percent for production of between 601 and 700 megalitres in a financial year;
- twenty percent for production of between 701 and 800 megalitres in a financial year; and
- thirty percent for production of over 800 megalitres.

The excise rates are applied to the cumulative annual production from individual condensate production areas that are prescribed by the Commissioner of Taxation (the Commissioner) through by-law. The *Excise Tariff Act 1921* currently defines a ‘prescribed condensate production area’ as meaning:

“a condensate production area prescribed by by-laws (which, without limiting the generality of the foregoing, may be a relevant accumulation, a well, an oilfield or a gas field)”⁴.

The Rankin Trend

To enable the 2008-09 measure to operate, in November 2008 the Commissioner made Excise By-law No. 156⁵, which prescribed a number of areas as condensate production areas for the purposes of the *Excise Tariff Act 1921* with effect from 13 May 2008. Two

² 2008-09 Budget paper 2, page 19, *Crude oil excise – condensate*

³ Press Release No 45, *Crude Oil Excise – condensate exemption*. Available at <http://www.treasurer.gov.au>

⁴ See section 6CA *Excise Tariff Act 1921*

⁵ Available at <http://www.comlaw.gov.au/Details/F2008L04516>

condensate production areas were prescribed within the North West Shelf, namely the Rankin Trend and Angel.

The Rankin Trend refers to an area encompassing a number of spatially related reservoirs. It was prescribed as a single condensate production area on the basis that the reservoirs formed a single field, following technical advice from Geoscience Australia.

The North West Shelf project is held by the North West Shelf Joint Venture (NWSJV). The NWSJV comprises Woodside Petroleum (the project operator), Shell, Chevron, BHP Billiton, and Japan Australia LNG (MIMI).

VOLWARE price determinations

VOLWARE prices are the prices determined each month which are used to calculate the excise duty payable on production from a prescribed production area.

The process for determining VOLWARE prices is set out in the *Petroleum Excise (Prices) Act 1987*, which requires the Minister, or person authorised by the Minister to determine both interim and final VOLWARE price within specified time limits.⁶⁷

Section 8 of the *Petroleum Excise (Prices) Act 1987* requires that written notices setting out the terms of a VOLWARE determination be provided to the relevant producers. The Act does not prescribe a time within which this notice must be provided.

UNCERTAINTIES TO BE ADDRESSED

Following the implementation of the 2008-09 measure, doubts have been raised regarding the validity of the by-law prescribing the Rankin Trend as a condensate production area, as well as the processes surrounding the associated VOLWARE price determinations.

Excise By-law No. 156 prescribed the Rankin Trend by 'name' only, consistent with normal practice. It has been suggested that the term, 'Rankin Trend,' does not have a sufficiently certain meaning to describe a condensate production area for the purposes of the *Excise Tariff Act 1921*, on the basis that the term 'Rankin Trend' could be interpreted as referring to a significantly larger area than was intended - approximately 10,000 square kilometres in area - which is of uncertain size and without defined boundaries.

In relation to VOLWARE price determinations, it has been suggested that in circumstances where a written notice setting out the terms of a price determination is not provided to the relevant producers within the time period specified for the making of the price determination, the determination itself would be invalid.

⁶ See subsections 7(2) and 7(3) of the *Petroleum Excise (Prices) Act 1987*

⁷ An interim VOLWARE price must be determined within a month of the end of the month to which the VOLWARE price applies (subsection 7(2)). Similarly a final VOLWARE price must be determined within 6 months of the end of the month to which the VOLWARE price applies.

EXCISE TARIFF AND LEGISLATION BILL AMENDMENTS

The amendments within the Excise Tariff Bill and the Excise Legislation Bill clarify and affirm the current application of Crude Oil Excise to condensate production. They do this by:

- providing certainty regarding the area encompassed by the Rankin Trend, via the inclusion of a statutory definition of the Rankin Trend within the *Excise Tariff Act 1921*; and
- clarifying that a failure to provide a notice setting out the terms of a VOLWARE price determination to the relevant producer(s) does not affect the validity of the VOLWARE determination itself.

The amendments will apply from midnight 13 May 2008, consistent with the original 2008-09 Budget measure. As the amendments merely affirm the current application of crude oil excise in relation to the Rankin Trend, they have no revenue impact.

The specifics of the amendments contained within the Bills are outlined below.

Definition of the Rankin Trend prescribed condensate production area

The Excise Tariff Bill amends the *Excise Tariff Act 1921* to address any uncertainty regarding the area encompassed by the Rankin Trend. It does this by introducing a statutory definition of the Rankin Trend prescribed condensate production area.

Specifically, the Rankin Trend prescribed condensate production area will be defined within section 6CA of the *Excise Tariff Act 1921* as the area including the reservoirs or groups of reservoirs known as North Rankin; Perseus; Searipple; Goodwyn; Keast/Dockrell and Echo/Yodel. The contiguous area so defined includes those reservoirs or groups of reservoirs which Geoscience Australia advise comprise a single field.

The amendments also provide for additional reservoirs or groups of reservoirs to be included within the Rankin Trend by regulation. This may only occur where the Minister for Resources is satisfied they are part of the Rankin Trend field on the basis of geological evidence. Where the Minister is so satisfied, consideration must also be had to what effect, if any, including the reservoirs or groups of reservoirs within the Rankin Trend may have on the efficient exploitation of the relevant resource.

The scope to include additional reservoirs recognises that there are a number of known, but currently non-producing reservoirs located near the Rankin Trend condensate production area, which available geological evidence suggests may be part of the same field. Historically, however, a determination of whether a reservoir is part of an existing field has been made at the time production from the reservoir commences, based on the geological evidence at that time and the amendments reflect this practice.

In circumstances where a new reservoir/group of reservoirs is not part of the Rankin Trend, the area encompassing the reservoir/group of reservoirs will instead be prescribed by the Commissioner as a separate condensate production area, consistent with current practice.

The amendments also remove reference to Rankin Trend in Excise Tariff By-law No 156 due to it being statutorily defined, while preserving the status of the other condensate production areas prescribed in that by-law.

Clarifying VOLWARE price determination process

The Excise Legislation Bill includes a minor amendment to section 8 of the *Petroleum Excise (Prices) Act 1987* (PEPA) to clarify that failure to provide a written notice regarding a VOLWARE determination does not invalidate the price determination itself.

Under the current provisions of the PEPA, a producer may seek a review of a reviewable decision within 28 days of it first coming to their notice, or a further period allowed by the decision maker⁸. The determination of a final VOLWARE price is a reviewable decision. The Excise Legislation Bill expands the scope for a producer to seek a review of a final VOLWARE price determination, by allowing them to seek a review within 28 days of receiving a written notice under section 8 of the PEPA.

⁸ See subsection 12(1) *Petroleum Excise (Prices) Act 1987*