



Bills Digest

No. 107 2000-01

Excise Tariff Amendment Bill (No. 1) 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Excise Tariff Amendment Bill (No. 1) 2001

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23 March 2001

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Excise Tariff Amendment Bill (No. 1) 2001

Date Introduced: 8 March 2001

House: House of Representatives

Portfolio: Treasury

Commencement: The amendments increasing the rate of excise duty on aviation kerosene are taken to have effect from 13 May 2000. The amendments relating to the excise on alcoholic beverages are taken to have effect from 1 July 2000. The amendments relating to the reduction in excise duty by 1.5 cents per litre on specified petroleum products are taken to have effect 2 March 2001.

Purpose

The major amendments proposed by the Bill:

- increase the rate of excise duty for kerosene for use as fuel in aircraft
- introduce a new 3 tiered excise duty structure for beer, and
- reduce by 1.5 cents per litre the excise duty for unleaded petrol, leaded petrol, diesel and other petroleum products.

Background

As there is no central theme to the amendments proposed by this Bill, a background to each major amendment is contained in the Main Provisions section of this Digest.

Main Provisions

Aviation Kerosene

The amendment proposed by **item 1 of Part 1 of Schedule 1** substitutes a new rate of excise duty for kerosene used as fuel in aircraft (avtur). The current rate of excise duty for kerosene for use as fuel in aircraft is 2.759 cents per litre. The proposed new rate of excise duty will be 2.795 cents per litre.

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The increase in the rate of excise duty was announced in the 2000-2001 Budget. At the time of the Budget it was announced that the measure would be used to fund regulatory activities by the Australian Competition and Consumer Commission (ACCC). Specifically, it was announced that funds raised by the excise increase would be used to fund ACCC activities relating to:

- airport access arrangements
- assessing compliance with airport price caps
- monitoring prices of aeronautical related services at airports
- monitoring quality of service, and
- performing other related functions.¹

A further rationale for the increased rate of excise duty is given by the Government in the Second Reading Speech to this Bill, that is:

The regulation activities for airports are more extensive than originally envisaged and require more funding. An increase in the rates of excise and customs duty for aviation was considered an administratively efficient method of cost recovery. The increase is taken to have effect from 13 May 2000 and will provide \$900,000 per annum to fund the regulatory arrangement.

The proposed increase in the rate of excise duty will be taken to have effect from 13 May 2000 (Budget night) (**item 2**).

Alcoholic Beverages

The principal effect of **item 5** of **Part 2** of **Schedule 1** of the Bill is to introduce a new 3 tiered excise duty structure for beer. The structure is based on the percentage of alcohol by volume exceeding an excise free threshold of 1.15%. The rates of applicable excise duty are:

- beer not exceeding 3% by volume of alcohol – \$41.67 per litre of alcohol
- beer exceeding 3% but not exceeding 3.5% by volume of alcohol – \$35.38 per litre of alcohol, and
- beer exceeding 3.5% by volume of alcohol – \$30.46 per litre of alcohol.

The proposed amendments also provide a new rate for 'other excisable beverages' of an alcoholic strength by volume not exceeding 10%. The Government in its Explanatory Memorandum to the Bill indicates that this measure is intended to bring designer drinks, alcoholic sodas, coolers etc., into the excise regime.

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In respect to spirits and other excisable beverages of an alcoholic strength by volume of more than 10%, the rates of applicable excise duty are:

- brandy – \$48.7 per litre of alcohol
- fruit brandy – \$51.58 per litre of alcohol
- whisky – \$51.58 per litre of alcohol
- rum – \$51.58 per litre of alcohol
- liqueurs – \$51.58 per litre of alcohol
- other excisable beverages of an alcoholic strength by volume exceeding 10% – \$51.58 per litre of alcohol
- spirit for fortifying Australian wine or for fortifying Australian grape, subject to regulations – Free
- methylated spirits, subject to regulations – Free
- spirits, n.e.i. – \$51.58 per litre of alcohol
- spirit for scientific or educational purposes, subject to regulation for use in universities or for use in approved technical colleges or other educational institutions prescribed by By-law - Free
- spirit for use in public hospitals, or for use in the manufacture of medicinal preparations for use in public hospitals and universities, subject to regulations – Free, and
- denatured ethanol for use as a fuel in internal combustion engines, as prescribed by by-law.

The amendments relating to alcoholic beverages proposed by the Bill give effect to the Government's tax reform measures, particularly the replacement of the whole sales tax with the goods and services tax. The amendments have been in effect since 1 July 2000.

The amendments relating to excise duty on beer have attracted considerable media attention. Outlined below is a selection of media reports relating to the issue.

- *The Financial Review* – 8 May 2000 – The Australian Democrats are reported as standing by an earlier undertaking to block government moves to lift the beer excise rate.
- *The Sydney Morning Herald* – 3 June 2000 – The Australian Labor Party and the Australian Democrats are reported as saying they will amend the excise regime to

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make it conform with the Prime Minister's 1998 election campaign promise that the price of ordinary beer would rise by no more than 1.9 per cent.

- *The Age* – 1 July 2000 – It is reported that Australian Hotels Association Victorian chief executive Alan Giles said hoteliers were in a no-win situation because they had to collect the tax now. Mr Giles is reported as saying: 'One section of the government is saying the price has been increased but the other is saying they will reject it. ... We believe the Federal Government should immediately freeze this increase. It puts us in a shocking position. It's unethical and unconscionable to insist we collect the excise rise when the Senate says it will overturn it.' The Treasurer is reported as saying that the Government always said it would adjust excise and the price of ordinary beer – defined as packaged beer sold in a bottle shop not a beer served over a bar – would rise by only 1.9 per cent. The author of the article expresses an opinion that 'Mr Costello has adopted a risky strategy by announcing the excise rise in the House of Representatives but delaying it being put to a vote in the Senate for 12 months. Labor and the Democrats said they would oppose it.
- *The Financial Review* – 5 July 2000 – It is reported that the row over the extra \$500 million beer excise to be collected under the new tax system intensified when the major brewers, including Lion Nathan and Foster's Brewing Group, confirmed they would challenge its collection in the Federal Court. The brewers are reported as having told the chief of Customs that they would pay the higher excise rate on draught beer under protest, arguing its collection was illegal because Labor and the Democrats have resolved not to endorse it in the Senate.
- *The Sun Herald* – 14 January 2001 – It is reported that major brewers are working on plans to refund the tax already paid by drinkers in anticipation that the beer excise increase will be declared illegal when Parliament resumes. According to this media article, both houses of Parliament must ratify the excise rise by midnight on June 20 to make it legal retrospectively and that if the ratification were to fail the Government would have to refund the extra excise, estimated at \$200 million to \$240 million over 12 months.
- *The Financial Review* – 19 January 2001 – The Australian Associated Brewers are reported as confirming that it had lodged statements of claim against the Federal Government to enable member companies to claim back disputed beer excise (being collected under the excise tariff proposal which this Bill proposed to give effect to). The AAB is reported as saying it believes the excise levies set by the Government breach a promise by the Prime Minister that beer prices would not increase by more than 1.9 per cent. The article also reports a Government source as saying that the Treasurer was confident the Brewers' case was misconceived.
- *The Canberra Times* – 19 January 2001 – Carlton & United Breweries, Lion Nathan, Coopers and J. Boag & Sons are reported as confirming that they were

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- seeking a return of disputed beer excise being collected. Australian Associated Brewers are reported as saying '[O]ur legal action will enable us to claim back the disputed excise that has driven beer prices well above the 1.9 per cent the Government promised. To date, this amount is in excess of \$100 million.' Australian Associated Brewers are also reported as saying that they would not profit from the disputed excise and would return it to beer drinkers, possibly through price reductions, or give it to charities.
- *The Courier Mail* – 19 January 2001 – Lion Nathan spokesperson, Gabriel McDowell is reported as saying that all four major brewing groups promised to immediately cut beer prices at the pub by the full amount of the excise. McDowell is quoted as saying '[T]he price of beer at the pub will fall immediately by about 8% after the excise is declared illegal, none of the brewers will profit and all savings will be passed on to drinkers.'
 - *The Sydney Morning Herald* – 22 January 2001 – It is reported that in a survey commissioned by the brewing industry, drinkers voted to devote a prospective Government windfall from the Labor and the Democrats rejecting the beer excise rise to help alcohol related medical research, remedial programs and charities. The Australian Associated Brewers is reported as saying it would use the money to establish the Beer Drinkers Foundation which would be the biggest charitable foundation in the country with well over \$100 million to invest.

Fuel Tax Reductions

On 1 March 2001, the Prime Minister announced a package of cuts to fuel taxes. As part of this package, a number of legislative changes to the rates of excise on certain petroleum products are required. **Items 13-17** of **Part 5** of **Schedule 1** of the Bill give effect to the relevant changes to the rates of excise. Under the proposed amendments:

- the rate of excise on unleaded petrol, diesel and other petroleum products that attract the equivalent rate of duty is reduced by 1.5 cents per litre to \$0.38143 cents per litre (**item 13**)
- the rate of excise on leaded petrol and other petroleum products that attract the equivalent rate of duty is reduced by 1.5 cents per litre to \$0.40516 cents per litre (**item 14**)
- the rate of excise on petroleum products attracting concessional rates of duty is reduced by 0.297 cents per litre to \$0.07557 cents per litre (**item 15**)
- the rate of excise on avtur is reduced by 0.112 cents per litre to \$0.02845 cents per litre (**item 16**), and

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- the rate of excise on aviation gasoline is reduced by 0.110 cents per litre to \$0.02808 cents per litre (**item 17**).

Note: The Government's Explanatory Memorandum to the Bill states that:

Rates of excise for aviation fuels and those petroleum products attracting concessional rates of duty are reduced by an amount per litre that is proportional to that of the 1.5 cents per litre reduction applying to unleaded petrol and diesel.²

Prime Minister's Rationale For Reduction In Fuel Excise

Based on the contents of the transcript of the Prime Minister's Press Conference at which he announced the 1.5 cent per litre reduction in fuel excise, a number of reasons for the decision can be identified, the clearest of which is:

... it is designed to do what governments should always do and that is respond to the strongly held feelings of the Australian community. The Australian community was, has clearly sent us a message that it's unhappy that we haven't done more - even though they recognise that the main reason petrol prices are high because of the high price of crude oil, they recognise that - but they really think that we could have done a bit more. And they were obviously not persuaded about the argument on the cost savings last year when the GST was introduced. Even though when you look at the ACCC report you find there's plenty of evidence that there was an absorption of cost by the oil companies at the time of the introduction of the GST. So for all of those reasons we have come to the conclusion that we do need to recognise that concern, acknowledge that there has been an unwillingness for reasons they feel are well based to accept what the Government has said on that issue and others and through this not only to meet those concerns and re-establish that connection as John puts it very well, but also to make some contribution towards reducing the price of petrol at the bowser, I mean it will help a little. It's not going to cut it dramatically, I've never, you know, pretended that. The only way you can cut it dramatically is to see the world price fall.³

Media Comment

The Prime Minister's announcement of 1 March 2001 has received considerable media attention. Outlined below is a selection of media reports relating to the issue.

- *The Age* – 2 March 2001 – It is reported that the petrol package was welcomed by key interest groups. The National Farmers Federation is reported as hailing 'it as the third tax break for farmers in eight days'. In addition, motoring organisations, including the RACV is reported as saying that they were pleased with the petrol price relief and planned review of the fuel tax system. In contrast to such support, the article also reports that economist Chris Richardson, director of Access Economics, said that the Government had an excellent record on budget

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management but was now 'letting populism win out over policy because it feared losing the election.'

- *The West Australian* – 2 March 2001 – The WA Motor Trade Association and the RAC is reported as welcoming the decision to cut fuel excise. However, both organisations are also reported as agreeing that it would do nothing to reduce the gap between city and country prices in WA.
- *The Canberra Times* – 2 March 2001 – Liberal Gary Nairn, Member for Eden Manaro, who holds a slim margin, is reported as saying that the Government had responded to the legitimate concerns of country voters and that '[W]hile high oil prices will still have an impact on fuel prices, farmers, rural families and small businesses will know that the Coalition Government is doing as much as is economically responsible to help ease the burden.'
- *The Financial Review* – 2 March 2001 – Oil companies confirmed they would pass on the Federal Government's excise cut of 1.5 cents a litre. However, Mobil is reported as saying that an instant flow through was conditional on the Government refunding pre-paid excise on fuel products already in stock.
- *The Sydney Morning Herald* – 2 March 2001 – The Chief Executive officer of the NRMA, Mr Rob Carter, is reported as saying that the abolition of six-monthly indexation was more significant than the 1.5 cents per litre cut. Market economists are also reported as saying that overseas investors would view the about-turn on petrol tax as a reaction to special interests and this would undermine investor confidence in Australia.
- *The Age* – 2 March 2001 – Access Economics director Chris Richardson is reported as calculating that by 2004-5 the scrapping of indexation and the 1.5 cents a litre tax cut would cost the budget \$2 billion. BT Funds Management senior economist Ian Cassie is reported as saying he was concerned that the budget could fall into deficit next financial year because of the spending blowout and lower than expected tax collection and higher social security payments. Mr Cassie stated 'the GST was the big wild card. Revenue from the new tax could help fill the hole the spending blowout left, but it was difficult to predict the size of the surplus because the government had given little information on GST revenue being collected.'
- *The Australian* – 2 March 2001 – Small business is reported as being underwhelmed by the excise cut with operators seeing the cut as laughably small. Sydney garage door repair man Bruce Moller is reported as saying 'so what?... I just paid 99c a litre to fill up.' APM courier Allan Moxan is reported as saying that the cut would not make any difference because petrol prices were all over the place. Dianna Dalton, franchise manager of household cleaning company Bizzi Bees, is stated 'We have 100 franchisees all over NSW and we're not territorial and so they're driving all over to their customers. This price cut will be appreciated

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because the higher petrol prices and the costs of the GST have not been passed on to our customers.' Gold Coast-based Fastway Couriers Rachel Bennett and Wade Gallagher are reported as having been over-whelmed by the petrol price rise, arguing that the dollar cost and the time impost of the GST have made business life much tougher. Ms Bennett is said to have calculated that she will save around \$85 a year from the fuel excise cuts.

- *The Australian* – 7 March 2001 – International oil companies are reported as having wiped out the Government's excise cut with price increases of up to 10c a litre in Melbourne and Adelaide. The price rises are said to have lifted the cost of petrol in Melbourne and Adelaide above its levels before the Government cut petrol taxes on 1 March 2001.

Excise Tariff Amendment (Petrol Tax Cut) Bill 2001

On 7 February the Deputy Leader of the Opposition in the Senate, Senator Cook, introduced the Excise Tariff Amendment (Petrol Tax Cut) Bill 2001. This Private Members Bill amends the *Excise Tariff Act 1921* to prevent the 1 February 2001 indexation of rates of excise duty applying to specified petroleum products.

The rationale given by Senator Cook in introducing the Bill was:

The bill I am introducing in the Senate today seeks not only to ease the pain of high fuel taxes, caused by the Howard Government's attempt to leach millions of dollars out of Australian through its fuel tax squeeze, but to stop this Government lining its pockets at the expense of families and communities, industries, businesses and voluntary organisation, both in the cities and the bush.

The Excise Tariff Amendment (Petrol Tax Cut) Bill 2001 amends the Excise Tariff Act 1921 to provide relief from the 1 February 2001 indexation of rates of excise duty applying to petroleum, and give much needed fuel tax relief.⁴

The second reading debate on Senator Cook's Bill was adjourned on 8 March 2001.

The leader of the Opposition, Kim Beazley, introduced a Bill of the same title and effect in the House of Representatives on 5 March 2001. The second reading of that Bill has been made an order of the day for the next sitting.

Concluding Comments

The amendments proposed by this Bill and the Customs Tariff Amendment Bill (No. 2) 2001 give effect to excise and custom tariff proposals introduced last calendar year and in March 2001. There has been some debate relating to the power of Parliament to reject tariff proposals. The possible rejection of the amendments relating to alcoholic beverages

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proposed by the Bills is illustrative of the problem with excise and customs tariff proposals.

Excise Tariff Proposal No. 2 (2000) was introduced into the House of Representatives on 21 June 2000. The amendments to the *Excise Tariff Act 1921* contained in that Proposal were deemed to have effect on and from 1 July 2000. In practical terms, the new excise regime for alcoholic beverages came into effect from that date, or in other words, excise became payable and was collected under the new excise regime. Now, if the Senate were to reject the amendments to the *Excise Tariff Act 1921* proposed by this Bill, the Government faces the problem of having to pay back that excise which was collected and paid without the requisite parliamentary approval.

The conventional procedure for effecting excise and customs tariff amendments is a tariff proposal followed by validating legislation. Ultimately a government cannot increase or reduce excise or customs tariffs, which are legislatively based, without parliamentary approval.

However, a government can introduce a tariff proposal which, temporarily, is not subject to parliamentary approval. While tariff proposals must be validated, it is the government which determines when the validating legislation is to be introduced. This can be a considerable time after the proposal comes into effect. Convention in the past 10 years has seen governments introduce validating legislation within 3 to 12 months of a proposal coming into effect.

It should be understood that a tariff proposal is not legislation but an executive instrument. The Minister has absolute power with respect to tariff proposals. While a tariff proposal can be debated, by either Chamber, an amendment to a tariff proposal is a prerogative of the executive. Certainly a Chamber can debate the merits of a tariff proposal or pass a motion expressing its concern with it. A Chamber could even indicate that it would reject the validating legislation.

The law on the matter of how long a Government has to introduce a Bill to validate a tariff proposal is uncertain. The relevant law on the matter is contained in section 273EA of the *Excise Tariff Act 1921* and section 266 of the *Customs Act 1901*. The only certain matter in respect of excise and customs tariff proposals is that a government must introduce validating legislation at some point. Convention dictates that the legislation be introduced within 3 to 12 months of the proposal coming into effect. The *House of Representatives Practice*, however, states that in the absence of the Government introducing a tariff amendment bill, changes 'may be affirmed towards the end of a period of sittings by means of a tariff validation bill'. The full text of *House of Representatives Practice* should be recalled:

In the absence of a tariff amendment bill, tariff proposals then before the House may be affirmed towards the end of a period of sittings by means of a tariff validation bill. In this case the proposals are not discharged from the Notice Paper as they have not

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yet been incorporated in the tariff schedule by means of a tariff amendment bill. A validation bill merely extends the force of tariff proposals (p. 415).

Endnotes

- 1 Budget Measures 2000-01, Budget Paper No. 2, p. 25.
- 2 Excise Tariff Amendment Bill (No. 1) 2001, *Explanatory Memorandum*, p. 32.
- 3 <http://www.pm.gov.au/news/interviews/2001.780.htm>
- 4 <http://search.aph.gov.au/search/ParlIn.../Second+reading+speeches&action+view&WC>

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