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Bills Digest
No. 148 2003–04

Excise Tariff Amendment (Fuels) Bill 2004

ISSN 1328-8091

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Published by Information and Research Services, Parliamentary Library,
Department of Parliamentary Services, 2004.

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

Bills Digest
No. 148 2003–04

Excise Tariff Amendment (Fuels) Bill 2004

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Law and Bills Digest Section
2 June 2004

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Excise Tariff Amendment (Fuels) Bill 2004

Date Introduced: 1 April 2004

House: House of Representatives

Portfolio: Treasury

Commencement: The individual parts of the *Excise Tariff Amendment (Fuel) Bill 2004* have various commencement dates. They are dealt with under the heading Main Provisions.¹

Purpose

The Excise Tariff Amendment (Fuel) Bill 2004 (the Bill) proposes the following changes to the *Excise Tariff Act 1921*:

- the implementation of a different excise duty rate (EDR) for ultra low sulphur diesel (ULSD) and high sulphur diesel (HSD),
- an increase in the excise on aviation fuel to provide additional funding to the Civil Aviation Safety Authority,
- the imposition of an excise duty on biodiesel, bringing this currently untaxed fuel into the existing customs and excise duty system.

Background

Amendments in relation to low sulphur diesel

The implementation of EDRs for diesel fuels based on their different sulphur content was proposed by the Prime Minister in his Policy Initiative *Measures for a Better Environment* on 31 May 1999.²

The promotion of ULSD by imposing a lower EDR on ULSD and a higher one on high sulphur content fuels is based on environmental considerations. The *Explanatory Memorandum* states that:

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Low sulphur fuels provide environmental and health benefits through reduced emissions of hydrocarbons and oxides of nitrogen that affect air quality and particulate emissions known to cause respiratory problems.³

However, the introduction of ULSD alone is not sufficient to achieve these results. Rather, it is necessary to use certain engine technology, especially in the form of appropriate catalysts, to gain the full benefit of ULSD.⁴ Accordingly, critics have argued that whilst the introduction of ULSD was long overdue, it may not bring the wanted outcome as the average Australian diesel run car does not have the necessary technology.⁵

The Government recognises this limitation and has stated that the facilitation of a 'broader adoption of greenhouse friendly engine technology that depends upon low sulphur fuels' will be a subsequent measure.⁶

The proposed changes follow an international trend. Many countries regulate the sulphur content in diesel.⁷ Currently, the prescribed contents vary from country to country, ranging between 30 and 150 parts per million ('ppm'). The new quality standard for diesel fuels attracting the lower EDR in Australia will be the "Euro 4" standard or a sulphur content of less than 50 ppm.⁸

The introduction of the different EDRs was initially planned for 1 January 2003, with the second stage of the increases for the high sulphur diesel fuels to be introduced on 1 January 2004.⁹ However, the introduction was delayed by the Government until 1 July 2003 to avoid possible diesel fuel price increases for farmers facing drought conditions.¹⁰ The second increase has taken effect retrospectively on 1 January 2004. As a result, the period between the first and the subsequent EDR increase for high sulphur fuels has been significantly shortened.

Amendments in relation to aviation fuels

The increase in excise on aviation fuels, i.e. for aviation gasoline and kerosene was announced by the Federal Government in the 2003–2004 Federal Budget and will take effect retrospectively from 1 January 2004.

The increase is designed to raise additional funds to support the operation of the Civil Aviation Safety Authority (CASA).

Amendments in relation to biodiesel

The introduction of an excise duty on biodiesel was announced by the Federal Government in the 2003–2004 Federal Budget and introduced as Excise Tariff Proposal No. 4 (2003) and will take effect retrospectively on 18 September 2003.

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Placing an excise duty on this currently untaxed alternative liquid fuel carries out the Federal Government's commitment to implement a homogenous excise and customs duty system for all liquid fuels irrespective of their derivation.¹¹ This commitment is the result of a recommendation made by the Fuel Taxation Inquiry.¹²

Biodiesel is a clean burning alternative fuel which can be produced from vegetable oils and animal fats by a process called 'lipid transesterification'. It has similar properties to petroleum fuels and can be blended with petroleum based diesel fuels at any rate.¹³

The proposal to impose an excise duty on bio-diesel has been criticised. It has been argued that the imposition of excise duties for biodiesel in Australia would raise the price for this alternative fuel to an extent where it becomes uncompetitive with the traditional petroleum diesel.¹⁴

To assist in the prevention of this, the Government has introduced a grant scheme according to which licensed biodiesel producers can recover increased costs through subsidies.¹⁵ The Government stated that:

Grants will then be provided for production or importation of biodiesel, such that the current effective excise rate of zero for pure biodiesel is continued, with this being extended to the biodiesel component of blends, until 30 June 2008.¹⁶

However, in the same announcement, the Government explained that these grants will only be available for a limited period of time with the grants being phased out in five even annual instalments from 1 July 2008 to 1 July 2012.

Overseas, the European Commission recently decided to permit the German Government to exempt bio fuels, including biodiesel, from fuel taxes.¹⁷ The European Commission accepted that alternative fuels face particular difficulties competing against the traditional fuels and allowed Germany to subsidise the alternative fuel by granting a tax exemption.¹⁸

Main Provisions

EDRs for ultra low and high sulphur diesel (Schedule 1, Part 1 of the Bill)

The proposed amendments in Schedule 1, Part 1 of the Bill, introduce different EDRs for diesel by reference to their sulphur content. Part 1 of the Bill will take effect retrospectively on 1 July 2003.

Item 2 repeals paragraph 6G(1)(b) of the *Excise Tariff Act 1921*, substituting it with a new paragraph (b). This new subsection stipulates different EDRs applicable to diesel product other than recycled products, determined by reference to their sulphur content.

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Products with a sulphur content below 50 ppm attract the lower EDR, whilst those products with a sulphur content above this level attract the higher EDR.

In relation to UDSL the Bill prescribes the current, uniform level of excise for liquid fuel products, i.e. \$0.38143. For fuels which exceed a sulphur content of 50 ppm, an initial increase of one cent to \$0.39143 per litre is proposed. After this initial increase, the difference between the excise for products with a sulphur content below 50 ppm and the excise for products above this threshold will amount to one cent per litre (**Item 7 to Item 14**).

The new subsection (b) creates a presumption that the sulphur content of diesel exceeds the threshold of 50 ppm. Where the lower EDR for UDSL is claimed, the onus of proof will lie with the producer of the diesel product to satisfy the collector that the product's sulphur level is below the threshold of 50 ppm.¹⁹

Item 4 of the Bill sets out the formula for calculating the amount of excise duty payable on diesel or blended diesel products. In particular the formula provides for the fact that:

- the product may contain diesel as well as ethanol or other substances,
- different EDRs will apply, depending upon the sulphur content of the diesel, by implementing a diesel rate into the equation. The definition of diesel rate distinguishes between ULSD and HSD, and
- some of the products and substances contained in the product already have been subject to excise and customs duties, allowing the setting off of those as previously paid duties.

The term 'other substances' as used in this formula is defined to mean 'substances in the excisable blended petroleum product that are not either diesel or ethanol'. This definition appears to be broad enough to capture any substance added to the fuel, even non-excisable substances not being considered an integral part of the fuel.

Item 5 and **Item 6** set out the formula for calculating the amount of excise duty payable on emulsified blends of diesel, water and any other additives.

EDR for high sulphur diesel after 1 January 2004 (Schedule 1, Part 2 of the Bill)

Part 2 of the Bill puts into place the legislative arrangements to increase the excise duty on HSD fuels. This increase took effect on 1 January 2004.

Item 15 to **Item 22** of the Bill increase the EDR applicable to those products which exceed a sulphur content of 50 parts per million by a further cent to \$0.40143 per litre. After this second increase, the difference between the excise for ULSD and products above the threshold of 50 ppm will reach two cents per litre.

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EDR for aviation fuels (Schedule 1, Part 3 of the Bill)

Part 3 of the Bill increase the EDRs for aviation fuels. This part took effect on 1 July 2003.

Item 23 proposes to increase the current excise rate for kerosene used as aircraft fuel by \$0.00306 per litre from \$0.02845 per litre to \$0.03151 per litre.

Item 24 and **Item 25** increase the current excise rate for gasoline, other petroleum or shale spirit, in packages below or above 210 litres, by \$0.00306 per litre from \$0.02808 per litre to \$0.03114 per litre.

EDR for biodiesel (Schedule 1, Part 4 of the Bill)

Part 4 of the Bill deals with the introduction of an EDR for biodiesel and biodiesel products. The new EDR took effect on 18 September 2003.

Item 26 inserts a definition for the term “biodiesel” into the Act. Note that the definition is limited to those biodiesel products that are used as fuel in an internal combustion engine.

Item 28 inserts subsection (2C) into s.6G of the Act, providing a formula to calculate the duty payable on products containing biodiesel products, ethanol and any other substances. The duty is calculated by applying the relevant EDR to the volume of the individual product and by deducting previously paid duties.

Again, the term ‘other substances’ is defined to mean ‘substances in the excisable blended petroleum product that are not either biodiesel or ethanol’. This definition appears to be broad enough to capture any substance added to the fuel, even non-excisable substances that are not being considered an integral part of the fuel, such as additives.

Item 30 sets the excise rate for biodiesel to be \$0.38143 per litre.

Concluding Comments

The amendments proposed in relation to the diesel fuel excise are designed to encourage production and use of environmentally friendly diesel fuels. As indicated above, the Government follows an international trend with this proposal.

Whether the proposal can unfold its full potential in the short term has to be seen. It seems that engine technology, especially catalytic converters, are necessary to actually achieve the reduction in harmful emissions that is the primary goal of the Government’s policy.

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The amendments in relation to aviation fuels are proposed to raise funds for CASA. However, the Government already foreshadowed in the Explanatory Memorandum that:

The revenue from aviation fuel duty is estimated to be 11% lower than forecast as a consequence of cessation of Ansett operations, world wide reduction in air travel demand and introduction of larger, more fuel efficient aircraft.

The amendments making biodiesel excisable are the result of the Government's plan to create a homogenous excise system as suggested by the Fuel Taxation Inquiry. The introduction of the EDR corresponds with the introduction of the Energy Grants (Cleaner Fuels) Scheme and should result in a 'zero-excise rate' for those qualifying for a grant.

Endnotes

- 1 Note that Part 5 of Schedule 1 will not commence as the *Excise Tariff Amendment Act (No.1) 2004* commenced on 21 April 2004.
- 2 The Hon. J W Howard, *Measures for a Better Environment*, Media Release, 31 May 1999, available on: http://www.pm.gov.au/news/media_releases/1999/changes3105.htm, accessed 12 May 2004.
- 3 *Explanatory Memorandum*, at paragraph 1.3, available at: <http://parlinfoweb.parl.net/parlinfo/Repository/Legis/ems/Linked/08040400.pdf>, accessed 13 May 2004.
- 4 N H Sweed, R Demmin, H Ryu, 'Low Sulphur Technology' Research Paper on Hydrocarbon Engineering, July 2002, available on: <http://www.prod.exxonmobil.com/refiningtechnologies/pdf/JulyHESCF.pdf>, accessed on 13 May 2004.
- 5 A Main, 'Why Diesel Need not to be a Dirty Word for Greenies', *The Australian Financial Review*, 6 August 2003.
- 6 *Explanatory Memorandum*, at paragraph 1.3, available at: <http://parlinfoweb.parl.net/parlinfo/Repository/Legis/ems/Linked/08040400.pdf>, accessed 13 May 2004.
- 7 N H Sweed, R Demmin, H Ryu, "Low Sulphur Technology" Research Paper on Hydrocarbon Engineering, July 2002, available on: <http://www.prod.exxonmobil.com/refiningtechnologies/pdf/JulyHESCF.pdf>, accessed on 13 May 2004.
- 8 J Dowling, 'Push to Cut Excise on Cleaner Fuel so it Sells', *The Sydney Morning Herald*, 23 July 2002.
- 9 The Hon. J W Howard, *Measures for a Better Environment*, Media Release, 31 May 1999, available on: http://www.pm.gov.au/news/media_releases/1999/changes3105.htm, accessed 12 May 2004.

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- 10 T O'Loughlin, 'Farmers, Truckies Fight Diesel Price Rise', *Financial Review*, 19 December 2002; J Gordon, 'Farmers get Diesel Tax Reprieve', *The Age*, 25 December 2002; *Explanatory Memorandum*, at paragraph 1.4, available on: <http://parlinfoweb.parl.net/parlinfo/Repository/Legis/ems/Linked/08040400.pdf>, accessed 13 May 2004.
- 11 The Hon. P Costello, *Fuel Tax Reform for the Future*, Press Release No. 31, 13 May 2003, available on: <http://www.treasurer.gov.au/tsr/content/pressreleases/2003/031.asp>, accessed 13 May 2004.
- 12 D Trebeck, J Landels, K Hughs, 'Fuel Taxation Inquiry Report', Recommendation 1, at p. 29, March 2002, available on: <http://fueltaxinquiry.treasury.gov.au/content/report/default.asp>, accessed 11 May 2004.
- 13 Biodiesel Association of Australia, 'Biodiesel Fact Sheet, Biodiesel Fact 1', available on: <http://www.biodiesel.org.au/biodieselfacts.htm#IS>; accessed 11 May 2004.
- 14 'End of Biodiesel in Australia', *ReNew*, Vol. 86, 2004, at p. 13.
- 15 A Martyn, 'Energy Grants (Cleaner Fuels) Scheme Bill 2003', *Bills Digest*, No 33, Parliamentary Library Canberra, 2003-2004.
- 16 The Hon. P Costello, *Fuel Tax Reform for the Future*, Press Release No. 31, 13 May 2003, available on <http://www.treasurer.gov.au/tsr/content/pressreleases/2003/031.asp>, accessed 13 May 2004.
- 17 M Monti, "Staatliche Beihilfe N685/02 – Deutschland, Mineralölsteuerbefreiung für Biokraftstoffe" (Subsidy N685 – Germany, Petroleum Tax Exemption for Bio Fuels), European Commission, Brussels, 18 February 2004, at paragraph 10: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/comp-2002/n685-02.pdf, accessed 12 May 2004.
- 18 *ibid.*, at paragraph 18 and 32.
- 19 The Collector is either the Tax Commissioner (or their delegate) or someone else who has been authorised to perform a certain function under the *Excise Act 1901*.

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