

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

EXCISE TARIFF AMENDMENT BILL (NO. 2) 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, Science and Technology,
Senator the Hon. Peter Cook)



EXCISE TARIFF AMENDMENT BILL (NO. 2) 1995

OUTLINE

The purpose of this Bill is to amend the *Excise Tariff Act 1921* (the Tariff Act) to incorporate into the Tariff Act Excise Tariff Proposals Nos. 1, 2 and 3 of 1995, which were tabled in the Parliament earlier in the year, and to implement changes in the excise treatment of condensate and topped crude petroleum oil (topped crude). The principal changes contained in the Bill relate to:

- (i) the exclusion of the rate of excise duty applicable to beer produced from "micro-breweries" and "U-brews" from indexation under section 6A of the Tariff Act. Beer produced in this manner was made excisable with effect from 1 April 1994 and it was not intended that the applicable rate of excise duty be subject to indexation. This proposed amendment, which incorporates Excise Tariff Proposal No. 1 of 1995, is also to take effect from 1 April 1994 (clause 3 and Schedule 1 to the Bill refer);
- (ii) the increase in excise duty on manufactured tobacco and tobacco products by 10% with effect from 10 May 1995, which incorporates Excise Tariff Proposal No. 2 of 1995 (clause 4 and item 2 of Schedule 2 to the Bill refer). This increase was announced in the 1995-96 Budget and supports health policy aimed at discouraging smoking. As a consequence of this increase, it is also proposed to remove manufactured tobacco and tobacco products from the discretionary increase in excise duty under section 6AAA of the Tariff Act on 1 August 1995 (item 1 of Schedule 2 to the Bill refers);
- (iii) the amendment of the physical characteristics of fuel oil set out in subsection 3(4) of the Tariff Act to effectively exclude the diesel substitute "light" fuel oil, with effect from 1 July 1995 (clause 5 and item 1 of Schedule 3 to the Bill refer). The consequence of this amendment is that "light" fuel oil will become excisable at the same rate as diesel fuel, being \$0.33513 per litre, from this date. This amendment was announced in the 1995-96 Budget and is intended to address the Government's concerns with "light" fuel oil being used as a transport fuel substitute for diesel in order to take advantage of the lower rate of excise on "light" fuel oil (being \$0.06954 per litre). This amendment incorporates Excise Tariff Proposal No. 3 of 1995;
- (iv) an increase in the excise duty on aviation gasoline (avgas) of 1.847 cents per litre and on aviation kerosene (avtur) of 0.883 cents per litre, both with effect from 1 July 1995 (clause 5, items 2 and 3 of Schedule 3 to the Bill refer). These increases in excise duty were also announced in the 1995-96 Budget and are a part of Excise Tariff Proposal No. 3 of 1995. The 0.883 cents per litre increase on avtur and 0.883 cents of the 1.847 cents per litre increase on avgas will contribute to funding air safety regulation, undertaken by the new Civil Aviation Safety Authority, that benefits the travelling public and, in part, aviation industry participants. The remaining increase of 0.964 cents per litre on avgas will recover part of the airways costs that are attributable to avgas powered aircraft;

- (v) the exemption of condensate, which is currently excise free, from the application of the Tariff Act where it is separately produced, or separately marketed, from stabilized crude petroleum oil (stabilized oil). This amendment will take effect from 11 October 1995 (clause 6 and items 1, 2 and 4 of Schedule 4 refer); and
- (vi) the removal of the transport fuel substitution potential for topped crude by increasing the rate of excise duty on topped crude to \$0.33513 per litre from its present concessional rate of \$0.06954 per litre, with effect from 11 October 1995. However, topped crude that has the physical characteristics of fuel oil, set out in new subsection 3(4) of the Tariff Act (which is proposed to be inserted by Excise Tariff Proposal No. 3 of 1995) will continue to be excisable at the concessional rate (clause 6 and item 3 of Schedule 4 refers).

Financial Impact Statement

- a) the exclusion of the rate of excise duty applicable to beer produced from "micro-breweries" and "U-brews" from indexation

This amendment has no financial impact.

- b) the increase in excise duty on manufactured tobacco and tobacco products

The increase by 10% in the rate of excise duty on manufactured tobacco and tobacco products will result in an increase in revenue of \$70 million in 1995-96 and \$66 million in 1996-97.

- c) the amendment of the physical characteristics of fuel oil to effectively exclude "light" fuel oil

The amendment to the Tariff Act in respect of the physical characteristics of fuel oil will result in an increase in revenue of \$100 million in 1995-96 and \$100 million in 1996-97.

- d) the increase in the excise duty on avgas and avtur

The increase of 1.847 cents per litre in the excise duty on avgas is balanced by an equivalent increase in the moneys appropriated to the Civil Aviation Safety Authority and Air Services Australia. The financial impact is neutral.

The increase of 0.883 cents per litre in the excise duty on avtur is balanced by an equivalent increase in the moneys appropriated to the Civil Aviation Safety Authority. The financial impact is neutral.

e) Amendments to the excise treatment of condensate

The amendments proposed to the excise treatment of condensate have no financial impact.

f) topped crude diesel substitution

The amendment to eliminate the potential diesel fuel substitution problem with topped crude oil closes down a potential revenue drain of the same magnitude as the \$100 million per annum "light" fuel oil revenue impact in paragraph (c) above.

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NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the Act to be cited as the *Excise Tariff Amendment Act (No. 2) 1995*.

Clause 2 - Commencement

This clause provides for the commencement provisions of the various amendments contained in the Act as set out below.

Subclause 2(1) provides that sections 1 and 2 commence on the day on which the Act receives the Royal Assent.

Subclause 2(2) provides that section 3 is taken to have commenced on 1 April 1994, which is the date of commencement of Excise Tariff Proposal No. 1 of 1995. Section 3 provides that the *Excise Tariff Act 1921* (the Tariff Act) is amended as set out in Schedule 1 to the Act, which contains the amendments with respect to the indexation of the rate of excise applying to beer produced from "micro-breweries" and "U-brews".

Subclause 2(3) provides that section 4 is taken to have commenced on 10 May 1995, which is the date of commencement of Excise Tariff Proposal No. 2 of 1995. Section 4 provides that the Tariff Act is amended as set out in Schedule 2 to the Act, which contains the amendments with respect to the increase in the excise duty payable on manufactured tobacco and tobacco products.

Subclause 2(4) provides that section 5 is taken to have commenced on 1 July 1995, which is the date of commencement of Excise Tariff Proposal No. 3 of 1995. Section 5 provides that the Tariff Act is amended as set out in Schedule 3 to the Act, which contains the amendments with respect to "light" fuel oil, aviation gasoline (avgas) and aviation kerosene (avtur).

Subclause 2(5) provides that section 6 is taken to have commenced on 11 October 1995, which is the date of operation of the notice published in the Commonwealth Gazette notifying of the proposed amendments with respect to condensate and topped crude petroleum oil (topped crude). Section 6 provides that the Tariff Act is amended as set out in Schedule 4 to the Act, which contains the amendments with respect to condensate and topped crude.

Section 3 - Amendments having effect from 1 April 1994

Clause 3 provides that the Tariff Act is amended as set out in Schedule 1. Schedule 1 contains the amendments to section 6A of the Tariff Act with respect to the removal from indexation of the rate of excise duty on beer produced from "micro-breweries" and "U-brews".

Section 4 - Amendments having effect from 10 May 1995

Clause 4 provides that the Tariff Act is amended as set out in Schedule 2. Schedule 2 contains the amendments to items 6, 7, 8 and 9 of the Schedule to the Tariff Act with respect to the increase in excise duty payable on manufactured tobacco and tobacco products, as announced in the 1995-96 Budget.

Clause 5 - Amendments having effect from 1 July 1995

Clause 5 provides that the Tariff Act is amended as set out in Schedule 3. Schedule 3 contains the amendment to section 3 of the Tariff Act with respect to the physical characteristics of fuel oil. Schedule 3 also contains the amendment to subparagraph 11(A)(3)(a) and sub-item 11(D) of the Schedule to the Tariff Act with respect to the increase in the excise duty payable on avgas and avtur.

Section 6 - Amendments having effect from 11 October 1995

Clause 6 provides that the Tariff Act is amended as set out in Schedule 4. Schedule 4 contains the amendments to section 5B and sub-item 17(B) of the Schedule to the Tariff Act with respect to condensate. Schedule 4 also contains the amendment to paragraph 11(G)(2) of the Schedule to the Tariff Act with respect to topped crude.

SCHEDULE 1**AMENDMENTS TO THE EXCISE TARIFF ACT 1921
HAVING EFFECT ON 1 APRIL 1994****Item 1**

This item amends subsection 6A(1) of the Tariff Act by omitting the present definition of "relevant rate" and substituting a new definition of "relevant rate", with effect from 1 April 1994. The effect of the new definition is to insert a reference to sub-item 1(BB) of the Schedule into the definition.

Section 6A of the Tariff Act sets out the provisions whereby rates of excise duty may be subject to indexation in accordance with the consumer price index on February 1 and August 1 of any year. The indexation only applies in respect of a "relevant rate" of duty, which is presently defined as meaning a rate of duty (other than the rate "free") specified in an item in the Schedule other than items 17 and 20. This means that presently the rates of excise on the goods referred to in items 17 and 20, which includes stabilized oil and coal, are not subject to indexation under section 6A.

Sub-item 1(BB) was inserted into the Schedule to make beer produced for non-commercial purposes using commercial facilities or equipment subject to excise. Such facilities and equipment are known as "micro-breweries" or "U-brews". This beer became excisable on 1 April 1994.

Under the present definition of "relevant rate" in section 6A, the rate of excise on this beer calculated under sub-item 1(BB) (being 15% of the rate applying to goods classified to sub-item 1(C)) is subject to indexation as it is not expressly excluded from the definition. However, as it is *not* intended that this rate of excise is to be subject to indexation, an amendment is required to the definition of "relevant rate" to ensure that the definition also does not apply to the rate of duty calculated under sub-item 1(BB), with effect from 1 April 1994. This is the effect of the substituted definition of "relevant rate", which now provides that "relevant rate" means a rate of duty (other than the rate "free") specified in an item, sub-item, paragraph or subparagraph in the Schedule other than sub-item 1(BB) and items 17 and 20.

The amendment to subsection 6A(1) of the Tariff Act was proposed in Excise Tariff Proposal No. 1 of 1995, which was tabled in the House of Representatives on 8 February 1995 and took effect on and from 1 April 1994.

SCHEDULE 2**AMENDMENTS OF THE EXCISE TARIFF ACT 1921
HAVING EFFECT FROM 10 MAY 1995****Item 1 - Subsections 6AAA(2) and (3)**

This item amends subsections 6AAA(2) and (3) of the Tariff Act by omitting the phrase ", 1 February 1995 or 1 August 1995", wherever occurring and substituting "or 1 February 1995". The effect of this amendment is to remove manufactured tobacco and tobacco products from the discretionary increase in excise duty under section 6AAA timed for 1 August 1995. This amendment is consequential upon the amendments in item 2 of this Schedule which propose to increase the rate of excise duty on manufactured tobacco and tobacco products with effect from 10 May 1995.

Item 2- Items 6, 7, 8 and 9 of the Schedule

This item amends the Schedule to the Tariff Act by omitting and substituting items 6, 7, 8 and 9. These items relate to tobacco (item 6), cigars (item 7), cigarettes and fine-cut tobacco (item 8) and snuff (item 9). This amendment gives effect to the Government's Budget announcement of a 10 % increase in the excise duty on manufactured tobacco and tobacco products with effect from 10 May 1995.

This amendment increases the rate of excise duty payable on tobacco, cigars, cigarettes and fine-cut tobacco suitable for the manufacture of cigarettes to \$79.02 per kilogram. The rate of excise duty payable on snuff is increased to \$1.77 per kilogram.

The amendments to the Tariff Act in items 1 and 2 above were proposed in Excise Tariff Proposal No. 2 of 1995, which was tabled in the House of Representatives on 9 May 1995 and took effect on and from 10 May 1995.

SCHEDULE 3**AMENDMENTS TO THE EXCISE TARIFF ACT 1921
HAVING EFFECT ON 1 JULY 1995****Item 1 - Subsection 3(4)**

This item amends section 3 of the Tariff Act by omitting and substituting subsection 3(4) with effect from 1 July 1995. The purpose of this amendment is to re-define the physical characteristics of fuel oil for the purposes of the definition of "fuel oil" in section 3 and paragraph 11(E)(b) of the Schedule to the Tariff Act, to effectively exclude "light" fuel oil from the definition. The consequence of this amendment is that "light" fuel oil will become excisable at the same rate as diesel fuel, being \$0.33513 per litre, rather than the concessional rate currently applying to fuel oil, being \$0.06954 per litre.

This amendment has been driven by the desire to close down a revenue loophole as a result of excise duty differentials, where "light" fuel oil was being used as a substitute transport fuel for diesel solely to take advantage of the low excise rate applying to fuel oil.

The amendment was proposed in Excise Tariff Proposal No. 3 of 1995 which was table in the House of Representatives on 29 July 1995 and took effect on and from 1 July 1995.

Item 2 - Subparagraph 11(A)(3)(a) of the Schedule

This item amends the Schedule to the Tariff Act by omitting and substituting subparagraph 11(A)(3)(a).

The effect of this amendment is to increase the rate of excise duty payable on avgas by 1.847 cents per litre to \$0.1908 per litre with effect from 1 July 1995. Of this increase, 0.883 cents per litre will contribute to funding air safety regulation that benefits the travelling public and, in part, aviation industry participants. Air safety regulation is now undertaken by the new Civil Aviation Safety Authority. The remaining increase of 0.964 cents per litre on avgas will recover part of the airways costs that are attributable to avgas powered aircraft.

The increase in the excise duty on avgas was proposed in Excise Tariff Proposal No. 3 of 1995, which was tabled in the House of Representatives on 29 June 1995 and took effect on and from 1 July 1995.

Item 3 - Sub-item 11(D) of the Schedule

This item amends the Schedule to the Tariff Act by omitting and substituting sub-item 11(D).

The effect of this amendment is to increase the rate of excise duty payable on avtur by 0.883 cents per litre to \$0.0238 per litre with effect from 1 July 1995. This increase will contribute to funding air safety regulation that benefits the travelling public and, in

part, aviation industry participants. Air safety regulation is now undertaken by the new Civil Aviation Safety Authority.

The increase in the excise duty on avtur was proposed in Excise Tariff Proposal No. 3 of 1995, which was tabled in the House of Representatives on 29 June 1995 and took effect on and from 1 July 1995.

SCHEDULE 4**AMENDMENTS TO THE EXCISE TARIFF ACT 1921
HAVING EFFECT ON 11 OCTOBER 1995****Item 1 - Subsection 5B(1) (definition of petroleum)**

This item amends subsection 5B(1) of the Tariff Act by omitting the phrase "a liquid derived from petroleum gas" and substituting "condensate or liquid petroleum gas". This is a technical amendment to insert a direct reference to condensate for the purposes of the amendment to section 5B proposed in item 2 of this Schedule. The two liquids that are derived from petroleum gas are condensate and liquid petroleum gas.

For the purposes of items 2 and 4 below, condensate is also known as liquid petroleum and references to both condensate and liquid petroleum presently occur in the Schedule to the Tariff Act.

Item 2 - After subsection 5B(3)

This item amends section 5B of the Tariff Act by inserting new subsection 5B(3A). The purpose of the new subsection 5B(3A) is to create an exception to the operation of subsection 5B(3) with respect to the production of condensate.

Currently, condensate that is separately marketed from stabilized oil is excise free under sub-item 17(B) of the Schedule to the Tariff Act if produced from offshore areas and excise exempt if produced from onshore areas. With the extension of the petroleum resource rent tax regime to the Bass Strait petroleum project from 1 July 1990, the North West Shelf Project area is the only offshore area now subject to excise.

However, subsection 5B(3) of the Tariff Act provides that where a mixture of stabilized oil and prescribed petroleum is entered for home consumption, the prescribed petroleum in the mixture shall be deemed to be stabilized oil. The definition of "prescribed petroleum" includes condensate. Therefore, where a mixture of condensate and stabilized oil is entered for home consumption, the condensate will be deemed to be stabilized oil and will be dutiable at the rate of excise applying to stabilized oil under sub-item 17(A) of the Schedule. This applies to condensate produced from offshore and onshore areas.

With the first crude oil development soon to commence production from the North West Shelf Project area, small quantities of stabilized oil will be mixed with the condensate stream. It is not technically possible to remove all the stabilized oil from the natural gas/condensate stream. Due to the operation of subsection 5B(3), where this mixture of condensate and stabilized oil is entered for home consumption, all the condensate will be deemed to be stabilized oil and excisable at the rate of excise under sub-item 17A. This is clearly not the intention of the policy first introduced in 1977 which was designed to encourage condensate production by giving condensate concessional excise treatment.

Therefore it is proposed to create an exception to the operation of subsection 5B(3) in the new subsection 5B(3A). This new subsection provides that subsection 5B(3) does not apply to any mixture of prescribed petroleum and stabilized oil where:

- (a) the prescribed petroleum is condensate; and
- (b) the stabilized oil is obtained from unstabilized oil produced from a different well to the well from which the condensate is obtained, ie the condensate and the stabilized oil are separately produced.

Where the condensate and stabilized oil are produced from the same well, whether offshore or onshore, it is intended that subsection 5B(3) continues to apply to a mixture of these two petroleum products. This amendment will take effect from 11 October 1995.

Further amendments to the Tariff Act with respect to condensate are proposed by item 4 of this Schedule.

Item 3 - Paragraph 11(G)(2) of the Schedule

This item amends sub-item 11(G) of the Schedule to the Tariff Act by omitting and substituting paragraph 11(G)(2). The effect of the new paragraph 11(G)(2) is to increase the rate of excise duty on topped crude to \$0.33513 per litre from its present concessional rate of \$0.0654 per litre. New paragraph 11(G)(2) also provides that topped having the characteristics of fuel oil as defined under subsection 3(4) of the Tariff Act will continue to be excisable at the concessional rate of duty. The new characteristics of fuel oil are proposed to be inserted in to the Tariff Act by item 1 of Schedule 3 to this Bill.

Topped crude will continue to be excise free where it is for use as petroleum refinery feedstock.

This amendment is intended to remove a potential diesel transport fuel substitution problem with topped crude, in the same way as the "light" fuel oil substitution problem has been addressed (item 1 of Schedule 3 to this Bill refers). With the lower rate of excise now only applying to topped crude having the characteristics of fuel oil, the commercial/financial incentive which might otherwise have been present to use this product as a substitute for diesel fuel in the transport arena is removed.

Item 4 - Sub-item 17(B) of the Schedule

This item amends the Schedule to the Tariff Act by omitting sub-item 17(B).

The purpose of this amendment is to implement further Government policy with respect to condensate. It is proposed to make excise exempt all condensate:

- (a) separately produced from stabilized oil; and
- (b) produced with stabilized oil that is separately marketed from the stabilized oil prior to entry for home consumption.

As referred to in item 2 above, condensate that is separately marketed from stabilized oil is excise exempt if produced from onshore areas. Condensate produced from a Resource Rent Tax area or from an excluded liquid petroleum area is also excise exempt. It is proposed to add to these exemptions the condensate production referred to in paragraphs (a) and (b) above.

If these further two exemptions were inserted into the present wording of sub-item 17(B), there would be no other remaining condensate production to which *this* sub-item would continue to apply. Therefore, in place of amending sub-item 17(B) to create further exemptions to its application, it is proposed to omit the sub-item from the Schedule. This amendment will take effect from 11 October 1995.

Despite omitting sub-item 17(B), condensate will continue to be excisable under two other sub-items of the Schedule to the Tariff Act being:

- (1) sub-item 17(A) as stabilized oil in accordance with the amended provisions of section 5B proposed by item 2 of this Schedule; and
- (2) sub-item 11(J) where it is for use as a fuel and is excisable at the rate applying to leaded petrol.

The amendments contained in items 1, 2 and 3 of this Schedule were notified in the Commonwealth Gazette on 10 October 1995, to take effect from 11 October 1995 in accordance with section 160B of the *Excise Act 1901*.

