SUMMARY OF CONSULTATION PROCESS

The Government announced in its White Paper, released on 15 December 2008, that it would introduce discrete income tax provisions that would establish a rolling balance treatment for emissions units, similar to that for trading stock. The Government also proposed that scheme transactions would be treated under normal goods and services tax (GST) rules.

This measure was included in the Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 (the Bill), which was introduced into Parliament on 14 May 2009.

Consultation process

Treasury and the Department of Climate Change conducted a pre-policy discussion in May 2008.

The Government released its Carbon Pollution Reduction Scheme Green Paper in July 2008 and the last day for submissions was 10 September 2008. The Government received more than 1000 submissions on the Green Paper, of which more than 50 commented on tax issues. Treasury held information sessions in Sydney, Melbourne, Perth and Brisbane and also conducted an in-depth consultation meeting in Canberra on 26 and 27 August 2008 to consider any technical and practical implementation issues.

Submissions on the Green Paper can be viewed by clicking on the following link.

Carbon Pollution Reduction Scheme Green Paper - Submissions

The Government published Exposure Draft legislation on 10 March 2009 and consulted on that draft legislation up to 14 April 2009. Consultation meetings on the draft tax provisions were held in Melbourne and Sydney on 24 and 26 March 2009. 160 non-campaign submissions were received, of which more than 15 commented on tax issues.

Summary of key issues

Income tax

Some Green Paper submissions (and some submissions on the Exposure Draft legislation) argued that an emitting entity should be allowed a deduction for an emissions liability that had accrued at the end of an income year. This argument was not accepted because it would be major source of complexity and depart from normal income tax principles (more detailed reasons are at 14.2.3 in the White Paper.)
Green Paper submissions argued that taxpayers should have a choice between cost and market value in valuing units held at the end of an income year and this argument was accepted. The White Paper and Exposure Draft legislation proposed that taxpayers could only change methods once during the first five years of the Scheme and that cost must be determined using the first-in, first out method. Submissions on the Exposure Draft legislation criticised these rules as too restrictive. The Bill provides more flexibility by allowing taxpayers to choose another valuation method (actual cost) and to change valuation method every five years.

Some submissions on the Exposure Draft legislation said that coal-fired electricity generators should receive the ‘no disadvantage’ rule (a timing rule for free Australian emissions units) that is given to Emissions-Intensive Trade-Exposed (EITE) entities. It was not accepted that generators should receiving the ‘no-disadvantage’ rule because units are provided to generators for a different purpose. Coal-fired generators are receiving a tax treatment consistent with the normal treatment for government business assistance.

Submissions on the Exposure Draft legislation criticised the market value deeming rules for the importing and exporting of units on the basis that it could tax unrealised gains. The Bill modified the treatment on importation so that imported units held on revenue account (the usual case) will be automatically transferred onto the Australian registry at the unit’s cost. This results in a ‘roll-over’ if any gains or loses accrued up to importation.

It is appropriate to treat exporting as happening at market value and, therefore, as an effective taxing point because after the unit leaves Australia any later transaction may have no link to Australia. After export it is also very difficult to enforce any Australian tax obligations, particularly against foreign residents.

Goods and services tax

Some Green Paper submissions (and most tax-related submissions on the Exposure Draft legislation) argued that Carbon Pollution Reduction Scheme (CPRS) transactions should be made GST-free rather than subject to the application of the normal GST rules. The submissions argued that the application of normal GST rules will lead to uncertainties, embedded tax for financial derivatives, higher compliance and financial costs for businesses and hinder international trade in units. These arguments were not accepted. While the application of the normal GST rules may lead to an increase in financial costs for businesses, it will avoid distortions, is in line with the broad-base nature of the GST, minimises compliance costs for businesses generally and avoids adding complexity to the tax law. However, in view of concerns raised in submissions, the Bill amends the GST law to characterise emissions units as personal property rights to promote certainty about the characteristics of emissions units under the normal GST rules.

A few submissions on the Exposure Draft legislation raised technical issues regarding the proposed GST amendments and the application of the existing GST law. These concerns mainly relate to the
uncertainty about GST treatment of cross-border trading in emissions units. The Explanatory Memorandum to the Bill provides more examples clarifying this treatment.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au. Alternatively, you can contact Graeme Davis on 6263 2078.

Thank you to all participants in the consultation process.