



Taxation of Alternative Fuels Legislation Amendment Act 2011

No. 68, 2011

**An Act to change the law relating to certain fuels,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 68, 2011

An Act to change the law relating to certain fuels, and for related purposes

[Assented to 29 June 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation of Alternative Fuels
Legislation Amendment Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 29 June 2011 |
| 2. Schedules 1 and 2 | 1 December 2011. However, the provision(s) do not commence at all if any of the following do not commence on or before 1 December 2011: (a) Part 1 of Schedule 1 to the <i>Excise Tariff Amendment (Taxation of Alternative Fuels) Act 2011</i> ; (b) Part 1 of Schedule 1 to the <i>Customs Tariff Amendment (Taxation of Alternative Fuels) Act 2011</i> ; (c) Schedule 1 to the <i>Energy Grants (Cleaner Fuels) Scheme Amendment Act 2011</i> . | 1 December 2011 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Excise Act 1901

1 Subsection 4(1)

Insert:

apply, in relation to an LPG remission, has a meaning affected by subsection (5).

2 Subsection 4(1)

Insert:

excisable LPG use in relation to LPG:

- (a) means the use of LPG in a system for supplying fuel to an internal combustion engine of either a motor vehicle or a vessel, either directly or by filling another tank connected to such an engine; but
- (b) does not include the use of LPG for a motor vehicle that:
 - (i) is designed merely to move goods with a forklift and is for use primarily off public roads; or
 - (ii) is of a kind prescribed by the regulations for the purposes of this subparagraph.

3 Subsection 4(1)

Insert:

LPG means:

- (a) liquid propane; or
- (b) a liquid mixture of propane and butane; or
- (c) a liquid mixture of propane and other hydrocarbons that consists mainly of propane; or
- (d) a liquid mixture of propane, butane and other hydrocarbons that consists mainly of propane and butane.

4 Subsection 4(1)

Insert:

LPG remission in relation to LPG means a remission, refund or rebate of excise duty that applies to LPG under regulations made under section 78 because the LPG is not intended to be used for an excisable LPG use.

5 At the end of section 4

Add:

- (5) To avoid doubt, an LPG remission ceases to **apply** in relation to LPG if the excise duty on the LPG is subsequently paid (despite the remission having previously applied).

6 Subsection 58(2)

Omit “, condensate or liquefied petroleum gas”, substitute “or condensate”.

7 Subsection 58(3)

Repeal the subsection, substitute:

- (3) Subsection (2) does not apply to excisable goods that are stabilised crude petroleum oil, or condensate, obtained from prescribed petroleum, within the meaning of section 5B of the *Excise Tariff Act 1921*, produced from a Resource Rent Tax area as defined in that Act.

8 At the end of subsection 65(1)

Add:

; (d) the energy content of excisable goods.

9 Subsection 77H(5) (definition of *eligible goods*)

After “(d),”, insert “(da), (db), (dc),”.

10 After section 77H

Insert:

77HA Compressed natural gas that is exempt from excise duty

Compressed natural gas is exempt from excise duty if any of the following apply:

- (a) the gas was compressed for use other than as a fuel for a motor vehicle;

- (b) the gas was compressed other than in the course of carrying on an enterprise (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*);
- (c) the gas was compressed for use as a fuel for a motor vehicle that:
 - (i) is designed merely to move goods with a forklift and is for use primarily off public roads; or
 - (ii) is of a kind prescribed by the regulations for the purposes of this subparagraph.

77HB Liquefied petroleum gas and liquefied natural gas that is exempt from excise duty

Liquefied petroleum gas or liquefied natural gas is exempt from excise duty if:

- (a) the liquefied petroleum gas or liquefied natural gas is used by a licensed manufacturer on premises specified in the manufacturer licence; and
- (b) the use is in the process of manufacturing:
 - (i) petroleum condensate or stabilised crude petroleum oil; or
 - (ii) liquefied petroleum gas, liquefied natural gas or other hydrocarbons; and
- (c) the manufacturer manufactures the goods referred to in paragraph (b) in accordance with the licence.

11 At the end of Part VIIB

Add:

77L Notice requirements for sales or supplies of LPG to which an LPG remission applies

- (1) A person (the *licensee*) who holds a manufacturer licence or a storage licence must give a notice to a person if:
 - (a) the licensee sells or supplies LPG to the person; and
 - (b) an LPG remission applies to the LPG at the time of the sale or supply.

Note: The meaning of *apply* is affected by subsection 4(5).

- (2) A person (the *supplier*) must give a notice to a person if:

- (a) the supplier sells or supplies the LPG to the person; and
- (b) an LPG remission applies to the LPG at the time of the sale or supply; and
- (c) when the supplier was supplied the LPG, the supplier was given a notice under this section (including under a previous application of this subsection) in respect of that LPG.

Note: The regulations may prescribe circumstances in which a notice is not required to be given (see subsection (4)).

Contents of notice

- (3) A notice under this section must:
 - (a) set out:
 - (i) that excise duty has not been paid on the LPG that is being sold or supplied; and
 - (ii) the effect of sections 77M and 117BA; and
 - (b) be given in the manner and form prescribed by the regulations.

Regulations

- (4) The regulations may prescribe circumstances in which a notice is not required to be given by a person under this section.

Offence

- (5) A person commits an offence if:
 - (a) a person is required to give a notice under this section; and
 - (b) the person fails to give the notice in accordance with this section.

Penalty: 1 penalty unit.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

77M Penalty for using LPG for excisable LPG use

- (1) This section applies if:
 - (a) LPG is sold or supplied to a person; and
 - (b) the person uses the LPG for an excisable LPG use; and
 - (c) an LPG remission applies to the LPG at the time of the use.

Note 1: The meaning of *apply* is affected by subsection 4(5).

Note 2: A person might commit an offence if the person sells LPG and the LPG is used for an excisable LPG use (see section 117BA).

- (2) The person must, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to 2 times the amount of the duty that would have been payable on the LPG if:
- (a) an LPG remission had not applied to the LPG; and
 - (b) the LPG had been entered for home consumption on the day on which the Collector made the demand.

Note: For provisions about collection and recovery of the amount, see Part 4-15 in Schedule 1 to the *Taxation Administration Act 1953*.

- (3) A demand under subsection (2) is not a legislative instrument.

12 After section 117B

Insert:

117BA Unlawfully selling LPG that is used for an excisable LPG use

A person commits an offence if:

- (a) the person intentionally sells LPG; and
- (b) the person knows that, or is reckless as to whether, the LPG will be used for an excisable LPG use; and
- (c) the LPG is used for an excisable LPG use; and
- (d) an LPG remission applies to the LPG at the time of the use.

Penalty: 2 years imprisonment or the greater of:

- (a) 500 penalty units; and
- (b) 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day (assuming that an LPG remission had not applied to the LPG).

Note 1: The meaning of *apply* is affected by subsection 4(5).

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

13 Subparagraph 127A(a)(ii)

After “117B,” insert “117BA,”.

14 Paragraph 162C(1)(e)

Omit “or 77FH”, substitute “, 77FH or 77M”.

Part 2—Fuel Tax Act 2006

15 Section 2-1

Omit “It is intended that this Act be extended to apply to certain compressed and liquefied gaseous fuels.”.

16 At the end of subsection 40-5(2)

Add:

; and (d) fuel supplied into certain kinds of tanks.

17 Section 41-1

Omit:

The first situation is where you acquire, manufacture or import fuel to use in carrying on your enterprise (whether the fuel is used as fuel or otherwise). The second situation is where you acquire, manufacture or import fuel to make a taxable supply to a private user for domestic heating or to package the fuel for the purpose of making a taxable supply of it for use other than in an internal combustion engine.

substitute:

The first situation is where you acquire, manufacture or import fuel to use in carrying on your enterprise (whether the fuel is used as fuel or otherwise).

The second situation is where you acquire, manufacture or import fuel to:

- (a) make a taxable supply to a private user for domestic heating; or
- (b) package the fuel for the purpose of making a taxable supply of it for use other than in an internal combustion engine; or

- | |
|---|
| (c) make a taxable supply of LPG into certain kinds of tanks. |
|---|

18 Section 41-10 (heading)

Repeal the heading, substitute:

**41-10 Fuel tax credit for fuel supplied for domestic heating,
packaged for supply or transferred into tanks**

19 Before subsection 41-10(1)

Insert:

Certain fuels supplied for domestic heating

20 Before subsection 41-10(2)

Insert:

Certain fuels packaged for supply

21 At the end of section 41-10

Add:

LPG supplied into certain kinds of tanks

- (3) You are entitled to a fuel tax credit for taxable fuel that is *LPG that you acquire or manufacture in, or import into, Australia to the extent that:
- (a) you do so for making a *taxable supply of the LPG; and
 - (b) the supply involves transferring the LPG to a tank; and
 - (c) the tank is not for use in a system for supplying fuel to an internal combustion engine of either a *motor vehicle or a vessel, either directly or by filling another tank connected to such an engine; and
 - (d) any of the following apply to the tank:
 - (i) the tank has a capacity of not more than 210 kilograms of LPG and is for use in *carrying on an *enterprise;
 - (ii) the tank is at *residential premises and is not for use in carrying on an enterprise;

(iii) the tank is for use in a system for supplying fuel to at least 2 residential premises (whether or not the system also supplies fuel to premises other than residential premises).

(4) Paragraph (3)(c) does not apply to a *motor vehicle that:

- (a) is designed merely to move goods with a forklift and is for use primarily off public roads; or
- (b) is of a kind prescribed by the regulations for the purposes of this paragraph.

22 Application

Subsections 41-10(3) and (4) of the *Fuel Tax Act 2006* apply to taxable fuel acquired, manufactured or imported on or after 1 December 2011.

23 Subsection 41-15(1)

After “credit” (wherever occurring), insert “(under this Division or Division 42)”.

24 Previous interpretation preserved

The amendment of subsection 41-15(1) of the *Fuel Tax Act 2006* made by this Schedule does not affect by implication the interpretation of the subsection before the amendment.

25 Section 43-1 (after the paragraph relating to the amount of your credit for taxable fuel)

Insert:

| |
|--|
| For taxable fuel that is a blend of fuels, there are additional rules for working out the amount of your credit. |
|--|

26 Subsection 43-5(2)

Repeal the subsection, substitute:

Amount of effective fuel tax

- (2) The *amount of *effective fuel tax* that is payable on the fuel is the amount (but not less than nil) worked out using the formula:

Fuel tax amount – Grant or subsidy amount

where:

fuel tax amount means the *amount of fuel tax that was or would be payable on the fuel at the rate in force on the day worked out using the table in subsection (2A).

grant or subsidy amount means the *amount of any grant or subsidy, except a grant specified in subsection (3), that was or would be payable in respect of the fuel by the Commonwealth at the rate in force on the day worked out using the table in subsection (2A).

Note: Section 43-7 affects how this subsection applies to blends.

Day for rate of fuel tax, grant or subsidy

(2A) Work out the day using the table:

| Day for rate of fuel tax, grant or subsidy | |
|---|---|
| If: | The day is: |
| 1 You: (a) acquired or imported the fuel after 30 November 2011 and before 1 July 2015; and (b) are *registered for GST or *required to be registered for GST | The day you acquired or imported the fuel |
| 2 You: (a) manufactured the fuel; and (b) entered the fuel for home consumption (within the meaning of the <i>Excise Act 1901</i>) after 30 November 2011 and before 1 July 2015; and (c) are *registered for GST or *required to be registered for GST | The day you entered the fuel for home consumption (within the meaning of the <i>Excise Act 1901</i>) |
| 3 You: (a) acquired, manufactured or imported the fuel after 30 June 2015; and (b) are *registered for GST or *required to be registered for GST | The first day of the *tax period to which the credit is attributable |
| 4 You are neither *registered for GST nor *required to be registered for GST | The day the Commissioner receives your return relating to the |

| Day for rate of fuel tax, grant or subsidy | |
|--|-------------|
| If: | The day is: |
| | fuel |

Note: Division 65 sets out which tax period a credit is attributable to.

27 Subsection 43-5(4)

Repeal the subsection.

28 After section 43-5

Insert:

43-7 Working out the effective fuel tax for fuel blends

Certain blends containing ethanol

- (1) The **effective fuel tax** for taxable fuel that:
- (a) is a blend of ethanol and one or more other kinds of fuel; and
 - (b) meets the requirements prescribed by the regulations;
- is worked out under subsection 43-5(2) as if the fuel were entirely petrol.

Certain blends containing biodiesel

- (2) The **effective fuel tax** for taxable fuel that:
- (a) is a blend of biodiesel and one or more other kinds of fuel; and
 - (b) meets the requirements prescribed by the regulations;
- is worked out under subsection 43-5(2) as if the fuel were entirely diesel.

Other blends for which there is evidence of fuel proportions

- (3) The **effective fuel tax** for taxable fuel:
- (a) that is a blend of more than one kind of fuel; and
 - (b) to which neither subsection (1) nor (2) applies; and
 - (c) for which you have documentary evidence that satisfies the Commissioner of the actual proportions of the kinds of fuel in the blend;
- is worked out under subsection 43-5(2) in accordance with those proportions.

- (4) The Commissioner may determine, by legislative instrument, the kinds of documentary evidence that are able to satisfy the Commissioner for the purposes of paragraph (3)(c).
- (5) If:
- (a) you acquire or manufacture in, or import into, Australia a taxable fuel that is a blend of either of the following (whether or not the blend includes other substances other than fuel):
 - (i) petrol and one other kind of fuel;
 - (ii) diesel and one other kind of fuel; and
 - (b) none of subsections (1), (2) or (3) apply to the fuel; and
 - (c) you acquire, manufacture or import the fuel on terms and conditions that specify or require that the blend contains a minimum percentage by volume of petrol or diesel (as the case requires);
- then the *effective fuel tax* for the fuel is worked out under subsection 43-5(2) as if:
- (d) the fuel contains that minimum percentage of petrol or diesel (as the case requires); and
 - (e) the remaining percentage by volume of the fuel consists of the other kind of fuel contained in the blend.

Rules for working out fuel tax in other cases of blends

- (6) For the purposes of working out under subsection 43-5(2) the *effective fuel tax payable on taxable fuels that are blends other than blends to which any of subsections (1), (2), (3) or (5) of this section apply, the Commissioner may determine, by legislative instrument, rules for working out the proportions of one or more of the constituents of the blends.

Note: The rules may make different provision for different blends or different classes of blends (see subsection 33(3A) of the *Acts Interpretation Act 1901*).

Working out the fuel tax for certain fuels containing ethanol

- (7) Work out the *effective fuel tax under subsection 43-5(2) for taxable fuel:
- (a) that you acquired, manufactured or imported; and
 - (b) that is a blend containing ethanol; and
 - (c) to which neither subsection (1) nor (2) of this section applies;

as if a grant under a funding agreement with the Commonwealth connected with a program called the Ethanol Production Grants Program was payable for all the ethanol.

Note: As you may not know whether the ethanol contained in the blend is imported or produced domestically, subsection (7) requires you to work out the effective fuel tax assuming that the ethanol was produced domestically and had attracted the payment of a grant.

29 Application

- (1) The amendments of section 43-5 of the *Fuel Tax Act 2006* made by this Schedule apply to fuel acquired, manufactured or imported on or after 1 December 2011.
- (2) Section 43-7 of the *Fuel Tax Act 2006*, as inserted by this Schedule, applies to fuel acquired, manufactured or imported on or after 1 December 2011.

30 Subsection 60-5(1)

Omit “(1)”.

31 Subsection 60-5(1) (note at the end of the definition of *total fuel tax*)

Omit the second sentence.

32 Section 110-5 (definition of *effective fuel tax*)

Omit “section 43-5”, substitute “sections 43-5 and 43-7”.

33 Section 110-5

Insert:

LPG means:

- (a) liquid propane; or
- (b) a liquid mixture of propane and butane; or
- (c) a liquid mixture of propane and other hydrocarbons that consists mainly of propane; or
- (d) a liquid mixture of propane, butane and other hydrocarbons that consists mainly of propane and butane.

34 Section 110-5

Insert:

residential premises has the meaning given by section 195-1 of the
*GST Act.

**Part 3—Product Grants and Benefits Administration
Act 2000**

35 Part 10 (heading)

Repeal the heading.

Part 4—Taxation Administration Act 1953

36 Subsection 250-10(2) in Schedule 1 (after table item 24C)

Insert:

| | | | |
|------|--|-----|------------------------|
| 24CA | penalty for using LPG for excisable LPG use | 77M | <i>Excise Act 1901</i> |
|------|--|-----|------------------------|

Schedule 2—Transitional provisions for excise on gaseous fuels

1 Definitions

In this Schedule:

CEO has the same meaning as in the *Excise Act 1901*.

Collector has the same meaning as in section 15 of the *Excise Act 1901*.

excisable goods has the same meaning as in the *Excise Act 1901*.

factory has the same meaning as in the *Excise Act 1901*.

licence has the same meaning as in the *Excise Act 1901*.

manufacture has the same meaning as in the *Excise Act 1901*.

manufacturer licence has the same meaning as in the *Excise Act 1901*.

2 Application

- (1) This Schedule applies in relation to a person and any of the following excisable goods that the person manufactures, or proposes to manufacture, while the person does not have a manufacturer licence for the goods:
- (a) liquefied petroleum gas;
 - (b) liquefied natural gas;
 - (c) compressed natural gas.

Note: Not all liquefied petroleum gas, liquefied natural gas or compressed natural gas is excisable goods.

- (2) However, this Schedule does not apply in relation to the person and the goods after the time described in an item of the table.

When this Schedule does not apply if manufacturer licence is not granted

| If: | This Schedule does not apply after: |
|--|--|
| 1 Before 1 February 2012: (a) the person applies for a manufacturer licence for the goods; and (b) the Collector refuses to grant the licence | The Collector refuses to grant the licence |

When this Schedule does not apply if manufacturer licence is not granted

| If: | This Schedule does not apply after: |
|---|--|
| 2 Before 1 February 2012: (a) the person applies for a manufacturer licence for the goods; and (b) the Collector has not decided whether to grant or refuse to grant the licence | The earliest of the following times: (a) the time the Collector refuses to grant the licence; (b) the end of 30 November 2012; (c) the time (if any) determined under subitem (3) for the goods |
| 3 The person does not apply for a manufacturer licence for the goods before 1 February 2012 | 31 January 2012 |

Note: This Schedule does not apply after the Collector grants the person a manufacturer licence for the goods (because this Schedule applies only while the person does not have such a licence).

- (3) The Collector may by legislative instrument determine for goods a time after 31 January 2012 and before the end of 30 November 2012. The time must be after the determination is made. The Collector may determine different times for different goods.

3 Operation of rules about licences

- (1) The person need not comply with the provisions of the *Excise Act 1901*, and regulations made under that Act, relating to licences for the goods.
- (2) However, if the person manufactures the goods:
- (a) the person must comply with that Act and those regulations as if the person held a manufacturer licence to manufacture the goods; and
 - (b) the premises on which the person manufactures the goods are taken to be a factory for the purposes of that Act and those regulations.

4 Permission to deliver goods for home consumption

- (1) If the person manufactures the goods, the person is taken to have been given permission under section 61C of the *Excise Act 1901* to deliver the goods for home consumption from the place where they are subject to the CEO's control.

Schedule 2 Transitional provisions for excise on gaseous fuels

- (2) The permission is taken for the purposes of that section to be revoked at the first time this Schedule does not apply in relation to the person and the goods.
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*[Minister's second reading speech made in—
House of Representatives on 12 May 2011
Senate on 16 June 2011]*

(69/11)
