

Chair  
Finance and Expenditure Select Committee  
Parliament Buildings  
Wellington

23 February 2011

Dear Sir

## **GST and emissions units**

### **Introduction**

1. The Association represents the interests of oil and gas explorers and producers in New Zealand. Whilst not a subject raised in the Bill under consideration by the Committee, we trust that you will give this matter some consideration.

### **Issue**

2. The introduction of emissions obligations to the gas industry has led to commercial renegotiation (and potential litigation) between gas suppliers and gas purchasers, as suppliers seek to contractually pass through the carbon costs associated with the gas supplied to purchasers.
3. Under some arrangements, gas suppliers and gas purchasers have contractually agreed that the purchaser can provide emissions units or a cash equivalent to meet the supplier's carbon costs. In other situations, gas purchasers have offered to meet the supplier's carbon costs through a combination of emissions units and cash (although the parties may have different views as to the magnitude of the liabilities and the settlement may be on a "without prejudice" basis to the outcome of future litigation of these issues).
4. Both types of arrangements generally give rise to problems in terms of valuation and timing for GST purposes. This is because while the gas is supplied on a continuous basis and payment is therefore invoiced and received regularly for the base cash price of the gas, the emissions units (or cash equivalent) may be settled on a less frequent basis (potentially once a year, shortly before the emissions units are required to be surrendered to the Crown).
5. While the emissions units may only be settled periodically, the supplier generally knows the emissions units required from the purchaser at the point of invoicing. This raises questions over the relevant time of supply and valuation of the units.
6. One view is that the full consideration (base cash price of the gas and emissions units) for the supply of gas is known at the time of supply (i.e. when the gas is invoiced), as the required number of emissions units is known and a market price for the units can be ascertained.

7. Accordingly, the emissions component should therefore be chargeable with GST based on the open market value of the emissions units at the time of supply (section 10(2)(b) of the Act).
8. However, there appears to be an equally valid view that the emissions component of the consideration for the gas supply cannot be valued until the gas supplier knows whether the purchaser will provide them with units (with constantly changing market values) or a cash equivalent, which only occurs periodically (and in some cases after the end of the emissions year). In such a case, the emissions component could potentially be treated as a separate supply, under section 9(6) of the Act.
9. The uncertainty around the appropriate GST treatment leads to additional compliance costs for industry participants with no additional GST for the Crown where the supplier and purchaser are both GST registered.

#### **Submission**

10. It is submitted that the above issues can be resolved by introducing a new provision into section 10 (Value of supply of goods and services) of the Act that allows parties who are GST registered and are fully taxable (i.e. have no restriction on claiming input tax) to agree the value of goods and services in the case of barter-type transactions, including allowing parties to agree that the value of the barter-type transaction can be zero. This would allow gas suppliers to include emissions units on their regular invoices to the purchaser at a predetermined value agreed with the gas purchaser.
11. The ability for the parties to determine the value of the goods and/or services supplied will leave the Crown in a tax neutral position, as the input and output tax claimed in the GST returns filed by the parties will net to zero.
12. Accordingly, to provide certainty to gas industry participants, we submit that such a provision be added to the Taxation (Tax Administration and Remedial Matters) Bill that is currently before the Select Committee. This legislative change should have retrospective application to 1 July 2010, being the date on which gas industry participants first became liable to the costs of carbon emissions.

#### **General**

13. We welcome the opportunity to engage with officials to develop the above proposal. If you have any questions, please contact Executive Committee Member, Greg Bishop on (04) 816 4517.

Yours sincerely

John Pfahlert  
Executive Officer  
Petroleum Exploration and Production Association of New Zealand