



November 2008

Climate Change update

Emissions Trading Scheme and Waste

Having become law in September 2008 the Emissions Trading Scheme is now reality for New Zealand. Operators of a disposal facility will enter New Zealand's Emissions Trading Scheme (ETS) from 1 January 2013. Those persons combusting waste for the purpose of generating electricity or industrial heat will enter the ETS from 1 January 2010. Businesses will need to carefully consider how to dispose of their waste to reduce costs and also to provide fuel for electricity or heat. *Are you ready?*

What it covers

Operators of a disposal facility include those operating any facility in which waste is disposed (including a landfill) as a business. It does not include waste that is entirely from the construction, renovation or demolition of a house. The waste disposal must be final, or more than short-term. Incinerating waste for no benefit is included in the definition of disposal. However, incinerating waste for a purpose is categorised differently, as outlined below.

Combusting waste for the purposes of generating electricity or industrial heat is included in the ETS. Although it involves waste, this activity is categorised as part of the "stationary energy" sector, not the waste sector. Therefore, it enters the ETS earlier than waste disposed of at a disposal facility.

Other sectors included in the ETS are forestry, stationary energy, industrial processes and agriculture. Waste disposal facilities and agriculture will be the last sectors to enter the ETS in 2013.

Developments

- The Climate Change Response (Emissions Trading) Amendment Act 2008 received Royal assent on 25 September 2008. It introduces the ETS and amends the **Climate Change Response Act 2002** (the **Act**).
- The **Waste Minimisation Act 2008** also received Royal Assent on 25 September 2008.
- The **Draft Climate Change (Stationary Energy and Industrial Processes) Regulations 2008** have been released for consultation on the **climate change** website. Submissions are due on **15 December 2008**.
- On 8 November 2008 New Zealand elected a new government. The National party-led government has promised to change the ETS, but the scale of the proposed changes is currently unknown.

Participant Obligations – Are you ready?

Commencement dates

Combusting waste - Reporting and liability for surrendering New Zealand Units (NZU)s commences on 1 January 2010. Waste sector - Reporting is voluntary from 1 January 2011 and mandatory from 1 January 2012. Obligation to surrender NZUs commence on 1 January 2013.

Are you registered?

Mandatory participants must give notice to the Chief Executive of the Ministry of Economic Development (MED) that they are a participant within 20 working days of entering the scheme. Participants are not required to register until their sector enters the ETS, although they can choose to register earlier.

Do you have a holding account?

At the time of giving notice participants must apply to open a holding account, if they don't have one already. Participants must have a holding account to receive and surrender units under the scheme. A holding account can be obtained from the [New Zealand Emissions Register](#).

Do you know how to monitor and calculate emissions and removals?

Participants must, for each year they carry out relevant activities, collect described data or information, calculate the emissions and the removals activity in accordance with the relevant regulations (see below) and if required, have calculations verified by a recognised person.

Are you aware of the record keeping requirements?

Participants must keep records of the data, information and calculations. Participants must also retain records for seven years after the end of the period to which they relate.

Do you know how to file annual emissions returns?

For the waste sector, voluntary reporting commences from 1 January 2011 and mandatory reporting from 1 January 2012. There are no voluntary and mandatory reporting periods before stationary energy enters the ETS. Participants will have to file returns from 31 March of the year following their entry in to the scheme.

Are you aware of the liability to surrender units to cover emissions?

Obligations to surrender units commence on 1 January 2010 for those combusting waste and 1 January 2013 for the waste sector. A participant is liable to surrender 1 NZU for each whole tonne of emissions covered by the scheme. After submitting their return by 31 March participants are required to surrender NZUs by 30 April of the same calendar year. The first deadline for surrender of units by the waste sector is **30 April 2011** for combusting waste and **30 April 2014** for disposal facilities. The participant must make an application to transfer the required number of NZUs from the participants holding account to a surrender account designated by the Chief Executive.

Have you considered what the regulations mean for you?

You may need to make a submission on the Draft Climate Change (Stationary Energy and Industrial Processes) Regulations. (See page 3).

The Emissions Trading Scheme

The ETS assists New Zealand in meeting its international climate change commitments. New Zealand has committed under the Kyoto Protocol to reducing its climate change emissions to 1990 levels and to otherwise take responsibility for emissions above that level.

The ETS is a market-based mechanism. The ETS currency is the NZU which can be traded in New Zealand. The NZU is linked to the international Kyoto Protocol market and can generally be interchanged with Kyoto Protocol Assigned Amount Units (AAUs) as well as other Kyoto Units. The ETS has mandatory and voluntary participants for various sectors. There is no cap on a participant's level of emissions; rather participants are incentivised to avoid the cost of NZUs by reducing their level of emissions.

Mandatory participants in the ETS for the waste sector include persons:

- Combusting used oil, waste oil, used tyres, or waste for the purpose of generating electricity or industrial heat.
- Operating a disposal facility.

There is no opportunity to become a voluntary participant in the waste sector.

Free Allocation – Allocation Plan

The expectation is that participants, including the waste sector, will pass through the supply chain the costs of satisfying ETS obligations. For some this will reduce competitiveness. To ease the pain and to provide a "transition" while businesses adjust to these extra costs, some NZUs will be freely allocated to people who apply. The amount of NZUs will not cover a participant's entire liability to surrender NZUs.

However, if your business is likely to feel the impact of these increased costs then there needs to be a close assessment of the free allocation process. For those businesses that are not participants but can show that they are facing international competition (in NZ or abroad) with higher costs than competitors and cannot pass those costs on then there. These businesses are considered to be "trade exposed". Care will be needed in disseminating information about your vulnerability to competition.

There are also free units available in an Innovation Fund to facilitate deployment of innovative technology that has the potential to significantly reduce greenhouse gas emissions.

General Tax Treatment

If you will be trading and surrendering NZUs, you need to make sure you are able to pay the necessary costs. You are liable for tax obligations and need to ensure you are aware of those obligations. Generally:

- Tax payers are allowed a deduction for their accrued emissions liability.
- Any gain on the sale of emissions units will generally be taxable with a deduction for the cost of the units.
- There will be no tax consequences when a emissions unit is received from the government and surrendered in the same income year.
- Emissions units held by a person over an income year will be taxed under modified trading stock rules.
- Emission units will be zero rated for GST purposes.

For specific tax advice on climate change matters please contact the [Minter Ellison Tax team](#).

Penalties for Non compliance

There are civil penalties for non-compliance with the scheme aimed at supporting the obligations under the ETS of calculating emissions and surrendering equivalent NZUs.

Criminal offences apply when a person without good reason, knowingly or with intent to deceive, fails to collect information, register as a participant, submit an emissions return or keep information in relation to an activity.

Draft Climate Change (Stationary Energy and Industrial Processes) Regulations 2008

Public consultation is being sought on the Draft Climate Change (Stationary and Industrial Processes) (SEIP) Regulations 2008. These may be relevant to those interested in the waste sector, *particularly those combusting waste for industrial purposes*. The draft regulations include methodology for the monitoring and calculation of SEIP emissions. For instance, emissions calculation, point of measurement and unit of measurement (e.g. tonnes, gigajoules), setting emissions factors, unique emissions factors, the use of calorific value, opt-in, 'ready for sale' coal, waste, stockpile and storage adjustments. They also include a methodology applying to purchases of large amounts of coal or gas from a participant.

The draft regulations set out a process for calculating emissions based on the following formula:

- Total units of production (specific to the SEIP activity)
- Plus or minus other relevant factors that may increase or decrease ETS liability.
- Multiplied by a default emissions factor for that product or activity.

There is a proposal that a process be added to the regulations to permit participants to obtain and calculate emissions by reference to a unique emissions factor. The Act enables the use of unique emissions factors where it is provided for in regulations.

Submissions on the draft regulations are due on **15 December 2008**. Officials are particularly interested in receiving submissions on the following:

- The direct costs to participants in complying with the regulations – especially the costs associated with data collection and calculation of emissions.
- The setting of default emissions factors.
- Drafting a New-Zealand specific default emissions factor or other method to calculate emissions from this practice.
- Technical matters raised.

The treatment of waste

Increased costs for the waste sector are on their way. Operators of a disposal facility in New Zealand and those combusting waste (for the purpose of generating electricity or industrial heat) will pay more over the coming years and also face an increase in control over the end use of waste.

In 2010 the stationary energy sector will join the ETS resulting in costs of complying with the ETS if businesses wish to continue combusting waste for energy.

If waste is disposed of at a landfill there will also be a price to pay. The Waste Minimisation Act 2008 will also introduce a waste levy from 1 July 2009 of \$10 per tonne on waste disposed of at landfills. In 2011 the waste levy is scheduled to be reviewed and will likely be increased (given the general acceptance that the current levy of \$10 does not constitute a prohibitive amount).

2013 will see introduced into the ETS the disposal of waste to a disposal facility.

All these matters will likely contribute to a significant increase in the cost of waste over the coming years. Waste fuel for electricity will suddenly have a price around the same time that other fuel and electricity costs will increase. Future disposal of waste streams will need to be considered carefully.

This advice is general in nature. We recommend you obtain specific advice on how you may be affected by the ETS. We would be happy to assist you to understand further how to comply with your obligations under the ETS, make the most of the scheme, and if necessary make a submission on the Draft Climate Change (Stationary and Industrial Processes) Regulations 2008. Please [contact us](#).

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