

28 March 2013

Australia – EU Registry Linking Submissions  
Carbon Pricing and Markets Division  
Department of Climate Change and Energy Efficiency

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Dear Sir or Madam,

***Australia-EU Registry Linking Submissions***

1. This submission concerning registry amendments to link the Australian and EU emissions trading systems is made by the Climate Change Committee of the Business Law Section of the Law Council of Australia ('the Committee').

***Committee views***

2. The Committee wishes to bring the following matters to the Department's attention:
  - (a) the transfer of EUAs into the Australian Government's European registry account will be a disposal of EUAs for income tax purposes, exchanging one asset (EUAs) for another (AllUs) - the taxation laws should be amended to provide for relief similar to a scrip-for-scrip exchange of shares, otherwise there is a potential obligation to pay tax on the transfer without a real disposal occurring;
  - (b) a similar tax issue applies to the conversion back;
  - (c) the rules for market integrity between Australia and Europe should be harmonised; and
  - (d) if an incoming transfer under regulation 51(2) is not validated, there should be a requirement to notify the requesting party (as

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there is for proposed regulation 55(3)(a) relating to outgoing transfers);

- (e) if a transfer request is not validated or is otherwise declined, there should be an obligation on the CER to provide reasons to the requesting party;
- (f) proposed regulation 70, which makes cancellation automatic once a direct link is in place, also presents similar tax issues, title issues, and may constitute an unlawful acquisition of property if the value of the EUAs and AIUs has diverged; and
- (g) where a unit of one kind is exchanged for another (automatically or upon request), the legislation should provide that all legal and equitable interests held by any party in the former are deemed held by the same party in the unit into which it is exchanged.

***Conclusion and further contact***

3. The Committee would be pleased to discuss any aspect of this submission. Please contact the chair of the Committee, Graeme Dennis of Clayton Utz on (02) 9353-4106, if you would like to do so.

Yours faithfully,



**Frank O'Loughlin**