Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare

NORTON ROSE FULBRIGHT

# Legal update

## Canada unveils backstop carbon pricing details: the Greenhouse Gas Pollution Pricing Act

**January 2018**
**Energy**
**Environmental**

On January 15, the Canadian federal government released for public comment a draft Greenhouse Gas Pollution Pricing Act (Act) for its proposed federal carbon pricing system. The proposed legislation will set federal tax rates for various types of fossil fuels used for combustion in transportation, heating, electricity, manufacturing and industry, such as gasoline, diesel, propane and natural gas, that will be paid by fuel producers, distributors and importers. Details on the registration of producers, distributors and others is included, as well as reporting periods, rebates, remittance of the tax and penalties.

The tax will be based on the carbon emissions from combusting the fuel or waste and is set to start at $10 per tonne of greenhouse gas emissions on January 1, 2019, and then rise by $10 per tonne each year until it hits $50 per tonne in 2023.

The proposed law also includes an output-based pricing system for large carbon emitters where instead of paying the tax they will pay for carbon emissions that are above national averages in their industry.

No estimates have been released on expected carbon emission reductions under the proposed legislation.

### Applicability

Once passed and brought into force, the Greenhouse Gas Pollution Pricing Act will apply to provinces and territories without their own carbon pricing plans or with a plan not up to the federal government's standards.

At this time it is uncertain which provinces and territories will be subject to the new legislation, and this uncertainty is expected to last until the fall of 2018. The federal minister of environment and climate change and the minister of finance have written to the provinces and territories and asked that if they intend on following the federal scheme that they notify the federal government by March 30, 2018. If a province or territory is opting to establish or maintain its own carbon pricing scheme then it must outline such plans to the federal government by September 1, 2018. The federal government will then decide if the provincial or territorial schemes meet the federal standard. At present, Ontario, Quebec, Alberta and British Columbia already have or are implementing their own carbon pricing systems. All are expected to attempt to convince the federal government that their systems meet the federal benchmark.

After reviewing each system, the federal government intends to implement the federal legislation on January 1, 2019, in any province or territory that does not have a carbon pricing system that meets the federal benchmark. Once the federal legislation applies in a jurisdiction, the federal government intends on keeping it in place until at least 2022.

It is unknown what will happen if the federal government approves a provincial or territorial pricing system and then the province or territory changes or eliminates that system.

## Registrants

Producers, distributors and importers of fossil fuels and combustible waste (i.e., tires or asphalt shingles) in provinces and territories where the Act applies must become registered and file monthly reports and returns showing the net taxes for the fuels and waste they produce, distribute or import. The taxes are owing monthly.

It is fully expected that fuel producers, distributors and importers will pass the tax cost on to their customers.

Special registrations are provided for interjurisdictional railways, trucking, buses and airlines.

## Exemptions

Specific exemptions exist where fossil fuels are used but not combusted, such as where fuel is used as a raw material in an industrial process. Farmers who meet certain criteria and hold an exemption certificate are also exempt. Fuel in a prepackaged container of 10 litres or less is also not subject to the carbon tax.

## Output-based pricing

The proposed legislation includes a mechanism for the federal government to develop an output-based pricing system for industrial facilities with high emissions in provinces and territories where the new legislation will apply. The types of facilities that will be subject to this output-based system are those that emit 50,000 tonnes or more of greenhouse gases per year in the following sectors: oil and gas, pulp and paper, chemicals, nitrogen fertilizers, lime, cement, base metal smelting and refining, potash, iron ore pelletizing, mining, iron and steel and food processing.

Facilities covered by this system will not pay the federal carbon tax on the fuels they combust. Instead, they will pay a carbon price on their emissions above a specified level for each unit of production. The level above which a large emitter will begin paying a carbon price will be set as a percentage of the national average of the facility's industrial sector's emissions per unit of production with the standards becoming more stringent over time. If a large emitter has emissions below the standard then it may generate emission credits it can sell or save for future compliance years.

## Penalties

Failing to register, file a return and pay the tax are all offences. A person found guilty of failing to file a return is liable on summary conviction to a fine of between $2,000 and $40,000 or to a term of imprisonment not exceeding 12 months, or both. Failing to file multiple returns can result in multiple convictions.

Evasion is also an offence, with a potential liability of not less than 100% or more than 200% of the amount of the tax the person sought to evade, plus fines of up to $6 million.

Directors and officers of corporations can also face personal liability if they assent to or participate in a corporation committing an offence.

## Public comment

The federal government is accepting public comments on the proposed Greenhouse Gas Pollution Pricing Act until February 12, 2018.

The bill is expected to be introduced into Parliament this spring and passed in the fall.

Alan Harvie

For further information, please contact one of the following lawyers:


| | | | |
|---|---|---|---|
| **> Jean Piette** | Québec | +1 418.640.5002 | jean.piette@nortonrosefulbright.com |
| **> Janet Bobechko** | Toronto | +1 416.216.1886 | janet.bobechko@nortonrosefulbright.com |
| **> Alan Harvie** | Calgary | +1 403.267.9411 | alan.harvie@nortonrosefulbright.com |
| **> Max Collett** | Vancouver | +1 604.641.4912 | max.collett@nortonrosefulbright.com |
| **> Matthew D. Keen** | Vancouver | +1 604.641.4913 | matthew.keen@nortonrosefulbright.com |


Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to “Norton Rose Fulbright”, “the law firm”, and “legal practice” are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together “Norton Rose Fulbright entity/entities”). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a “partner”) accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.

© Norton Rose Fulbright Canada LLP 2018