


ER 2012/1A1 - Addendum - Excise: the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts

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Addendum

Excise Ruling

Excise: the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts

This Addendum is a public ruling for the purposes of the *Tax Administration Act 1953*. It amends Excise Ruling ER 2012/1 to insert new paragraphs and examples that clarify the Commissioner's view of the meaning of the expression 'manufactured or produced' in relation to the recycling of used oils following the decision in *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99

ER 2012/1 is amended as follows:

1. Paragraph 21

At the end of the paragraph; insert footnote:

^{9A} Improving the existing utility of goods so that they become saleable will not, in itself, result in an end product that could properly be said, on that account, to have been manufactured or produced (*Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99, at paragraph 78).

2. Paragraph 68

- (a) Omit 'filtering, dewatering,'.
- (b) After the paragraph insert:

68A. The Commissioner considers that a recycling process which consists only of filtering and de-watering used oil would not, by itself, result in something that is new or different having a distinctive character or use. Rather, in keeping with the findings of Deputy President Alpines in *Cooper Bros*,^{29A} such a process would result in an end product which is 'not relevantly different from the used oil in either its physical characteristics or in its utility'.^{29B}

^{29A} *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99.

^{29B} *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99 at paragraph 82.

3. Paragraph 75

After the paragraph insert:

Example 9: recycling (filtering and de-watering only) that is not manufacturing or producing an excisable good

75A. *Di Waste Oils Pty Ltd (Di) is a waste management company that collects various used oils, coolants (glycol and water) and other hazardous liquids.*

75B. *These waste liquids are collected from several sites in a single journey. During collection, the waste liquids are pumped into a tanker through a metal screen. By detecting audible changes in pump speed caused by variations in the viscosity of liquid passing through it, the tanker operator switches from one segregated part of the tanker to another to separate the fluids according to the relative viscosity. This is done in order to optimise the separation of less viscous fluids which will be directly disposed of by Di as hazardous waste, from other higher viscosity hydrocarbon liquids.*

75C. *At Di's depot, the tanker's compartments containing the less viscous liquids are disposed of as hazardous waste. The higher viscosity liquids (comprising primarily used oils and hydraulic fluids) are pumped through a filter bag into a large fixed waste oil storage tank. The filter bag removes small particles of wear metal and other solid or semi-solid contaminants.*

75D. *The oil in the waste oil tank is then pumped through a heat exchange where it is heated to a suitable temperature (to reduce the viscosity of the oil which assists with separation) and passed through a centrifuge to remove any remaining solids and water suspended within the oil. The oil is then tested to ensure, among other things, that the oil is compliant with local council and State environmental legislation and that it meets customer specifications. The oil is then sold as 'low grade burner fuel'.*

75E. *The low grade burner fuel is not a new and different product with a distinctive character or use. The burner fuel 'merely contains less water and other extrinsic impurities than the used oil'.^{30A} The burner fuel does not inherently have a different utility to that out of which it was made,^{30B} and is 'merely better able to be used for the same purpose'.^{30C}*

75F. *Di has not manufactured or produced a product for excise purposes.*

^{30A} Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99 at paragraph 83.

^{30B} Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99 at paragraph 79.

^{30C} Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99 at paragraph 82.

75G. This example can be contrasted with example 10 below in which used oil is subjected to an additional step of 'demineralisation'. This additional step results in the removal of impurities that are more intrinsic in nature (than the water and other extrinsic impurities removed by filtering and de-watering alone).

Example 10: recycling that is manufacturing or producing an excisable good

75H. Eric is an oil recycler. Eric collects used oil of varying type and quality from multiple sources. Upon arrival at his depot, Eric drains any free water from the road tanker and then pumps the used oil through a screen into a reaction tank.

75I. In order to reduce the ash content of the oil when combusted, Eric needs to remove intrinsically dissolved mineral contaminants produced from the breakdown of mineral enhancers and lubricants, both added to the oil by manufacturers and accumulated from fuel engine deposits.

75J. To do so Eric adds a quantity of sulphuric acid followed by an inter-facial surface active agent (surfactant) to the reaction tank and the mixture is stirred and heated to 60°C for two hours. The mixture is then allowed to stand so that it can separate into two layers or 'phases' - that is, an oil phase and water-based or 'aqueous' phase. The surfactant facilitates both the reaction of the sulfuric acid with mineral contaminants dissolved within the oil and the separation of the two phases. Excess acid, water and the reacted contaminants in the oil accumulate in the aqueous phase, which settles to the bottom of the reaction tank and is drained off as slurry.

75K. The oil then undergoes centrifugal separation to remove any remaining fine particles suspended in the oil. Eric samples and tests the oil to ensure the oil meets his customer's specifications for high grade industrial burner oil.

75L. A chemical transformation is required for the removal of mineral contaminants intrinsically dissolved in the used oil. This will also result in the modification of some of the used oil's physicochemical properties. This procedure involves more than the 'mere removal of water and other extrinsic materials' that may be achieved by filtering and de-watering alone.

75M. The process undertaken by Eric results in a 'recycled oil' that is new or different with a distinctive character from the used oil as collected. The high grade industrial burner oil^{30D} is manufactured or produced for excise purposes.

^{30D} An entitlement may exist to a benefit for the sale or consumption of recycled oil (being high grade industrial burning oils) under the *Product Stewardship (Oil) Act 2000*. See PGBR 2012/1 for further examples and discussion of recycled oil.

4. Paragraph 91

After the paragraph insert:

91A. In *Cooper Bros*,^{30E} Deputy President Alpins said of this definition, and its interaction with the reference to 'manufactured' in section 5 of the Excise Tariff Act:

The inclusive definition of the word 'manufacture' in s 4 of the Excise Act extends the meaning of the word beyond its ordinary meaning ... [O]nly licensed manufacturers may manufacture excisable goods, and they must do so in accordance with the Act and the licence. In my view, the definition of the word 'manufacture' serves to extend the application of those requirements to those who undertake processes in the manufacture of excisable goods. Furthermore, it thus extends liability to pay excise duty...

Nevertheless, the question posed by s 5(1) of the Tariff Act is whether the goods in question have been 'manufactured' ... As is evident from the reasoning of Sundberg J in *Caltex*, that question is to be answered according to the ordinary meaning [of that word].

5. Paragraph 136

Omit the paragraph; substitute:

136. In *Cooper Bros*, Deputy President Alpins found that oil may only be regarded as being 'derived through' a process for the purposes of paragraph 10(d) if it emerged from the process as a 'new and different article'.^{76A} Alpins DP noted that this was the same factual question that governed whether or not the oil could properly be said to have been manufactured or produced.^{76B}

136A. The expression 'other process' in paragraph 10(d) serves to capture any method by which you derive a liquid hydrocarbon product, such as a production process.

^{30E} *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99 at paragraphs 91 and 92.

^{76A} *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99, at paragraph 96.

^{76B} *Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation* [2013] AATA 99, at paragraph 96.

6. Paragraph 145

After the paragraph insert:

145A. The Commissioner further considers that it follows from *Cooper Bros* that the mere removal of water and other extrinsic impurities from used oil, through a filtering and de-watering process, does not result in something new or different having a distinctive character or use. The end product could not be said to be derived through a recycling, manufacturing or other process for the purposes of paragraph 10(d).

7. Paragraph 146

After the paragraph insert:

Filtering and de-watering - alternative view

146A. An alternative view (to that expressed at paragraph 145A of this Ruling) is that filtering and de-watering used oil will amount to manufacture or production in instances where it is physically impossible to employ the used oil (as collected) as a burner fuel. This may be the case where, for example, the amount of water that exists with the collected used oil is significant enough to prevent the solution from burning.

146B. In such a case, it is questionable whether the used oil could properly be said to be 'suitable for use as a burner fuel' at the time it is collected. If it cannot, this would represent a key point of distinction from the *Cooper Bros* case.^{84A}

146C. The Commissioner considers that the inherent characteristics of used oil are such that, in all cases, it is correct to regard it as 'suitable for use as a burner fuel'. It is acknowledged that, in any given case, high amounts of water or other extrinsic impurities in the used oil at the time it is collected may make it questionable whether the oil, as it then stands, could be used as a burner fuel. However, taking into account the relative ease at which these extrinsic impurities could be removed, the Commissioner does not consider that their presence should lead to a different conclusion.

^{84A} In *Cooper Bros*, Deputy President Alpines referred to the fact that the used oil collected by the taxpayer was 'suitable' for use as a burner fuel (at the time it was collected) in finding, at paragraph 82, that the end product did not have a relevantly different utility and was 'merely better able to be better used for the same purpose'.

146D. The Commissioner also notes that, if the alternative view were to prevail, oil recyclers would be required to perform tests at the point of collection to determine whether or not the oil they collect could be used as a burner fuel. This would increase compliance costs. Additionally, under the alternative view, the imposition of excise would turn on an extremely fine distinction, and it would mean that an oil recycler that collected oil with a marginally higher water content than its competitors may be liable to pay excise when its competitors are not.

8. Paragraph 147

Insert:

Example 9: recycling (filtering and de-watering only) that is not manufacturing or producing an excisable good 75A

Example 10: recycling that is manufacturing or producing an excisable good 76H

Filtering and de-watering - alternative view 146A

9. Case references

Insert:

- Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation [2013] AATA 99

This Addendum applies on and from 1 October 2014.

Commissioner of Taxation

1 October 2014

ATO references

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