



ED 2024/D2 - Alcohol excise: the addition of water and the integral attributes of beer for the purposes of the Excise Tariff Act 1921

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Status: **draft only – for comment**

Draft Excise Determination

Alcohol excise: the addition of water and the integral attributes of beer for the purposes of the *Excise Tariff Act 1921*

❗ Relying on this draft Determination

This publication is a draft for public comment. It represents the Commissioner's preliminary view on how a relevant provision could apply.

If this draft Determination applies to you and you rely on it reasonably and in good faith, you will not have to pay any interest or penalties in respect of the matters covered, if this draft Determination turns out to be incorrect and you underpay your tax as a result. However, you may still have to pay the correct amount of tax.

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What this draft Determination is about

1. The *Excise Tariff Act 1921* (Tariff Act) contains different classifications for alcoholic beverages, which determine the rates of excise that the beverages attract. Alcoholic beverages described as 'hard' or 'alcoholic' seltzers can be manufactured using different processes and inputs. One manufacturing process involves the addition of a significant quantity of water¹ to a predominantly aqueous extract of cereals fermented with yeast (that

¹ All references to water in this draft Determination include deaerated water and carbonated water.

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is, a beer base). Beverages produced by this process may also be known as ‘malternatives’.

2. Paragraph (e) of the definition of ‘beer’ in the Schedule to the Tariff Act allows the addition of water to a beverage that is potentially capable of satisfying the definition.

3. This draft Determination explains our view about the addition of water and the integral attributes of beer for the purposes of the beer definition in the Schedule to the Tariff Act.

Ruling

Legislative history and context of the beer definition

4. The role of the beer definition in the Schedule to the Tariff Act is to specify a class of goods, which by section 5 of the Tariff Act, are subject to excise duty. The Schedule to the Tariff Act itemises the rates of duty applicable to the goods so defined.

5. Table item 1 of the Schedule to the Tariff Act sets out the duty rates applicable to goods satisfying the beer definition. These rates are lower than the rate of duty applicable to other excisable beverages not exceeding 10% by volume of alcohol covered by table item 2 of the Schedule to the Tariff Act.²

6. The *Excise Tariff Amendment (2009 Measures No.1) Act 2009* considerably increased the rate of duty applicable to other excisable beverages under table item 2 of the Schedule to the Tariff Act.³ The *Excise Tariff Amendment (2009 Measures No.1) Act 2009* also introduced the current definition of beer in the Schedule to the Tariff Act, in order to ensure that malternatives or similar products made from beer that mimic spirit-based ready-to-drink beverages in terms of their taste and marketing, became subject to the increased rate that applied under table item 2 without disturbing the taxation of conventional beer products.⁴

7. Against this history and context, a beverage falls within the definition of beer in the Schedule to the Tariff Act, only if it meets **all** the conditions set out in paragraphs (a) to (g) of the definition of beer:

beer means a brewed beverage that:

- (a) is the product of the yeast fermentation of an aqueous extract, being predominantly an aqueous extract of cereals:
 - (i) whether the cereals are malted or unmalted; and
 - (ii) whether or not the aqueous extract contains other sources of carbohydrates; and
- (b) contains:
 - (i) hops, or extracts of hops, such that the beverage has international bitterness units of not less than 4.0; or

² Table item 2 of the Schedule to the Tariff Act excludes beer, brandy or wine as defined by the Schedule to the Tariff Act.

³ Paragraph 1.15 of the Revised Explanatory Memorandum to the Excise Tariff Amendment (2009 Measures No.1) Bill 2009 (Revised EM) explains that the rate applicable under table item 2 of the Schedule to the Tariff Act was increased from \$39.36 to \$66.67.

⁴ Paragraphs 2.2 to 2.4 of the Revised EM.

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- (ii) other bitters such that the beverage has a bitterness comparable to that of a beverage mentioned in subparagraph (i); and
- (c) contains not more than 4.0% by weight of sugars; and
- (d) has not had added to it, at any time, artificial sweetener; and
- (e) may have had added to it, at any time, other substances, including flavours, but only if, in the case of substances that contain alcohol (other than spirit distilled from beer), the alcohol did not add more than 0.5% to the total volume of the final beverage; and
- (f) may have had added to it, at any time, spirit distilled from beer, but only if that spirit did not add more than 0.5% to the total volume of the final beverage; and
- (g) contains more than 1.15% by volume of alcohol.

8. The conditions in paragraphs (a) to (g) of the beer definition specify the statutorily contemplated attributes of beer for excise purposes. A brewed beverage which at a preliminary stage in its production is a product of the yeast fermentation of a predominantly aqueous extract of cereals, whether or not malted or containing other carbohydrates, will not satisfy the beer definition, if, as a final beverage, the beverage does not meet all the conditions in the definition.

9. Examples of beverages which may not satisfy the beer definition by reason of not meeting all the conditions contained in the beer definition include hard seltzers, alcoholic seltzers or malternatives that are initially brewed from cereal and subjected to yeast fermentation in a similar way to beer, but which in order to be manufactured into a final beverage, can have their alcohol content diluted with water or their taste flavoured with fruit juices or other flavourings. Such beverages might also be processed in a way intended to strip them of the taste, odour and appearance that would associate the final beverage with beer as conventionally understood.

The integral attributes of beer according to the beer definition

10. Paragraphs (a) to (d) and (g) of the beer definition specify unconditional requirements a beverage must meet to be defined as beer. Paragraphs (e) and (f) of the definition permit, but do not require, the addition of other substances to the beverage.

11. The contrast between the mandatory conditions that must be met in paragraphs (a) to (d) and (g) of the beer definition and the non-mandatory conditions in paragraphs (e) and (f) demonstrate that the mandatory conditions in paragraphs (a) to (d) and (g) describe the integral attributes of beer for purposes of the Tariff Act.

12. The integral attributes of beer arising from the mandatory conditions in the beer definition require beer for the purposes of the Tariff Act to be:

- an alcoholic beverage brewed predominantly from cereals (paragraphs (a) and (g))
- fermented with yeast (paragraph (a))
- limited in its sugar content (paragraph (e))
- devoid of any artificial sweeteners (paragraph (d)), and
- made bitter with hops or other bitters (paragraph (c)).

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13. Although the beer definition is not described in its own terms as an essential character test⁵, the content of the mandatory conditions in the definition conveys the intention that a beverage that is beer for excise purposes should exhibit the essential characteristics of beer based on taste and ingredients.⁶ This will ordinarily be demonstrated by a final beverage that can conventionally be regarded as beer satisfying all the requirements of the definition.

14. In terms of a conventional understanding of beer, the Macquarie Dictionary defines beer as an alcoholic beverage made by the brewing and fermentation from cereals, usually malted barley and flavoured with hops, et cetera, to give a bitter taste.⁷

15. The ordinary meaning of beer is not, and cannot, be used in place of the statutory definition of beer in the Schedule to the Tariff Act. However, the ordinary meaning is referred to here to demonstrate the consistency between the characteristics imparted by the integral attributes of beer from the statutory definition⁸, and what answers the description of a beer as conventionally understood.⁹

16. Compared to other beverages derived from a beer base but produced into final beverages that are not conventionally regarded as beer, the integral attributes of beer arising from the beer definition characterise beer for the purposes of the Tariff Act as a bitter and not typically sweet brewed alcoholic beverage¹⁰, which upon manufacture into a final beverage, demonstrably remains the product of the yeast fermentation of a predominantly cereal-based aqueous extract. Such a characterisation accords with an ordinary understanding of beer.

17. The extrinsic materials for the amending legislation that introduced the beer definition in its present form support these conclusions. The Explanatory Memorandum for the amending Bill explained that the beer definition was amended into its present form to prevent malternatives made from beer from being defined as beer for excise purposes, in order to subject these beverages to the higher excise rate applicable to other excisable beverages while leaving the taxation of conventional beer products that have the essential characteristics of beer based on taste and ingredients intact.¹¹

The addition of water and other unfermented substances

18. Paragraph (e) of the beer definition allows other substances including flavours and spirit that was not distilled from beer to be added to a beverage provided that such spirit does not exceed 0.5% of the total volume of the final beverage. The addition of other

⁵ In *Divas Beverages Holding Ltd v Commissioner of Taxation* [2018] FCA 576, the Federal Court (per Davies J) held at [59] that the grape wine definition in section 31-2 of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) did not express any test for essential characteristics over and above the requirement in the definition for the beverage to be the product of grape fermentation. In contrast, the mandatory conditions in the beer definition statutorily describe the integral attributes of beer and were intended to reflect what can be conventionally regarded as beer based on essential characteristics as to taste and ingredients; see paragraph 2.4 of the Revised EM.

⁶ Paragraph 2.4 of the Revised EM.

⁷ Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 9 August 2024.

⁸ Particularly from the requirements of the conditions in paragraphs (a) to (d) and (g) of the beer definition in the Schedule to the Tariff Act.

⁹ The statutory definition of beer differs from this ordinary meaning by contemplating the fermentation of unmalted cereals and the use of bitters other than hops. If bitters other than hops are used, subparagraph (b)(ii) of the beer definition requires the final beverage to be comparable to a beverage produced with hops or hops extracts that has at least 4.0 international bitterness units. This further indicates a degree of alignment between the statutory beer definition and beverages conventionally regarded as beer.

¹⁰ Paragraphs 2.5, 2.6 and 2.10 of the Revised EM.

¹¹ Paragraphs 2.2 to 2.4 of the Revised EM.

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substances permitted under paragraph (e) is therefore not completely without restriction. The beer definition read in its entirety and informed by its legislative history and extrinsic materials, also requires a necessary connection to remain between the final beverage and the process of fermentation referred to in paragraph (a) of the definition.

19. That connection must be sufficiently close, so that despite the addition of any other substances permitted by paragraph (e) of the beer definition, the final beverage remains describable as ‘the product’ of the fermentation process contemplated by paragraph (a) of the beer definition.

20. The necessary connection with the process of fermentation contemplated by paragraph (a) of the beer definition will not be lost merely because unfermented substances permitted by paragraph (e) of the definition, including water, are added to the beverage.

21. Consequently, adding water to a beverage to reduce its alcoholic content as a final beverage to an amount that still exceeds the minimum 1.15% alcohol by volume requirement in paragraph (g) of the beer definition, will not preclude the beverage from being defined as beer. However, this is provided that the final beverage continues to possess the integral attributes of beer by satisfying all the conditions in the beer definition, and by reason of possessing these attributes, can still be regarded as beer as conventionally understood.

22. For example, the addition of water to a fermented, predominantly aqueous, extract of cereals to produce a final beverage of reduced alcoholic strength that can be conventionally regarded as a medium-strength to low-strength beer, will not prevent the final beverage from being defined as beer for excise purposes, where that final beverage satisfies all of the conditions in the beer definition.

23. Conversely, a beverage initially brewed from cereal and subjected to yeast fermentation in a similar way to beer, but which to be manufactured into a final beverage that cannot be conventionally regarded as beer (for example, a hard seltzer, alcoholic seltzer or malt alternative), has its alcohol content reduced with added water is unlikely to satisfy the beer definition. Such a beverage will not be beer in accordance with the beer definition if any one or more of the following circumstances apply:

- (a) the beverage is flavoured with artificial sweeteners of any kind (contrary to paragraph (d) of the beer definition)
- (b) the beverage is flavoured, blended with substances other than artificial sweeteners, or processed by other means, so as to contain more than 4.0% by weight of sugars as a final beverage (contrary to paragraph (c) of the beer definition), or
- (c) the beverage is produced into a final beverage that cannot be conventionally regarded as beer and has an unfermented component greater than the fermented component (contrary to paragraph (a) of the beer definition, for the beverage will not be the product of the fermentation of a predominantly aqueous extract of cereals, but rather the product of a mixture of substances in which unfermented substances form the majority of the final beverage; such a beverage could also be processed in a way intended to strip it of the taste, odour and appearance that would associate the final beverage with beer as conventionally understood).

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Applying the beer definition by reference to the final beverage

24. While paragraph (e) of the beer definition does not state any limitation on the other substances, aside from alcohol, that can be added to a beverage seeking classification as beer, paragraph (e) of the definition cannot be read in isolation and must be understood within the context of the beer definition as a whole.

25. To satisfy the beer definition read as a whole, it is not sufficient for a brewed beverage to have been derived from a beer base at one stage in its manufacturing.

26. The combination of the words ‘beverage’ and ‘the product’, and the use of the definite article ‘the’ in respect of ‘product’ in the introduction to the beer definition and in paragraph (a) of the definition, make clear that the definition is intended to apply to the finished product that is to be consumed – that is, the final beverage.¹² A ‘beverage’ in ordinary connotation refers to a drink, and ‘beverage’ read in conjunction with ‘product’ connotes in ordinary meaning, that the product (that is, the final beverage) is that which must meet the description of a drink satisfying the beer definition.¹³

27. Accordingly, a beverage may become incapable of satisfying the beer definition if it is derived from a beer base, but which because of the addition of unfermented substances (and if applicable, other processing steps stripping the beverage of the taste, odour and appearance derived from its beer base), is not manufactured into a final beverage that is to be consumed as beer as conventionally understood.

28. The inclusion of conditions in the beer definition that require assessing the components of the beverage relative to its total volume as a final beverage¹⁴, further supports the view that it is the attributes of the final beverage that are relevant to applying the beer definition, and that a volume-based analysis of the final beverage can be used to consider if a beverage produced from a beer base remains the product of the requisite fermentation process under paragraph (a), in circumstances where large volumes of unfermented substances are added to a beer base in order to produce a final beverage that is not intended to be conventionally regarded as beer.

29. Consequently, in cases where water or other permitted unfermented substances are added to the fermented substance (that is, the beer base) in a volume greater than the fermented substance (that is, in a volume that is more than half of the total volume of the final beverage) in order to produce a final beverage that cannot be conventionally regarded as beer (for example, a hard seltzer, alcoholic seltzer or malternative), the final beverage is not beer for the purposes of the Schedule to the Tariff Act, as the final beverage will not be the product of the fermentation process required by paragraph (a) of the beer definition. Instead, the final beverage will be classified as an ‘other excisable beverage’ for the purposes of the Schedule to the Tariff Act and subject to duty at the applicable rate.

Example 1 – beer

30. *MW Company manufactures a brewed alcoholic beverage. A solution of malted barley, hops, yeast and water is fermented to create a ‘beer base’ from a predominantly aqueous extract of cereals (the cereals being barley in this case). The strength of the beer base is reduced by the addition of water so that the final beverage, when produced, will be*

¹² *Divas* at [40] regarding the same combination of words in the grape wine definition in section 31-2 of the WET Act.

¹³ *Divas* at [41] with respect to the use of the word ‘beverage’, which is used both in the beer definition in the Schedule to the Tariff Act, and in the grape wine definition in section 31-2 of the WET Act.

¹⁴ For example, in relation to added spirit and alcohol volume under paragraphs (e) to (g) of the beer definition in the Schedule to the Tariff Act.

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decreased in its label strength from a higher-strength beer to a medium-strength to lower-strength beer that still contains more than 1.15% by volume of alcohol. In terms of taste, the final beverage will have at least 4 international bitterness units (or will have a bitterness comparable to such a beverage had bitters other than hops been used) and will not be artificially sweetened or flavoured or processed by other means so that it contains more than 4.0% by weight of sugars. Any alcohol added to the beverage will represent 0.5% or less of the total volume of the final beverage.

31. *The final beverage meets the beer definition for the purposes of the Schedule to the Tariff Act because it conforms with the requirements of the definition. The final beverage can be conventionally regarded as beer because it possesses the integral attributes required by the beer definition, even though it is of a reduced strength given the water added during the production process.*

Example 2 – other excisable beverage

32. *AB Brewing Company manufactures ‘Senorita Seltzer’ as a final beverage from a beer base to which 3 parts water was added for each part of the beer base. The final beverage will not be conventionally regarded as beer according to taste and ingredients. Despite containing 3% alcohol and being initially manufactured from a beer base, the final beverage was processed to remove the colour, odour and taste from the beer base and sweetened with added juices and artificial sweeteners. The addition of the artificial sweeteners causes the final beverage to breach the condition in paragraph (d) of the beer definition and to consequently be classified as ‘other excisable beverages not exceeding 10% by volume of alcohol’ under table item 2 of the Schedule to the Tariff Act.*

33. *Without artificial sweeteners, the final beverage would still not satisfy the beer definition, if the juices added during its production and or other processing steps caused the final beverage to contain more than 4.0% by weight of sugars, contrary to the limit set by paragraph (c) of the beer definition.*

34. *Even if the final beverage in this example did not contain any artificial sweeteners or sugars exceeding the 4.0% cap, it would not meet the beer definition. Although the beer base, prior to the addition of the water, consisted of a predominantly aqueous extract of cereals fermented with yeast, the addition of such a large quantity of water for the purpose of producing a final beverage that cannot be conventionally regarded as beer, means the final beverage is no longer properly characterised as the ‘product of the yeast fermentation of an aqueous extract ...’ for the purposes of paragraph (a) of the beer definition. Therefore, the final beverage does not satisfy the beer definition and is instead classified as ‘other excisable beverages not exceeding 10% by volume of alcohol’ under table item 2 of the Schedule to the Tariff Act.*

Date of effect

35. When the final Determination is issued, it is proposed to apply from 1 February 2025.

Commissioner of Taxation
28 August 2024

Status: **draft only – for comment**

Appendix 1 – Alternative views

❶ ***This Appendix sets out alternative views and explains why they are not supported by the Commissioner. It does not form part of the proposed binding public ruling.***

Alternative view 1: unlimited unfermented substances can be added to a beer base to produce ready-to-drink beverages taxed as beer for excise purposes

36. The definition of beer in the Schedule to the Tariff Act refers to substances that:

- must be included (for example, cereals, hops or other bitters)
- are expressly allowed (for example, flavours)
- are expressly prohibited (for example, artificial sweetener)
- are expressly allowed but limited (for example, spirit distilled from beer and sugars)
- are not expressly prohibited (for example, water).

37. It does not follow that the addition of substances which are not expressly prohibited will in all cases have no impact on whether a final beverage satisfies the beer definition. The definition was amended into its current form by the *Excise Tariff Amendment (2009 Measures No.1) Act 2009*. The Explanatory Memorandum for the amending Bill explained that¹⁵:

2.3 Some products, sometimes known as ‘malternatives’, made from beer, mimic spirit-based RTDs in terms of their taste and marketing.

2.4 These amendments seek to ensure that malternatives are subject to the same tax rate as that applying to RTDs by amending the existing taxation definition of beer. The tax changes are not designed to affect the taxation of conventional beer products that have the essential characteristics of beer, based on taste and ingredients.

...

2.15 Further changes to the beer definition seek to ensure certainty as to acceptable brewing processes for taxation purposes.

38. On one view, the relatively prescriptive nature of the beer definition following the 2009 amendments means that where there are no prescribed limits on the quantity of substances that may be added, such substances may be added in unlimited quantities without affecting satisfaction of the definition.

39. We do not accept this to be the better view. The amendments to the beer definition in 2009 were made to ensure that brewed beverages designed to mimic spirit-based ready-to-drink beverages would be taxed in the same way and at the higher duty rate applicable to other excisable beverages with an alcohol content not exceeding 10%, and it was intended that only conventional beer products that have the essential characteristics of beer should be subject to the rates of duty applicable to beer.¹⁶

40. Final beverages produced from a beer base, which are comprised mostly of unfermented substances (including water) and are not intended to be consumed as beer as ordinarily understood, are not conventional beer products that have the essential characteristics of beer.

¹⁵ See paragraphs 2.3, 2.4 and 2.15 of the Revised EM. References in the quoted passages from the Revised EM to ‘RTDs’ are to ready-to-drink beverages.

¹⁶ See paragraphs 1.6 to 1.15, and 2.1 to 2.4 of the Revised EM.

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41. A literal or isolated construction of paragraph (e) of the beer definition, which seeks to attract lower excise rates where unfermented substances are added to a beer base without limitation, in order to produce a final beverage that is not conventionally regarded as beer, negates the evident policy of the Schedule to the Tariff Act to preserve lower excise rates for beer products as conventionally understood, and should be avoided.¹⁷

42. The decision in *Esso Australia Resources Pty Ltd v The Commissioner of Taxation* [2011] FCA 360 (*Esso*), which concerned when certain products were produced from petroleum for the purposes of the *Petroleum Resource Rent Tax Assessment Act 1987* is also instructive.

43. Informed by Justice Middleton's decision at [235–239] in *Esso* concerning when the products were produced,¹⁸ the Court in *Divas* agreed with us, that it was the final beverage that was intended and suitable for consumption as a drink, and not the beverage while still in the course of being produced, that was relevant for determining satisfaction of the grape wine definition in section 31-2 of the WET Act.¹⁹

44. This finding from *Divas* supports our view that it is the final beverage, and not the beverage at an intermediate stage of production (for example, just after fermentation) that must be tested against the beer definition.²⁰

45. It follows, that a final beverage sought to be classified as beer must demonstrably remain the product of the fermentation process referred to in paragraph (a) of the beer definition. The final beverage refers to the end result of a production process, in line with the ordinary meaning of the word 'produce', which the Court identified at [236–238] in *Esso* to mean more than simply being 'derived' from and to instead connote bringing something into existence as the result of a process.

46. Therefore, notwithstanding the permissions, limitations or restrictions in terms of what may or may not be added at various stages of the manufacturing process, the beer definition remains subject to the overarching requirement in paragraph (a), that the final beverage must still be capable of being regarded as 'the product of the yeast fermentation of an aqueous extract, being predominantly an aqueous extract of cereals'. A final beverage comprised of mainly unfermented substances which is not intended to be consumed as beer as conventionally understood does not meet this requirement.

¹⁷ At [103] In *Kelly v The Queen* [2004] HCA 12, Justice McHugh said:

... the function of a definition is not to enact substantive law. It is to provide aid in construing the statute. Nothing is more likely to defeat the intention of the legislature than to give a definition a narrow, literal meaning and then use that meaning to negate the evident policy or purpose of a substantive enactment.

¹⁸ Which was not disturbed on the appeal of the decision in *Esso* at [91], [94], [98], [99], and [107].

¹⁹ *Divas* at [25] and [39]. See also *Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* [2008] FCA 1951 at [71] where the Federal Court (Sundberg J) held that for the purposes of section 5 of the Tariff Act, goods are manufactured or produced if they have emerged from a process as a 'new and different article ... having a distinctive character or use'.

²⁰ The beer definition in the Schedule to the Tariff Act is similar to the grape wine definition in section 31-2 of the WET Act that was considered in *Divas*, to the extent that both definitions require considering whether the final beverage is the product of the requisite types of fermentation.

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Alternative view 2: essential characteristics of beer are irrelevant

47. In *Divas*, the Court concluded that despite the fermented product being stripped of its colour, odour and taste, still left at the end of the process was a beverage produced by the fermentation of products derived solely from fresh grapes (as was required by the grape wine definition at issue in that case).²¹

48. The Court observed that the grape wine definition did not impose any requirements as to the appearance, state or other characteristics of the final beverage, other than the requirement for the beverage to be produced from the fermentation of fresh grapes or products derived solely from fresh grapes.²²

49. In contrast, the beer definition specifies conditions as to taste and other characteristics through its requirements that the beverage be the product of the fermentation of a predominantly aqueous extract of cereals, contain hops, hops extracts or other bitters so that the beverage has at least 4 international bitterness units, not be artificially sweetened in any way, and not contain more than 4.0% by weight of sugars.

50. Accordingly, while the grape wine definition did not express any test for essential characteristics over and above the requirement of grape fermentation²³, the requirements in the beer definition statutorily describe the integral attributes of beer and were intended to reflect beverages conventionally regarded as beer based on essential characteristics as to taste and ingredients. The beer definition was amended to include these requirements to address the mischief of beer-based malternatives being taxed at the lower excise rate of conventional beer products.²⁴

²¹ *Divas* at [59].

²² *Divas* at [59].

²³ *Divas* at [72–73].

²⁴ Paragraph 2.4 of the Revised EM.

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Appendix 2 – Your comments

51. You are invited to comment on this draft Determination including the proposed date of effect. Please forward your comments to the contact officer by the due date.

52. A compendium of comments is prepared when finalising this Determination, and an edited version (names and identifying information removed) is published to the Legal database on ato.gov.au

53. Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 27 September 2024

Contact officer details have been removed as the comments period has ended.

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References

Previous draft:

ED 2024/D1 (withdrawn)

Legislative references:

- Excise Tariff Act 1921 5
- Excise Tariff Act 1921 the Sch
- Excise Tariff Amendment (2009 Measures No.1) Act 2009
- ANTS(WET)A 1999 31-2

Cases relied on

- Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation [2008] FCA 1951; 173 FCR 359; 74 ATR 676; [2009] ALMD 4077
- Divas Beverages Holdings Ltd v Commissioner of Taxation [2018] FCA 576; 2018 ATC 20-654
- Esso Australia Resources Pty Ltd v The Commissioner of Taxation [2011] FCA

360; 194 FCR 32; 83 ATR 47; 279 ALR 519; [2012] ALMD 1118

- Esso Australia Resources Pty Ltd v Commissioner of Taxation [2011] FCAFC 154; 199 FCR 226; 86 ATR 525; [2013] ALMD 3084; [2013] ALMD 3085
- Kelly v The Queen [2004] HCA 12; 218 CLR 216; 205 ALR 274; 78 ALJR 538; [2004] ALMD 3171

Other references:

- Revised Explanatory Memorandum to the Excise Tariff Amendment (2009 Measures No.1) Bill 2009
- Macmillan Publishers Australia, The Macquarie Dictionary online, www.macquariedictionary.com.au

ATO references

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