

EXC 2006/3 - Explanatory statement -



Explanatory Statement

Excise Act 1901

Excise (Alcoholic strength of excisable beverages) Determination 2006 (No. 1)

General Outline

1. This Explanatory Statement is provided in accordance with section 26 of the *Legislative Instruments Act 2003*.
2. *Excise (Alcoholic strength of excisable beverages) Determination 2006 (No. 1)* is required due to amendments to the Excise legislation effected by *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006* and *Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006*.
3. The amendments are the result of the Review of the Schedule to the *Excise Tariff Act 1921* (the Review) initiated by Treasury on 2 June 2005 with the release of an industry discussion paper and a targeted consultation process. The principal objects of the Review were to streamline the Schedule to the *Excise Tariff Act 1921* (the Excise tariff) and make it more user-friendly, make excise law clearer and less complex, and improve the integrity of the excise system.
4. Section 77FB of the *Excise Act 1901* (Excise Act) allows the CEO (Commissioner of Taxation) to determine, in relation to classes of alcoholic beverages, rules for working out the percentage by volume of alcohol in a beverage. Three determinations published in the *Commonwealth of Australia Gazette* (No. GN 12, 26 March 2003) are operative under this provision:
 - *Excise Act (Alcoholic strength of beer) Determination 2003* ('ED 2003/1')
 - *Excise Act (Alcoholic strength of spirits) Determination 2003* ('ED 2003/2')
 - *Excise Act (Alcoholic strength of ready to drink beverages and liqueurs) Determination 2003* ('ED 2003/3')
5. Section 77FB is repealed under the amendments. In its place new section 65 allows the CEO to determine rules for working out the volume, weight and percentage by volume of alcohol in excisable goods. A saving provision preserves the operation of section 77FB until the first set of rules is made under section 65.
6. The instrument is made under section 65 of the Excise Act. It provides rules for working out the percentage of alcohol for all excisable beverages in a single determination.
7. When section 77FB ceases to have effect under the repeal and subject to the saving provision, ED 2003/1, ED 2003/2 and ED 2003/3 also no longer have effect (*Watson v. Winch* (1916) 1 KB 688).

Date of effect

8. The instrument commences on 1 July 2006.

Purpose and effect of the instrument

9. The Excise Act imposes a liability to pay duty on alcoholic beverages, determined in relation to the volume of alcohol contained in the alcoholic beverage. The volume of alcohol is calculated by multiplying the volume of the beverage by the alcoholic strength.

10. The purpose of these rules is to ensure that licensed manufacturers pay the correct amount of duty by correctly measuring the alcoholic strength of excisable beverages. The rules are sufficiently flexible to allow for small variations in alcoholic strength.

11. The instrument covers:

- sampling and analysis;
- measuring and equipment; and
- permitted variations in alcoholic strength.

12. Sampling and analysis is to be carried out after the beverage has reached its maximum alcoholic strength. Equipment is to be properly calibrated.

13. Sufficient samples must be taken from each run to ensure accuracy. What is 'sufficient' is to be judged by the manufacturer taking into account such things as the circumstances and size of the run and the consistency of the product. For example, if beer in a single run were drawn from different tanks, sampling would need to ensure that any difference in strength between tanks was adequately allowed for in determining the overall strength of the beer in the run. Strength is to be determined as an average of the strength of sample measurements.

14. Strength is the volume of alcohol in a beverage as a percentage of the total volume of the beverage. Since the volume of alcohol varies considerably according to temperature, the volume for the purpose of determining strength is the volume of alcohol if measured at 20°C. The determination also provides a standard figure for the specific gravity of alcohol in relation to water.

15. Instruments and measuring techniques must be capable of measuring the alcoholic strength of a beverage to an accuracy of plus or minus 0.2% of the actual strength. This basic requirement has not changed. The determination specifically refers to certain measuring techniques as providing the necessary degree of accuracy with equipment calibrated at intervals of one year or less against standard instruments certified by an independent authority approved by the National Association of Testing Authorities (NATA).

16. Small breweries (producing 100,000 litres or less per calendar year) can use a formula and a hydrometer, provided that the formula can be supported by a documented testing process as producing the required degree of accuracy. Records of the testing process must be kept for 5 years after a formula has ceased to be used, in order to allow audit activity.

17. Under ED 2003/1 the permitted variation in the strength for beer undergoing secondary fermentation (0.3%) is greater than for beer that does not undergo secondary fermentation (0.2%). This is due to the nature of the process, as fermentation continues after the product has been packaged for retail sale and variations in strength are slightly less predictable. This difference is reflected in the determination, with the permitted

variations for all other excisable beverages (including beer that does not undergo secondary fermentation) being 0.2%.

Impact of the instrument

18. The instrument simplifies the legal framework, bringing together into one determination the rules for the three categories of beverages and ED 2003/1, ED 2003/2 and ED 2003/3.

19. While the required standard of accuracy and permitted variations remain the same, the rules contained in the instrument allow more flexibility in the types of equipment and testing methods that can be used in complying with the standard. This leaves room for technological advances within the alcoholic beverage industry and will ease the administrative and compliance burden in the event of new strength measuring technologies and methods being developed.

Consultation:

20. Prior to the publication of ED 2003/1, ED2003/2 and ED 2003/3, the Tax Office consulted with the Distilled Spirits Industry Council of Australia (DSICA) and individual members of the association, who agreed with the rules as a constructive guide to enable them to comply with excise legislation.

21. A revision of those rules was discussed at the Alcohol Industry Forum convened by the Tax Office in late May 2005, along the lines of the rules which are incorporated into the current instrument. DSICA welcomed the revised approach as being less restrictive and better able to accommodate changes in technology.

22. On 1 June 2006 the Tax Office initiated a 2-week public consultation process on the legislative instruments arising from the Review, with the Assistant Treasurer approving the consultation prior to the related legislation being passed by Parliament.

23. The instruments and explanatory statements were published on the ATO website www.ato.gov.au in the form of drafts for consultation. The instrument, together with this explanatory statement, was included in that process.

24. Selected parties in the alcohol industry were contacted and invited to comment on the content, form and language of the determination and explanatory statement.

Commissioner of Taxation

[30 June 2006]

Previous draft:

1 June 2006

Related Rulings/Determinations:

Excise (Volume—excisable beverages) Determination 2006 (No. 1)

Previous Rulings/Determinations:

Excise Act (Alcoholic strength of beer) Determination 2003 (ED 2003/1)

Excise Act (Alcoholic strength of spirits) Determination 2003 (ED 2003/2)

Excise Act (Alcoholic strength of ready-to-drink beverages and liqueurs) Determination 2003 (ED 2003/3)

Subject references:

Excise

Excisable goods

Excisable beverages

Alcohol

Legislative references:

Excise Act 1901 section 65

Excise Act 1901 section 77FB

Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006

Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006

Case references:

Watson v. Winch (1916) 1 KB 688

Other references:

Commonwealth of Australia Gazette (No. GN 12, 26 March 2003)

Review of the Schedule to the Excise Tariff Act: industry discussion paper, Treasury, 2 June 2005

ATO references

NO:

ISSN: