

EXC 2006/5 - Explanatory statement -



Explanatory Statement

Excise Act 1901

Excise (Volume—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 (Volume—excisable beverages) Determination 2006 (No. 1)* is required by amendments to the Excise legislation effected by *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006*, *Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006* and Excise Amendment Regulations 2006 (No. 3).
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 77B of the *Excise Act 1901* (Excise Act) prescribes the manner of determining volumes of, and fixing duty on, beer. *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006* repeals section 77B and inserts section 65, which allows the CEO (Commissioner of Taxation), by legislative instrument, to determine rules for working out the volume, weight and alcoholic strength of excisable goods.
5. Under section 65 the CEO may make rules for determining not only the volume of beer but of all excisable beverages. Paragraphs 2.37 to 2.42 of the Explanatory Memorandum to the amending Bills provide commentary on the intended operation of section 65.
6. The instrument provides licensed manufacturers and the Tax Office with rules for working out the excisable volume of all excisable beverages in retail and bulk containers and for determining the duty payable outside permitted variations in volume.
7. The instrument replicates the rules currently prescribed for beer and extends their scope to other excisable beverages for which no similar rules exist. It will enhance the administration of the Excise Act in relation to these other beverages by providing a proper basis in law for current practice.
8. The instrument is made under section 65 of the Excise Act.

Date of effect

9. The instrument commences on 1 July 2006.

Effect of the instrument:

10. The amount of excise duty payable is determined by the volume of alcohol contained in the alcoholic beverage. The volume of alcohol is calculated by multiplying volume by alcoholic strength. To ensure manufacturers pay the correct amount of duty on the alcoholic beverages they manufacture, it is important that there is a set of rules for correctly measuring the volume of those alcoholic beverages. The rules are sufficiently flexible to allow for small variations in volume.

11. This instrument provides rules for measuring the excisable volume of alcoholic beverages and includes guidance in the following key areas:

- measuring and equipment; and
- permitted variations in volume.

12. Under section 77B, the permitted variation over the nominated volume of beer in a container differs between non-bulk containers (2 litres and under), where 1.5% is allowed, and bulk containers, where only 1% is allowed. Policy reasons for permitted variations were outlined in the second reading speech for the Customs and Excise Legislation Amendment Bill 1988 in the House of Representatives by the Hon. Barry Jones, Member for Lalor and Minister for Science, Customs and Small Business, on 7 November 1988:

Technological improvements in the manner in which bulk vessels are manufactured and filled means that it is now possible to measure beer more accurately. As from 1 February 1989, it is proposed to assess duty on bulk containers, that is, vessels in excess of two litres capacity, according to the quantity of beer nominated by the manufacturer as being in the bulk container providing that the actual contents do not exceed 101.5 per cent of the nominated quantity of the beer. As from 1 July 1991, the 1.5 per cent overfill tolerance just discussed will be reduced to one per cent.

For beer in bottles and cans up to two litre capacity that are entered for home consumption as from 1 February 1989, duty will be based on the labelled contents of the container providing the actual contents do not exceed 101.5 per cent of the labelled contents of the container.

13. With the increased scope of new section 65, it was considered whether the same standards should apply to all excisable beverages. For the following reasons it was decided to retain the same scope as section 77B:

- industry comment received to date (see Consultation below) provides no grounds to alter the current requirement when applied to beverages other than beer;
- the policy considerations in relation to bulk containers still apply;
- a tightening of the requirements for containers of 2 litres or less would be likely to impose a greater compliance burden on industry, contrary to the objects of the Review;
- for ease of compliance and administration it is desirable that the same standards apply to all excisable beverages.

Examples of extra duty calculation

14. These calculations are applied to each production run.

Packaged Beer

750 ml bottle	(stated contents on label)
765 ml fill	(actual contents)
15 ml overfill	(difference between stated and actual contents)

750ml (stated contents)	X	101.5% (1.5% tolerance)	=	761.25ml (total permissible fill before incurring extra duty)
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765ml (actual contents)	-	761.25ml (total permissible fill before incurring extra duty)	=	3.75ml (quantity attracting extra duty)
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Assuming an actual bottling run of 1,000 bottles, the **volume of excisable product** would be:

1,000 x 750ml	=	750.0 litres
plus		
1,000 x 3.75ml	=	<u>3.75</u> litres
Total		<u>753.75</u> litres

Bulk Beer

49 litres fill	(actual contents)
47 litres nominated	(nominated fill)
2 litres overfill	(difference between actual contents and nominated fill)

47 litres (stated contents)	X	101% (1% tolerance)	=	47.47 litres (total permissible fill before incurring extra duty)
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49 litres (actual contents)	-	47.47 litres (total permissible fill before incurring extra duty)	=	1.53 litres (quantity attracting extra duty)
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Assuming an actual racking run of 200 kegs, the **volume of excisable product** would be:

200 x 47 litres	=	9,400 litres
plus		
200 x 1.53 litres	=	<u>306</u> litres
Total		<u>9,706</u> litres

Impact of the instrument

15. Under section 65 of the Excise Act, the instrument maintains the current provisions for working out duty in relation to variations in volume for beer and extends the scope of those provisions to all excisable beverages, providing greater certainty for industry and enhancing administration.

Consultation

16. At the end of May 2005 the Tax Office met with industry representatives in Adelaide to discuss the Alcohol Industry Manual then being prepared by the Tax Office. At that meeting, industry representatives acknowledged that similar rules to those that then applied for determining the volume of beer were required for other alcoholic beverages.

17. 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.

18. 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.

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

Excise (Volume—recycled waste oil) Determination 2006 (No. 2)

Subject references:

Excise

Excisable goods

Excise duty

Beer excise

Legislative references:

Excise Act 1901 section 65

Excise Act 1901 section 77B

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

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

Excise Regulations Amendment 2006 (No. 3)

Other references:

House of Representatives, *Hansard*, 7 November 1988, p 2482

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

Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006, Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006

ATO references

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