

# ***EXC 2009/2 - Explanatory statement -***



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# Legislative instrument: Excise (Volume – Alcoholic excisable goods) Determination 2009 (No. 1)

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## Explanatory Statement

### General Outline of Instrument

1. This Explanatory Statement is provided in accordance with section 26 of the *Legislative Instruments Act 2003*.
2. Under section 65 of the *Excise Act 1901* (Excise Act) the CEO may make rules for determining the volume and strength of excisable goods. Paragraphs 2.37 to 2.42 of the Explanatory Memorandum to the amending Bills provide commentary on the intended operation of section 65.
3. This instrument is made under section 65 of the *Excise Act 1901* (Excise Act). It provides rules for working out the excisable volume of all alcoholic excisable goods that are being entered for home consumption in retail and bulk containers, and for determining the duty payable outside permitted variations in volume.
4. Excise (Volume – Alcoholic excisable goods) Determination 2009 (No. 1) replaces and revokes Excise (Volume – excisable beverages) Determination 2006 (No. 1) (FRLI No. F2006L02171).

### Date of effect

5. The determination will have effect from the day after registration.

### Effect of this instrument:

6. The amount of excise duty payable is determined by the volume of alcohol contained in the alcoholic excisable goods. The volume of alcohol is calculated by multiplying volume by alcoholic strength. To ensure manufacturers pay the correct amount of duty on the alcoholic excisable goods they manufacture, it is important that there is a set of rules for correctly measuring the volume of those alcoholic goods. The rules are sufficiently flexible to allow for small variations in volume.
7. For added clarity the term 'excisable beverages' has been replaced with 'alcoholic excisable goods' because it is arguable that some of the products that fall to item 3 of the Schedule to the *Excise Tariff Act 1921* are not beverages and thus would not be covered by the determination. Section 65 of the Excise Act specifically refers to 'excisable goods' not 'beverages'.
8. The determination has been expanded to include as authorities able to certify instruments, all verifying or authorising authorities appointed by the Chief Metrologist and authorities appointed under State and Territory Trade Measurement legislation and not just those certified by the National Association of Testing Authorities (NATA).

## The Rules

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

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

10. The volume of alcohol in excisable goods is the volume of alcohol as measured at 20 degrees Celsius. To measure the volume of alcohol therefore requires the measurement of the temperature and the volume, and then appropriate adjustments made to give the volume of alcohol at 20 degrees Celsius.

11. Under section 77B (now repealed), the permitted variation over the nominated volume of beer in a container differed between non-bulk containers (2 litres and under), where 1.5% was allowed, and bulk containers, where only 1% was 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.

12. With the increased scope of 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 (see Consultation below) provided no grounds to alter the current requirement when applied to alcoholic excisable goods 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 objectives of the Review; and
- for ease of compliance and administration it is desirable that the same standards apply to all alcoholic excisable goods.

## Examples of extra duty calculation

13. 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)

$$\begin{array}{rclcl}
 750\text{ml} & & \times & 101.5\% & = & 761.25\text{ml} \\
 (\text{stated contents}) & & & (1.5\% \text{ tolerance}) & & (\text{total permissible fill} \\
 & & & & & \text{before incurring extra} \\
 & & & & & \text{duty})
 \end{array}$$

$$\begin{array}{rclcl}
 765\text{ml} & & - & 761.25\text{ml} & = & 3.75\text{ml} \\
 (\text{actual contents}) & & & (\text{total permissible fill} & & (\text{quantity attracting} \\
 & & & \text{before incurring} & & \text{extra duty}) \\
 & & & \text{extra duty}) & &
 \end{array}$$

Assuming an actual bottling run of 1,000 bottles, the **volume of excisable product on which duty needs to be paid** would be:

$$\begin{array}{rcl}
 1,000 \times 750\text{ml} & = & 750.0 \text{ litres} \\
 \text{plus} & & \\
 1,000 \times 3.75\text{ml} & = & 3.75 \text{ litres} \\
 \text{Total} & & 753.75 \text{ litres}
 \end{array}$$

### Bulk Beer

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

$$\begin{array}{rclcl}
 47 \text{ litres} & & \times & 101\% & = & 47.47 \text{ litres} \\
 (\text{stated contents}) & & & (1\% \text{ tolerance}) & & (\text{total permissible fill} \\
 & & & & & \text{before incurring} \\
 & & & & & \text{extra duty})
 \end{array}$$

$$\begin{array}{rclcl}
 49 \text{ litres} & & - & 47.47 \text{ litres} & = & 1.53 \text{ litres} \\
 (\text{actual contents}) & & & (\text{total permissible fill} & & (\text{quantity attracting} \\
 & & & \text{before incurring} & & \text{extra duty}) \\
 & & & \text{extra duty}) & &
 \end{array}$$

Assuming an actual racking run of 200 kegs, the **volume of excisable product on which duty needs to be paid** would be:

$$\begin{array}{rcl}
 200 \times 47 \text{ litres} & = & 9,400 \text{ litres} \\
 \text{plus} & & \\
 200 \times 1.53 \text{ litres} & = & 306 \text{ litres} \\
 \text{Total} & & 9,706 \text{ litres}
 \end{array}$$

### Impact of the instrument

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

### Consultation

- 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 excisable goods.

16. 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.
17. The instruments and explanatory statements were published on the Tax Office website [www.ato.gov.au](http://www.ato.gov.au) in the form of drafts for consultation. The instrument, together with the explanatory statement, was included in that process.
18. Selected parties in the alcohol industry were contacted and invited to comment on the content, form and language of the determination and explanatory statement.
19. As there have been no substantive changes to that determination, it was considered that further consultation on this determination was not necessary.
20. After consultation with the Revenue Analysis Branch, The Tax Office believes the revenue impact for this proposal will be nil as the proposal is not expected to alter the tax base. The proposal merely aims to reduce the compliance burden on taxpayers.



**Tim Dyce**

**Deputy Commissioner and Delegate of the Commissioner of Taxation**

4 March 2009

*Related Rulings/Determinations:*

FRLI No: TBA - Excise (Alcoholic strength of excisable goods) Determination 2009 (No. 1)

FRLI No: F2006L2165 - Excise (Alcoholic strength of excisable beverages) Determination 2006 (No. 1)

FRLI No: F2006L02171 - Excise (Volume-excisable beverages) Determination 2006 (No. 1)

*Subject references:*

Excise

Excisable goods

Excise duty

Beer excise

*Legislative references:*

Excise Act 1901, section 65 and section 77B

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

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

Excise Regulations Amendment 2006 (No. 3), the Regs

*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