

EXC 2015/1 - Explanatory statement -



Excise (Volume of Liquid Fuels - Temperature Correction) Determination 2015 (No. 1)

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 of excisable goods.
3. This instrument is made under section 65 of the Excise Act. It provides rules for working out the excisable volume of liquid fuel that is being entered for home consumption, and for the purposes of working out the amount of excise duty payable on such fuel.

Repealing of previous instrument

4. *Excise (Volume of Liquid Fuels – Temperature Correction) Determination 2011 (No. 1)* (FRLI No. F2011 L02373) registered on the 15/11/2011 is repealed on the commencement of this determination.
5. Paragraph 8 of the original instrument provides a definition of biodiesel that was mirrored in the *Excise Tariff Act 1921* (Tariff Act). The legislative provisions in the *Excise Tariff Amendment (Ethanol and Biodiesel) Act 2015* have resulted in a new definition for biodiesel in the Tariff Act. Additionally, paragraph 11 of the original instrument contains a reference to subitem 10.11 of the Schedule to the Tariff Act which has been repealed by the above mentioned excise tariff amendment.
6. The replacement of the instrument gives effect to the above changes by referring to the new definition of biodiesel in the Tariff Act and deleting from paragraph 11 references to subitem 10.11. In addition, paragraph 12 of the original instrument has been amended to take into account a reference to the *Excise (Volume - recycled waste oil) Determination 2006 (No. 2)* which will cease on 1 October 2016 due to the sun-setting provisions under the *Legislative Instruments Act 2003*.
7. Aside from these updated corrections the circumstances set out in the previous determination remain unchanged.

Date of effect

8. The determination will have effect from the day after it is registered.

Effect of this instrument:

9. The determination specifies the methods available for determining the volume of excisable liquid fuel. The determination also specifies the types of fuel and aggregated clearances as factors that permit the use of a particular method.
10. The new instrument is intended as a restatement of the previous instrument, adding in a new definition and clarifying permissible method 1 for determining the volume of fuel by prescribing the appropriate volume correction factor (VCF) for fuel classifiable to sub-item 10.20 of the Schedule to the Tariff Act. The new instrument makes it clear that it only has application in relation to liquid fuels.
11. Compliance cost impact: Minor – There will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.

The rules

12. The volume of liquid fuel must be determined at the time of delivery for home consumption using one of the permissible methods.
13. Pursuant to Method 1, a person who has aggregated clearances of liquid transport fuels exceeding 50,000 litres per accounting period must, depending on the type of fuel, use either the American Society for Testing and Materials (ASTM) volume correction factors or the Practical Alcohol Tables. Both available methods are used to convert the volume of fuel at ambient temperature to volume of fuel at 15° Celsius.

Revised computerised software editions of the above measurement standards installed in metering equipment may also be used to calculate the volume of liquid transport fuels in litres at 15° Celsius during dispensation.

Example: If 1 litre of diesel has a density of 840 kg/m³ at 15° Celsius, then 30,000 litres of diesel at 30° Celsius would need to be adjusted by the volume correction factor of 0.9873 m³ (as per the ASTM Petroleum Measurement Tables) to determine its volume at 15° Celsius. Application of the relevant factor would result in an adjusted volume of 29,619 litres. Excise duty is then calculated on 29,619 litres for a person who has aggregated clearances of transport fuels exceeding 50,000 litres per accounting period.

14. A person who does not have aggregated clearances of liquid transport fuels exceeding 50,000 litres per accounting period and does not have a requirement on their periodic settlement permission to correct to 15° Celsius on all their fuel clearances may either correct the volume of fuel to 15 degrees Celsius (Method 1) or use the measured volume of fuel at ambient temperature (Method 2).

Example: Following on from the example at paragraph 10 if that person's aggregated clearances of liquid transport fuels are less than 50,000 litres per accounting period, that person may either correct the volume of fuel to 15° Celsius (i.e. 29,619 litres) or use the measured volume of fuel at ambient temperature (i.e. 30,000 litres).

15. A person who has clearances of fuels classified to sub-items 10.1, 10.2, 10.3, 10.15, 10.16, 10.25, 10.26, 10.27 and 10.28 of the Schedule to the Tariff Act in any quantity may use either Method 1 or 2.
16. A person must use one Method for the duration of an accounting period, unless authorised in writing by the CEO to do otherwise.
17. Aggregated clearances means the volume of liquid fuel delivered for home consumption in an accounting period of 12 months from all excise licensed establishment/s based on

historical data or the volume of liquid fuels reasonably expected to be delivered for home consumption in an accounting period if no historical data is available.

18. The period adopted for the calculation of aggregated clearances is the accounting period adopted for income tax purposes as provided in section 18 of the *Income Tax Assessment Act 1936*.
19. Liquid transport fuels are defined as gasoline (including that used in an aircraft), diesel, kerosene (for use in an aircraft), fuel oil, fuel ethanol, biodiesel and blends consisting primarily of gasoline or diesel.
20. For transport fuels classified as gasoline (including that used in an aircraft), diesel, kerosene (for use in an aircraft), fuel oil, biodiesel and blends consisting primarily of gasoline or diesel, the American Society for Testing and Materials (ASTM) *Petroleum Measurement Tables Volume Correction Factors, Volume VIII* are used to convert the volume of the fuel to 15° Celsius.
21. For transport fuels classified as fuel ethanol, the Practical Alcohol Tables are used to convert the volume of the fuel to 15° Celsius.

Consultation

22. Section 18 of the *Legislative Instruments Act 2003* specifically provides for circumstances where consultation may not be necessary or appropriate. One of those circumstances is where the instrument is considered minor or machinery in nature, and does not substantially change the law.
23. Because there is no substantive change to the scope of the previous instrument, this instrument is considered to be minor or machinery in nature.
24. As such, no further consultation has been undertaken in the development of this instrument.

James O'Halloran
Deputy Commissioner of Taxation
19/10/2015

Related Rulings/Determinations:

Previous Rulings/Determinations:

Excise (Volume of Fuels – Temperature Correction) Determination 2009 (No. 1)

Excise (Volume of Liquid Fuels – Temperature Correction) Determination 2011 (No. 1)

Subject references:

Excise

Excisable goods

Excise Duty

Legislative references:

Excise Act 1901 section 65

Excise Tariff Act 1921 (Schedule)

Legislative Instruments Act 2003 section 26

Income Tax Assessment Act 1936 section 18

Case references:

Other references:

American Society for Testing and Materials (ASTM) Petroleum Measurement Tables Volume Correction Factors Volume VIII (*at the time of publication this reference is available from <http://www.astm.org>*)

Practical Alcohol Tables (PAT) (*at the time of publication this reference is available from <http://bookshop.europa.eu>*)

Statement of Compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Excise (Volume of Liquid Fuels - Temperature Correction) Determination 2015 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Excise (Volume of Liquid Fuels - Temperature Correction) Determination 2015 (No. 1) amends and replaces *Excise (Volume of Liquid Fuels - Temperature Correction) Determination 2011 (No. 1)*. The determination provides rules for working out the excisable volume of liquid fuel that is being delivered for home consumption which is then used for the purposes of working out the amount of excise duty payable on such fuel.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms as it is considered to be minor or machinery in nature. It provides greater certainty in relation to excise obligations around the measurement of liquid fuels.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.