

EXC 2019/2 - Explanatory statement -



Explanatory Statement

Excise (Volume – Alcoholic Excisable Goods)

Determination 2019

General Outline of Determination

1. This determination is made under section 65 of the *Excise Act 1901* (Excise Act).
2. This determination provides rules for working out the volume, for excise purposes, of all alcoholic excisable goods that are being entered for home consumption in retail and bulk containers.
3. The determination is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Date of effect

5. The determination commences on the day after it is registered on the Federal Register of Legislation and applies to alcoholic excisable goods entered for home consumption on or after the date of commencement.

What is this determination about

6. The duty payable on an alcoholic excisable good is determined by the volume of alcohol contained in the good. The volume of alcohol in a good is calculated by multiplying the volume of the good by its 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 goods. The rules are sufficiently flexible to allow for small variations in volume.
7. The purpose of this determination is to provide the rules for measuring the volume of alcoholic excisable goods, including:
 - (a) sampling and analysis;
 - (b) measuring and equipment; and
 - (c) permitted variations between the actual and labelled volume of alcoholic excisable goods.

What is the effect of this determination

8. Manufacturers will have clear rules as to how to measure the volume of alcoholic excisable goods, which will provide greater certainty for the industry and enhance administration of the Excise laws.

Background

9. This determination replaces *Excise (Volume – Alcoholic excisable goods) Determination 2009 (No. 1)* [F2009L00992] (previous determination), registered on 13 March 2009. The previous determination is repealed on commencement of this determination.
10. The new determination is largely the same as the previous determination. The changes to the new determination aim to simplify the key concepts and approaches that previously existed. Taxpayers that satisfied the requirements of the previous determination are unlikely to be affected by the changes, with the exception of the change to the permitted variations detailed in paragraphs 16 to 18 below.
11. Compliance cost impact: Minor – there will be no or minimal impact for both implementation and ongoing compliance costs. The change is minor or machinery in nature.

Explanation

The term ‘excisable beverages’ and ‘alcoholic excisable goods’

12. 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 have been covered by the determination. Section 65 of the Excise Act specifically refers to ‘excisable goods’ not ‘beverages’.

Sampling and analysis

13. Sufficient samples must be taken from each production or packaging 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.

Measuring and equipment

14. The volume of alcoholic excisable goods must be measured in accordance with legal requirements pertaining to measurements. Contact the National Measurement Institute (NMI) for further information.
15. There have been no changes to the position that the volume of alcohol in excisable goods is the volume of alcohol as measured at 20 degrees Celsius. Therefore to measure the volume of alcohol, a measurement of the temperature and the volume of the product is required. Appropriate adjustments may need to be made to be able to state the volume of alcohol at 20 degrees Celsius.

Permitted variations

16. To simplify the permitted variations and better align them with the variations listed in the *Excise (Alcoholic strength of excisable goods) Determination 2019*, one of the permitted variation approaches has been altered.
17. Where the actual volume of contents exceeds 101% of the nominated volume (for goods packaged in a bulk container) or 101.5% of the indicated volume (for goods not packaged in a bulk container), the actual volume will now be used in lieu of the previous differential method.
18. Whilst this approach may result in a slightly higher volume for manufacturers (in limited circumstances), the benefits of a simplified calculation methodology would outweigh these costs and will result in simpler administration of the Excise laws.

Other considerations

19. Users of this determination should be aware that the document only provides rules for taxpayers regarding compliance with their excise duty obligations.
20. Compliance with this instrument may not completely satisfy other legislative requirements such as those contained within the Australia New Zealand Food Standards Code.

Consultation

21. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the rule-maker is satisfied that appropriate and reasonably practicable consultation has been undertaken.
22. Draft versions of the determination and explanatory statement were published on the ATO Legal Database at ato.gov.au on 22 October 2018 for public consultation providing an opportunity for feedback to be provided by 2 November 2018. No feedback was received from the website publication.
23. Draft versions of the determination and explanatory statement were also forwarded directly to targeted stakeholders in the alcohol industry as part of the consultation process. Several responses were received from industry representatives.
24. One stakeholder was granted additional time to provide a response after the closing date so that they could further consult with their body of members.
25. The feedback received from stakeholders is summarised below:
 - (a) Stakeholders expressed gratitude at having been approached to participate in the consultation process and noted that the changes made are appropriate and will simplify the compliance process.
 - (b) Stakeholders requested refinement of the determination to better reflect and align the ATO measurement requirements to those legislated in the *National Measurement Act 1960*.
26. The ATO considered all stakeholder feedback in preparing the final determination and reached a view as follows:
 - (a) The ATO recognises that the requirements stated in previous determinations could infer to taxpayers that satisfaction of ATO measurement requirements results in satisfaction of requirements of

the NMI. Given the existence of specific legal requirements relating to measuring equipment contained in the *National Measurement Act 1960* and the regulations to that Act, it was considered sufficient for the determination to require adherence to those legal requirements. This also ensures the contemporaneity of the determination as it will require adherence to legal requirements pertaining to measurement as they exist at a particular point in time.

Legislative references:

Acts Interpretation Act 1901

Excise Act 1901

Excise (Alcoholic Strength of Excisable goods) Determination 2019

Excise Tariff Act 1921

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

National Measurements Act 1960

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 – Alcoholic Excisable Goods) Determination 2019

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

This instrument 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.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms as it simply provides guidance to manufacturers of alcoholic excisable goods as to how to determine the volume of their products

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.