

LI 2024/D4 - Explanatory statement -



Explanatory Statement

Excise (Blending Exemptions) Instrument 2024

General outline of instrument

1. This instrument is made under subsection 77H(4) of the *Excise Act 1901* (Excise Act).
2. This instrument specifies circumstances in which blends of excisable fuels, with or without other substances, are taken not to be excisable goods. This has the effect that excise duty is payable on the components of these blends (where applicable), but not on the blends themselves.
3. The instrument 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. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Effect of this instrument

6. Section 77G of the Excise Act provides that fuel blending to produce goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* (Excise Tariff Schedule) constitutes the manufacture of those goods, which means the resultant blends are excisable. Section 77H exempts certain fuel blends from being covered by section 10(g) of the Excise Tariff Schedule, meaning they are not taken to have been manufactured for the purposes of section 77G. Section 77H also allows the Commissioner of Taxation to specify by legislative instrument other circumstances in which fuel blends are not taken to be goods covered by paragraph 10(g) of the Excise Tariff Schedule.
7. This instrument specifies those other circumstances in which blends of excisable fuels, with or without other substances, are taken not to be excisable goods. This has the effect that excise duty is payable on the components of these blends (where applicable), but not on the blends themselves.
8. Paragraph 6(a) provides an exemption for two-stroke gasoline (that is, petrol).
9. Paragraph 6(b) exempts incidental blending within a storage tank or a vehicle's fuel tank. This exemption applies where there is no intention to benefit from the blend and practical considerations prevent the complete emptying of a tank of a relatively small quantity of product before filling it with the same product or another product. It is a matter of fact and degree whether the contents of a tank should be regarded as 'remnants' and therefore whether the resulting blend should be regarded as an 'incidental' blend.
10. Paragraph 6(c) provides an exemption for stabilised crude petroleum oil. Stabilised crude petroleum oil used in an oil refinery in refining (not in an internal combustion engine) is excluded from paragraph 10(a) of the Excise Tariff Schedule and is therefore not dutiable. A blend of such stabilised

crude petroleum oil and diesel or biodiesel is appropriately excluded from paragraph 10(g). Duty is payable only on the diesel or biodiesel component.

11. Paragraph 6(d) provides an exemption for eligible goods on which duty has been paid that are blended with a dye.

12. Paragraph 6(e) relates to the addition of certain kinds of performance enhancing or engine maintenance additives to fuel. In all cases, the prepared additives must not be methanol or eligible goods (or their imported equivalents). Where bulk blending occurs (that is, for packages that are more than 10 litres capacity), the total amount of all prepared additives in the blend must not exceed 0.5% volume to volume.

13. Paragraph 6(f) provides an exemption for blending amounts of liquified petroleum gas (LPG) where any applicable excise duty or an excise equivalent duty of customs has been paid and the blending occurs in a prescribed container or tank. The exemption is not available where the tank in which the blending occurs is for use in a system for supplying fuel to an internal combustion engine of a motor vehicle of vessel.

14. The term 'motor vehicle' has its ordinary meaning, except it does not include a vehicle designed merely to move goods with a forklift that is for use primarily off public roads, or a vehicle of a kind prescribed by regulations made for the purposes of paragraph 41-10(4)(b) of the *Fuel Tax Act 2006*.

Compliance cost assessment

15. To be advised.

Background

16. The previous instrument – *Excise (Blending Exemptions) Determination 2014 (No. 1)* (2014 Determination) – was developed to provide equal treatment for all taxpayers, as it allowed for a more inclusive regime of bulk additive preparations whilst still limiting the risk of substitution by regulating the amount of additive in the blend.

17. This instrument continues this general approach. It repeals and replaces the 2014 Determination, which would otherwise sunset on 1 October 2024, but is intended to achieve the same policy outcome.

Consultation

18. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a legislative instrument.

19. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

Please forward your comments to the contact officer by the due date.

Due date:	29 May 2024
Contact officer:	Alexandra Godwin
Email:	alexandra.godwin@ato.gov.au
Phone:	(03) 8632 5119

Legislative references

Acts Interpretation Act 1901

Excise Act 1901

Excise Tariff Act 1921

Fuel Tax Act 2006

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

DRAFT

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Excise (Blending Exemptions) Instrument 2024

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 legislative instrument specifies circumstances in which blends of excisable fuels, with or without other substances, are taken not to be excisable goods. This has the effect that excise duty is payable on the components of these blends (where applicable), but not on the blends themselves.

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 blending of fuels.

Conclusion

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