



Explanatory Statement

Excise Act 1901

Excise (Blending exemptions) Determination 2014 (No. 1)

Revocation and replacement of previous instrument

1. *Excise (Blending exemptions) Determination 2014 (No. 1)* revokes and replaces *Excise (Blending exemptions) Determination 2012 (No. 2)* – F2012L01262.
2. Paragraph (f) of the original instrument contained an exemption for the blending of certain bulk additives with duty paid eligible goods. The use of product brand names in that determination had led to the exemption becoming too restrictive. Specifically this had resulted in:
 - the restriction of new entrants into the market
 - commercial issues for entities that produced the exempted products relating to new branding, reformulation and expansion of product range
 - redundant provisions where the branded product was discontinued.
3. The replacement of paragraph (f) overcomes the above deficiencies and provides equal treatment for all taxpayers as it allows 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.
4. Paragraph (e) has also been re-drafted to provide a consistency of style with paragraph (f) which enables a straightforward differentiation between blending exemptions for additive preparations based on volume.
5. Aside from this updated blending circumstance, the remaining exemptions set out in the previous determination are unchanged.

General outline

6. This Explanatory Statement is provided in accordance with section 26 of the *Legislative Instruments Act 2003*.
7. The instrument is made under section 77H of the *Excise Act 1901* (Excise Act) and takes effect from 1 July 2014. The previous instrument commenced on 1 July 2012.
8. In addition to providing circumstances in which fuel blends are exempt from excise manufacture, section 77H of the Excise Act gives power to the CEO (i.e. the Commissioner of Taxation) to specify by legislative instrument, other circumstances in which fuel blends are taken not to be goods covered by paragraph 10(g) of the Schedule to the *Excise Tariff Act 1921* and therefore not subject to duty.

Date of effect

9. This determination commences on 1 July 2014.

Effect of the instrument

10. The determination specifies circumstances in which blends of excisable fuels, with or without other substances, are taken not to be excisable goods. Excise duty is therefore payable on the components of these blends (where applicable), but not on the blends themselves.
11. Compliance cost impact: No change/low – minor or machinery in nature. A compliance cost assessment indicates a minor impact to both implementation and ongoing compliance costs.
12. Item 8(a) provides an exemption for two-stroke petrol.
13. Item 8(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 as such 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.
14. Item 8(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 the Excise tariff under paragraph 10(a) and is therefore not dutiable. A blend of such stabilised crude petroleum oil and diesel or biodiesel is appropriately excluded from paragraph 10(g) and duty is therefore payable only on the diesel or biodiesel component.
15. Item 8(d) provides an exemption for eligible goods on which duty has been paid that are blended with a dye.
16. Item 8(e) provides an exemption for eligible goods on which duty has been paid which are blended with prepared additives that:
 - (i) are packaged into packages of not more than 10 litres capacity, and
 - (ii) enhance the performance of an internal combustion engine or assist in its maintenance, and
 - (iii) are not methanol or eligible goods (or their imported equivalents)
17. Item 8(f) provides an exemption for eligible goods on which duty has been paid which are blended with prepared additives that:
 - (i) are not packaged into packages of 10 litres capacity or less, and
 - (ii) enhance the performance of an internal combustion engine or assist in its maintenance, and
 - (iii) are not methanol or eligible goods (or their imported equivalents), and
 - (iv) where the total amount of all prepared additives in the resultant blend does not exceed 0.5 % v/v

18. Item 8(e) and item 8(f) relate to the addition of certain kinds of performance enhancing or engine maintenance additives to fuel. Item 8(e) limits the amount of prepared additive that is exempted from blending with eligible goods based on the package size. In bulk blending circumstances, item 8(f) limits the amount of additive that is exempted from blending with eligible goods based on the percentage volume of all prepared additives in the blend.
19. Item 8(g) provides an exemption for blending amounts of LPG when the following apply:
 - (i) any applicable excise duty or an excise equivalent duty of Customs that is payable on each quantity of the LPG has been paid;
and
 - (ii) the blending occurs:
 - (a) in a container that is capable of containing not more than 210 kilograms of LPG; or
 - (b) in a tank at residential premises and the resultant blend is not for use in carrying on an enterprise; or
 - (c) in a tank that is for use in a system for supplying LPG to at least 2 residential premises (whether or not the system also supplies fuel to premises other than residential premises)
and
 - (iii) the tank in which the blending occurs is not for use in a system for supplying fuel to an internal combustion engine of either a motor vehicle or a vessel, either directly or by filling another tank connected to such an engine.

For the purposes of (iii), the term motor vehicle does not include a vehicle that is designed merely to move goods with a forklift and is for use primarily off public roads, or a vehicle of a kind prescribed by the regulations for the purposes of paragraph 41-10(4)(b) of the *Fuel Tax Act 2006*.

Impact of the instrument

20. Together with the provisions for blends already made in section 77H of the Excise Act, the instrument ensures that blending exemptions in the former determination are maintained and updated to meet the evolving needs of taxpayers. This provides greater certainty in relation to excise obligations around the blending of fuels.

Consultation

21. Consultations on the determination was undertaken by direct contact with affected entities. No comments were received that indicated the proposals in the draft determination should not proceed.
22. Consultation was undertaken with the Revenue Analysis Branch (RAB) and no monetary, financial or revenue impacts resulting from or associated with this determination were identified.
23. The Treasury have been consulted and do not have any issue with the determination.

James O'Halloran
Deputy Commissioner of Taxation
06 06 2014

Previous draft:

Related Rulings/Determinations:

Excise (Blending exemptions) Determination 2012 (No. 2)
Excise (Blending exemptions) Determination 2012 (No. 1)
Excise (Blending exemptions) Determination 2006 (No. 1)

Fuel Tax (Fuel Blends) Determination 2012 (No. 1)
Fuel Tax (Fuel Blends) Determination 2006 (No. 3)

Subject references:

Excise
Excise tariff
Fuel blending
Exempt blends

Legislative references:

Excise Act 1901 section 77H (as at 29 June 2013)
Excise Act 1901 paragraph 77H(1)(a)
Excise Act 1901 paragraph 77H(1)(b)
Fuel Tax Act 2006 section 95-5

Other references:

ATO references

NO:
ISSN:

Statement of Compatibility with Human Rights

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

Excise (Blending exemptions) Determination 2014 (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

This legislative instrument specifies circumstances in which blends of excisable fuels, with or without other substances, are taken not to be excisable goods. Excise duty is therefore 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.

James O'Halloran
Deputy Commissioner of Taxation
06 06 2014
