


ER 2012/1A2 - Addendum - Excise: the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts

 This cover sheet is provided for information only. It does not form part of *ER 2012/1A2 - Addendum - Excise: the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts*

 View the [consolidated version](#) for this notice.



Addendum

Excise Ruling

Excise: the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Excise Ruling ER 2012/1 to reflect the legislative changes in the *Energy Grants and Other Legislation Amendment (Ethanol and Biodiesel) Act 2015* on the blending exemption provision and the *Treasury Laws Amendment (2019 Measures No. 1) Act 2019* on the repackaging provisions in the *Excise Act 1901*.

ER 2012/1 is amended as follows:

1. Paragraph 2

(a) Omit the paragraph (excluding footnote 1); substitute:

2. The Commissioner has the general administration of the excise regime with its framework principally provided by the *Excise Act 1901* (Excise Act) and the *Excise Tariff Act 1921* (Excise Tariff Act).¹

(b) Omit the wording of footnote 1; substitute:

¹ See sections 4 (definition of CEO) and 7 of the Excise Act, and sections 1A and 3 (definition of CEO) of the Excise Tariff Act.

2. Paragraph 11

After '*Acts Interpretation Act*', insert '*1901 (Acts Interpretation Act)*'.

3. Paragraph 12

In the first bullet point, omit the first five dashed points; substitute:

- 'Customs Tariff Act' is a reference to the *Customs Tariff Act 1995*;
- 'Excise Acts' is a reference to the *Excise Act 1901* and *Excise Tariff Act 1921*.

4. Paragraph 44

(a) Omit the paragraph (including footnote 16 but excluding footnote 15); substitute:

44. The repackaging of beer is taken to be the manufacture of beer for the purposes of the Excise Acts^{14A} if beer that has already been entered for home

consumption under subitems 1.2, 1.6 or 1.11 of the Schedule¹⁵ is then repackaged into sealed individual containers that are:

- less than 8 litres; or
- at least 8 litres but not exceeding 48 litres, where the container is not designed to connect to a pressurised gas or pump delivery system or other prescribed system.

(b) In the first sentence after 'Excise Acts', insert footnote 14A:

^{14A} Section 77FC of the Excise Act.

(c) In footnote 15, after '(2001) 49 ATR 114', insert '; (2001) 115 FCR 205'.

5. Paragraph 45

- (a) After 'has been paid and', insert 'then'.
- (b) Omit 'repackages it'; substitute 'repackages the beer'.

6. Paragraph 46

After the paragraph, insert new paragraphs 46A to 46F (including headings):

Example 5A: repackaging that is the manufacture of an excisable good

46A. *Harry's Hotel refills empty containers ('growlers') for their customers. They fill these smaller containers directly from 30 litre, duty paid kegs, using their draught beer system.*

46B. *Depending on their percentage of alcohol by volume, the 30 litre kegs were entered under one of subitems 1.2, 1.6 or 1.11 of the Schedule as they were designed to connect directly to a gas delivery system.*

46C. *As the beer is being repackaged into a container of less than 8 litres, the refilling of the growlers is taken to be manufacture for excise purposes.*

Example 5B: repackaging that is the manufacture of an excisable good

46D. *George's Craft Brewery packages their beer in 50 litre kegs and connects the kegs to their draught beer system. Depending on their percentage of alcohol by volume, the 50 litre kegs were entered under one of subitems 1.2, 1.6 or 1.11 of the Schedule.*

46E. *On occasion they fill 30 litre sealed containers, directly from their draught beer system, for the local restaurant.*

46F. *The 30 litre sealed containers are not designed to be connected to a pressurised gas or pump delivery system or other prescribed system. As such the repackaging is taken to be manufacture for excise purposes.*

7. Paragraph 88

- (a) After the heading 'Provision application dates', insert new bullet point:
- Section 77FC of the Excise Act:
 - changes to the repackaging provisions for beer from 1 July 2019.
See *Treasury Laws Amendment (2019 Measures No. 1) Act 2019*.
See paragraph 44 of this Ruling.
- (b) In the third bullet point, omit 'paragraphs 56 and 129'; substitute 'paragraphs 56 and 129A'.

8. Paragraph 95

In the first sentence, omit 'section 5 of the Schedule'; substitute 'section 5 of the Excise Tariff Act'.

9. Paragraph 114

Omit the paragraph; substitute:

114. Section 77FC of the Excise Act states:

If:

- (a) beer classified to subitem 1.2, 1.6 or 1.11 of the Schedule to the *Excise Tariff Act 1921* is entered for home consumption; and
- (b) the beer is repackaged into sealed individual containers:
 - (i) of less than 8 litres; or
 - (ii) of at least 8 litres but not exceeding 48 litres and not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed for the purposes of subitem 1.1, 1.5 or 1.10 of that Schedule (if any);

then, for the purposes of this Act, that repackaging is taken to be the manufacture of beer.

10. Paragraph 115

Omit the paragraph; substitute:

115. Under section 77FC of the Excise Act, the repackaging of duty paid beer that was entered at a concessional rate (that is, beer that was entered under subitem 1.2, 1.6 or 1.11) is taken to be the manufacture of beer where it is repackaged into sealed individual containers that are:

- less than 8 litres; or
- of at least 8 litres but not exceeding 48 litres, where the container is not designed to connect to a pressurised gas delivery system, pump delivery system or other prescribed system.

11. Paragraph 127

(a) Omit the paragraph (excluding footnote 68); substitute:

127. Subsection 77H(1) of the Excise Act excludes from paragraph 10(g) a blend of one or more eligible goods (goods covered by paragraphs 10(a) to 10(f) of the Schedule) (with or without other substances) where either the:

- applicable excise duty or a duty of Customs has been paid on all products and other substances (if any) included in the blend, and the rate of duty paid on all products and other substances in the blend is the same (apart from denatured ethanol for use in an internal combustion engine or biodiesel, which must have been duty paid at their applicable duty rates); or
- goods have been covered by a determination in force under subsection 95-5(1) of the Fuel Tax Act.⁶⁸

(b) In footnote 68, omit '*Fuel Tax (Fuel Blends) Determination 2006 (No. 3)*'; substitute '*Fuel Tax (Fuel Blends) Determination 2016 (No. 1)*'.

12. Paragraph 128

(a) Omit the paragraph (excluding footnote 69); substitute:

128. However, subsection 77H(1) of the Excise Act does not apply if any of the eligible goods or other substances on which excise duty or a duty of Customs has been paid are taxable fuel for which an entity has been entitled to a fuel tax credit under the Fuel Tax Act.⁶⁹

128A. Subsection 77H(2AA) of the Excise Act ensures that for the purposes of paragraph 77H(1)(a) of that Act, when determining whether eligible goods and other substances have been duty paid at the same rate, differences in rate due to any of the following should be disregarded:

- any indexation of rates under section 6A of the Excise Tariff Act; and
- any indexation of rates under section 19 of the Customs Tariff Act; and
- any changes of rates under the Excise Tariff Act as a result of amendments of that Act by Part 1 of Schedule 1 to the *Excise Tariff Amendment (Fuel Indexation) Act 2015*; and
- the effect of sections 19AAB and 19AAC of the Customs Tariff Act.^{69A}

(b) At the end of paragraph 128A, insert new footnote 69A:

^{69A} Subsection 77H(2AA) of the Excise Act.

13. Paragraph 129

Omit the paragraph (excluding footnotes 70 and 71); substitute:

129. Subsection 77H(2A) of the Excise Act excludes blends of one kind of relevant fuel from paragraph 10(g) of the Schedule where both of the following apply:

- none of the amounts of the relevant fuel are subject to a remission (either in full or in part) of excise duty or a duty of Customs; and

- the excise duty or a duty of Customs that is payable on the amounts of the relevant fuel has been paid.⁷⁰

129A. Subsection 77H(2B) of the Excise Act excludes from paragraph 10(g) of the Schedule goods that are the product of the blending of amounts of one kind of relevant fuel that is either liquefied petroleum gas or liquefied natural gas if, for each amount in the blend, either of the following applies to the amount:

- the amount is subject to a remission (whether in full or in part) of excise duty or a duty of Customs on the grounds that the amount is not used, or intended for use, in an internal combustion engine in either a motor vehicle or a vessel; or
- the amount is not subject to excise duty or a duty of Customs because the amount was manufactured, produced or imported before 1 December 2011.⁷¹

14. Paragraph 130

In footnote 73, omit '2012 (No.2)'; substitute '2014 (No. 1)'.

15. Paragraph 132

In footnote 75, omit 'produced n Australia'; substitute 'produced in Australia'.

16. Paragraph 147

Omit the paragraph and detailed contents list; substitute:

147. The following is a detailed contents list for this Ruling:

	Paragraph
Summary – what this Ruling is about	1
Background	2
Interpretation	12
Class of entities	13
Ruling	14
Meaning of 'manufactured or produced'	15
<i>Factors that may be taken into account in determining whether something new or different thing has been manufactured or produced in an excise context include:</i>	17
<i>The thing did not previously exist</i>	17
<i>A different thing from that out of which it is made or results</i>	19
<i>Change in form</i>	20
<i>Differences in its utility</i>	21
<i>Improving the goods</i>	22
<i>Subjective intention is relevant but not determinative</i>	23

<i>Quality or value of incidental goods</i>	24
<i>Goods for own consumption</i>	25
<i>Application of skill, knowledge or labour</i>	26
<i>Example 1: manufacture or production of an excisable good</i>	27
<i>Example 2: manufacture or production of an excisable good and a non-excisable good</i>	31
<i>Example 3: manufacture or production of an excisable good</i>	36
<i>Example 4: no manufacture or production of an excisable good</i>	39
<i>Excise provisions that modify, clarify or operate within the meaning of 'manufactured or produced' and provisions that exempt excisable goods for certain uses from excise duty</i>	42
<i>Tobacco curing – exemption</i>	43
<i>Repackaging of beer – taken to be manufacture</i>	44
<i>Example 5: repackaging that is the manufacture of an excisable good</i>	45
<i>Example 5A: repackaging that is the manufacture of an excisable good</i>	46A
<i>Example 5B: repackaging that is the manufacture of an excisable good</i>	46D
<i>Compressed natural gas for certain uses – exempt from excise duty</i>	47
<i>Liquefied petroleum gas and liquefied natural gas – exempt from excise duty</i>	50
<i>Blending</i>	53
<i>Example 6: blending that is the manufacture or production of an excisable good</i>	58
<i>Example 7: blending that is not the manufacture or production of an excisable good</i>	62
<i>Processes in deriving a liquid hydrocarbon product</i>	65
<i>Recycling</i>	66
<i>Example 8: recycling that is not the manufacture or production of an excisable good</i>	70
<i>Example 9: recycling (filtering and de-watering only) that is not manufacturing or producing an excisable good</i>	75A
<i>Example 10: recycling that is manufacturing or producing an excisable good</i>	75H
Date of effect	88
Appendix 1 – Explanation	90
Meaning of 'manufactured or produced'	90
<i>Subjective intention is relevant but not determinative</i>	96

<i>The thing did not previously exist</i>	98
<i>Differences – including change in form, utility and improvements</i>	100
<i>Complexity is not determinative but may be relevant</i>	105
<i>Application of skill, knowledge or labour</i>	107
<i>Excise provisions that modify, clarify or operate within the meaning of ‘manufactured or produced’ and provisions that exempt excisable goods for certain uses from excise duty</i>	110
<i>Section 68 of the Excise Act – Exemption for the curing of tobacco</i>	111
<i>Section 77FC of the Excise Act – Repackaging of beer taken to be manufacture</i>	114
<i>Section 77HA of the Excise Act – Exemption for compressed natural gas for certain uses</i>	116
<i>Section 77HB of the Excise Act – Exemption for liquefied petroleum gas and liquefied natural gas for certain uses</i>	119
<i>Blending</i>	123
<i>Section 77FM of the Excise Act – Spirit blending is to be treated as manufacture</i>	124
<i>Section 77G of the Excise Act – Fuel blending is to be treated as manufacture</i>	125
<i>Section 77H of the Excise Act – Blending exemptions</i>	126
<i>Section 77J of the Excise Act – Recycling of solvents</i>	131
<i>Liquid hydrocarbon products derived through a recycling, manufacturing or other process</i>	133
<i>Derived</i>	133
<i>Items 10 and 15 of the Schedule – the reference to ‘recycling’ or ‘recycled’</i>	137
<i>Filtering and de-watering – alternative view</i>	146A
Appendix 2 – Detailed contents list	147

This Addendum applies on and from 3 February 2021.

Commissioner of Taxation

3 February 2021

ATO references

NO: 1-HS1QOWM
 ISSN: 2200-6087
 BSL: PW

ATOlaw topic: Excise ~~ Alcohol ~~ Other
 Excise ~~ Cross commodity
 Excise ~~ Product stewardship oil ~~ Other
 Excise ~~ Tobacco ~~ Other

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).