

EXC 2009/1 -



Excise (Alcoholic strength of excisable goods) Determination 2009 (No. 1)

Excise Act 1901

Under section 65 of the *Excise Act 1901* (Excise Act) I make the following determination:

Revocation of existing determination

1. *Excise (Alcoholic strength of excisable beverages) Determination 2006 (No. 1)* (FRLI No. F2006L2165) is revoked.

Citation

2. This determination may be cited as the *Excise (Alcoholic strength of excisable goods) Determination 2009 (No. 1)*.

Legislative Instrument

3. This determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Commencement

4. This determination commences on the day after registration.

Application

5. This determination applies to alcoholic excisable goods entered for home consumption on or after the date of commencement.

Object

6. Under section 65 of the Excise Act, the CEO may determine rules for working out the volume, weight strength of alcohol in excisable goods entered for home consumption.
7. These rules govern the measurement of the alcoholic strength of excisable goods and provide permitted variations in strength from the actual strength for the purpose of determining duty payable.

Interpretation

8. In this determination:

alcoholic excisable goods means goods which fall to tariff items 1, 2 or 3 of the *Excise Tariff Act 1921*.

appropriate authority means

- a verifying or authorising authority appointed by the Chief Metrologist,
- an authority accredited by the National Association of Testing Authorities (NATA); or
- a person who holds, or an employee of a person who holds, a servicing licence under the Trade Measurement Act of the relevant State or Territory.

BOPS means brew on premises shops. BOPS are breweries licensed to provide to the public commercial facilities and equipment for the manufacture of beer for non-commercial purposes.

CEO means the Commissioner of Taxation (see subsection 4(1) of the Excise Act)

Chief Metrologist means the Chief Metrologist or Acting Chief Metrologist appointed under the *National Measurement Act 1960*

strength means percentage by volume of alcohol at 20°C.

Sampling & analysis

9. The alcoholic strength of the excisable goods must be measured by analysing samples of the product after it has reached its final alcoholic strength.

10. Packaged alcoholic excisable goods may be either: sampled in the header vessel immediately prior to packaging, or; sampled directly from the packaging line. Sufficient samples must be taken to ensure the measured strength accurately reflects the actual strength of the excisable goods. Bulk alcoholic excisable goods may be sampled at any point after reaching final alcoholic strength. In the case of beer produced for non-commercial purposes, it is sufficient for the BOPS to use the strength obtained from the test brews of each recipe.

11. The alcoholic strength of the excisable goods:

11.1. is taken to be the average of the strength of all the sample measurements;

11.2. is to be expressed as a percentage, if the alcohol were measured at a temperature of 20°C; and

11.3. if a calculation for the purposes of ascertaining that volume is made by reference to the specific gravity of alcohol, the calculation is to be made on the basis that, at a temperature of 20°C and in a vacuum, the specific gravity of alcohol in relation to water is 0.79067.

Measuring & equipment

12. The instruments and processes used to measure the alcoholic strength of excisable goods must be able to produce a result with a tolerance of plus or minus 0.2 percentage points of the actual alcoholic strength.

13. Permissible methods are:

13.1. gas chromatography;

13.2. near infra-red spectrometry;

13.3. distillation followed by the gravimetric measurement of the distillate or by measurement in a density meter; or

13.4. any other method that consistently produces a similar result demonstrated by a documented testing process.

14. Breweries producing less than 100,000 litres of beer in a financial year may use a hydrometer and a formula to determine the alcoholic strength of the beer, provided the formula is supported by a documented testing process that shows the formula produces accurate results. The records are to be retained for 5 years after a formula has ceased to be used. Individual brews produced in a BOPS for non-commercial purposes using commercial equipment do not need to be strength tested, provided the alcoholic strength that the recipe produces has been established using one of the above methods. The strength of the recipes should be re-established at least once a year.

15. Calibrated volumetric glassware and pycnometers must be used. Hydrometers, thermometers and weighing instruments must be calibrated at intervals of one year or less against a standard instrument certified by an appropriate authority.

Permitted variations

16. For the purposes of working out the excise duty payable on beer:

- 16.1. if the actual strength of beer, other than beer subject to secondary fermentation, does not exceed the labelled (or otherwise indicated) strength by more than 0.2 percentage points, the strength is the labelled (or otherwise indicated) strength and the tariff classification applicable to that strength applies.
- 16.2. if the actual strength of beer, other than beer subject to secondary fermentation, exceeds the labelled (or otherwise indicated) strength by more than 0.2 percentage points, the strength is the actual strength and the tariff classification applicable to that strength applies.
- 16.3. if the actual strength of beer subject to secondary fermentation does not exceed the labelled (or otherwise indicated) strength by more than 0.3 percentage points, the strength is the labelled (or otherwise indicated) strength and the tariff classification applicable to that strength applies.
- 16.4. if the actual strength of beer subject to secondary fermentation exceeds the labelled (or otherwise indicated) strength by more than 0.3 percentage points, the strength is the actual strength and the tariff classification applicable to that strength applies.

17. For the purposes of working out the excise duty payable on alcoholic excisable goods other than beer:

- 17.1. if the actual strength of the excisable good does not exceed the labelled (or otherwise indicated) strength by more than 0.2 percentage points, the strength is the labelled (or otherwise indicated) strength and the tariff classification applicable to that strength applies;
- 17.2. if the actual strength of the excisable good exceeds the labelled (or otherwise indicated) strength by more than 0.2 percentage points, the strength is the actual strength and the tariff classification applicable to that strength applies.

Dated this 4 day of March 2009



Tim Dyce
Deputy Commissioner and Delegate of the Commissioner of Taxation