



Legislative Instrument: Excise (Spirit blending exemptions) Determination 2010 (No.1)

Explanatory Statement

General Outline of Instrument

1. This instrument is made under subsection 77FM(3) of the *Excise Act 1901* (Excise Act).
2. The instrument specifies circumstances where spirit blending to produce spirit is not taken to constitute the manufacture of that spirit under the Excise Act.
3. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Legislative Instruments Act).

Date of effect

4. The instrument is taken to have commenced on the day Schedule 6 to the *Tax Laws Amendment (2009 Measures No. 6) Act 2010* commenced.
5. In accordance with subsection 12(2) of the Legislative Instruments Act the retrospective application of this instrument will not adversely affect the rights of, or impose liabilities on a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration so as to disadvantage that person in respect of anything done or omitted to be done before the date of registration.

What this instrument is about:

6. The purpose of this instrument is to identify circumstances in which spirit produced by blending spirits is not taken to constitute the manufacture of that spirit under the Excise Act and therefore excluded from goods described by item 3 of the Schedule to the *Excise Tariff Act 1921* (the Schedule).
7. Paragraph 8(a) excludes the incidental blending of spirit (whether previously entered for home consumption or under bond) within a vessel or container. The exclusion applies where there is no intention to benefit from the blend as such and practical considerations prevent the complete emptying of a vessel or container of a small quantity of spirit or another substance before filling it with spirit. It is a matter of fact and degree whether the contents of the vessel or container should be regarded as 'remnants' and whether the blend should be regarded as 'incidental'.
8. Paragraph 8(b) excludes the blending of spirit that has been previously entered for home consumption under sub-items 3.5, 3.6 and 3.7 of the Schedule with like spirit

that has also been previously entered for home consumption or another substance by a person who has approval under the Excise Act to use that spirit.

9. For example, where a person has an approval to use spirit for fortifying Australian wine and receives spirit previously entered for home consumption under sub-item 3.5 of the Schedule and that spirit is blended with other spirit for fortifying Australian wine, the blending of these spirits will not be considered to constitute manufacture and the spirit produced as a result is excluded from goods described by item 3 of the Schedule. This applies in the same way to spirit entered under sub-items 3.6 and 3.7 of the Schedule.
10. Also, where a person has approval under the Excise Act (either by way of a specific approval or under a determination) to use spirit entered under sub-items 3.6 and 3.7 for a specified purpose (eg industrial, manufacturing, scientific, medical, veterinary or other purpose), and that purpose involves blending the spirit with another substance, the resultant product will not constitute manufacture and be excluded from goods described by item 3 of the Schedule.
11. Paragraph 8(c) excludes the blending of denatured spirit that has been previously entered for home consumption under sub-item 3.8 of the Schedule with like spirit that has also been previously entered for home consumption or another substance by an end user.
12. Therefore, where spirit has been denatured according to a formula determined under section 77FG of the Excise Act (other than spirit for use as fuel in an internal combustion engine) and entered for home consumption under sub-item 3.8 of the Schedule, and that spirit is blended with another substance, the resultant product will not constitute manufacture and be excluded from goods described by item 3 of the Schedule.
13. Paragraph 8(d) excludes the blending of spirit that has been previously entered for home consumption with like spirit previously entered for home consumption where no skill knowledge or judgement was used in the blending process and the blending process does not result in the making of a product that is different from its inputs in any way (for example, colour, taste or percentage of alcohol by volume).

Effect of this instrument:

14. By setting out in this instrument the circumstances where spirit blending does not constitute manufacture for the purposes of the Excise Act, this instrument will ensure that certain end users of spirits will not fall into the excise system where it is not the intention of the legislation.

Background:

15. The concessional spirits regime is a mechanism under the Schedule which allows domestic high strength neutral spirit (HSNS) to be delivered into the domestic market at a 'free' rate of duty. HSNS is generally not intended for consumption as an alcoholic beverage and is generally used for 'a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose'.
16. Section 77FM of the Excise Act was introduced to deem spirit blending to produce spirit as manufacture for the purposes of the Excise Act. The effect of section 77FM of the Excise Act is that when imported HSNS is blended with domestically

produced HSNS, the blending results in its transfer into the excise system and the extinguishment of any customs liability other than any *ad valorem* component that must be paid. The entirety of the excisable HSNS blend is then delivered into the domestic market at a 'Free' rate of duty under the concessional spirits regime.

17. The introduction of section 77FM of the Excise Act provides legislative authority for long accepted administrative practice and, as such, maintains the status quo for the concessional spirits regime.
18. Subsections 77FM(2) and (3) of the Excise Act allow the Commissioner to make determinations by legislative instrument that exempt certain activities from constituting excise manufacture. By setting out the circumstances in a legislative instrument where spirit blending does not constitute manufacture for the purposes of the Excise Act, certain end users of spirits will be guarded against falling into the excise system and being subject to licensing requirements where this would not be the intention of the Excise Act.

Consultation:

19. On 12 October 2009, the Treasury initiated a 2 week public consultation process by publishing the exposure draft legislation and draft explanatory material on their website (www.treasury.gov) and inviting interested parties to comment. The legislation referenced the need for a legislative instrument. Given that no public comments were received on the legislation, separate consultation on the legislative instrument was deemed unnecessary.
20. Further, the ATO consulted with all major importers of HSNS and those clients that operate contract storage places that store (and possibly blend) HSNS on behalf of some importers in relation to section 77FM of the Excise Act and the Explanatory Memorandum. None of the stakeholders consulted expressed any concerns.
21. The Revenue Analysis Branch has assessed the regulatory impacts of this instrument and expects that it will result in no overall compliance cost impact, comprised of no implementation impact and no ongoing compliance costs relative to the affected group.



Tim Dyce
Deputy Commissioner of Taxation

31 March 2010

Legislative references:

Excise Act 1901

Legislative Instruments Act 2003

Schedule to the Excise Tariff Act 1921