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Australian Government
Australian Taxation Office

Excise guidelines for the alcohol industry

July 2026

We acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them, their cultures, and Elders past and present.

OUR COMMITMENT TO YOU

The information in this publication is current at 8 July 2026.

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information in this Guide and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith, we will not charge you interest.

If you feel that this Guide does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

About this Guide

This Guide is intended to be a reference tool for the alcohol industry to assist its members to meet their excise obligations. It contains information about the excise system and how it applies to alcohol and alcohol products that are manufactured or produced (hereafter the reference to 'manufacture' or 'manufactured' is a reference to 'manufactured or produced', 'manufacture or produce' or 'manufacture or production' having regard to the relevant context unless otherwise specified) in Australia.

The Guide will provide you with a broad outline of excise law and your compliance obligations – it does not cover every aspect of how excise law applies to every situation.

Throughout this Guide, you will find important notes (look for the exclamation symbol) that will help you with key information you should note.

You will also find 'more information' boxes (look for the right direction symbol) that will show any further steps you may need to take or supplementary information you may need to refer to.

The 'danger' notes (look for the danger symbol) give prominence to information that is critical to compliance. They suggest the highest level of urgency or facts you must comply with.

If this Guide does not fully cover your circumstances, seek help from us or a professional adviser. Contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at
  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days and finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

TERMS WE USE

When we say ‘you’, we mean you as a member of the alcohol industry who is either registered or wishes to register for excise.

Some technical terms used in this Guide may be new to you – some are defined in the legislation, others are not. These are indicated in quotation marks when first used and are explained at the end of that chapter.

The terms CEO, Collector, and Commissioner are all used in the legislation in reference to various officers. In most instances in this Guide, we have not used these specific terms and simply refer to 'us' or 'we'.

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1 INTRODUCTION

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1 INTRODUCTION

1.1 PURPOSE

This Chapter deals with:

- what excise is
- an overview of excise legislation relevant to alcohol
- who administers excise, and
- when you are involved in the excise system.

It provides a general introduction to excise as it relates to 'alcohol products'.

Further detail on the matters discussed is contained in later chapters.

1.2 WHAT IS EXCISE?

The *Commonwealth of Australia Constitution Act* (Constitution) provides that only the Commonwealth can impose duties of excise.[1]

In *Ha v New South Wales*[2] (*Ha*), the High Court explained a duty of excise as follows[3]:

> … duties of excise are taxes on the production, manufacture, sale or distribution of goods, whether of foreign or domestic origin. Duties of excise are inland taxes in contradistinction from duties of customs which are taxes on the importation of goods.

Excise is imposed by the *Excise Tariff Act 1921* on goods dutiable under the Schedule to that Act (Schedule) and manufactured or produced in Australia. It can be seen that this clearly fits the definition of duty of excise as described by the High Court in the *Ha* case.

1.3 OVERVIEW OF EXCISE LEGISLATION

The principal legislative framework for the excise system, relating to alcohol, is contained in the:

- *Excise Tariff Act 1921* (Excise Tariff Act)

[1] Section 90 of the Commonwealth of Australia Constitution Act.

[2] *Ha v New South Wales* [1997] HCA 34.

[3] *Ha* [1997] HCA 34; 97 ATC 4674 at [4684], per Brennan CJ, McHugh, Gummow and Kirby JJ.

- *Excise Act 1901* (Excise Act), and
- *Excise Regulation 2015* (Excise Regulation).

The Excise Tariff Act imposes excise on certain goods manufactured or produced in Australia[4] and the Excise Act sets out the administration of excise duties. The imposition of excise duties is in a separate Act to their administration because the Constitution provides that laws imposing taxation (such as excise) shall only deal with the imposition of tax.

To change the Excise Tariff Act, an amending Act must be passed through Parliament. However, there are parliamentary procedures which allow for changes to the excise tariff to apply immediately, pending amendment of the Act through Parliament. These procedures are known as tariff proposals.

For more information on tariff proposals, see Section 1.3.1 *Excise Tariff Act 1921.*

1.3.1 *Excise Tariff Act 1921*

There are 3 key provisions in the Excise Tariff Act that operate to:

- impose excise duty
- identify excisable goods and the applicable duty rates (the Schedule), and
- index the duty rate.

Imposition of excise duty

Section 5 of the Excise Tariff Act imposes excise duty on goods that are dutiable under the Schedule and manufactured or produced in Australia. Excise duty is imposed at the time of manufacture or production of the relevant goods. The Schedule lists the various goods that are subject to excise and the rate of duty applicable. It is sometimes referred to as the excise tariff.

The definition of manufactured or produced

The term 'manufacture' is defined in section 4 of the Excise Act and includes all processes (that is, operations or actions) used in the manufacture of excisable goods. The definition in the Excise Act is an inclusive one, that is, it includes some processes that might otherwise not generally be considered as manufacture. 'Produce' is not defined in the Excise Act or the Excise Tariff Act.

The Commissioner's view on the meaning of 'manufactured or produced' is set out in Excise Ruling ER 2012/1 *Excise: the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts*.

The phrase 'manufactured or produced' for the purposes of the Excise Act and Excise Tariff Act, requires that something new or different results from a process.

[4] Section 5 of the Excise Tariff Act imposes excise duty on goods 'manufactured or produced'. In this Guide, the term manufactured means manufactured or produced unless otherwise specified.

It will be a question of fact and degree as to whether the end product constitutes a new or different thing from that out of which it was made or results. This involves a process of evaluating and weighing a range of factors for the particular circumstance.

We consider that the factors that may be taken into account in determining whether a new or different thing has been manufactured or produced for excise purposes include:

- The thing did not previously exist. The parts have been combined to form a thing that is distinct (for example, commercially distinct) from that out of which it is made.
- The thing that is brought into existence has new or different qualities, properties or combinations thereof from that out of which it is made or derived. It may be any quality that indicates a difference – qualities such as colour, shape, or chemical composition.
- A change in form (for example, change from solid to liquid, or liquid to gas) where a new or different thing has resulted from this change – for example it has new qualities, properties or combinations thereof.
- Manufacture or production may involve the application of skill, knowledge or labour to a thing that brings into existence a new or different thing having a distinctive character or use.

Having regard to the operation of the excise system, it is considered that the phrase 'manufactured or produced' for the purposes of the Excise Acts requires that something new or different having a distinctive character or use, results from a process, which is captured under the Excise Acts.

This means that 'manufactured or produced' in the sense contemplated by the Excise Acts does not include activities that amount to reasonable steps taken in the course of consuming existing excisable (or excise equivalent) products once they have found their way into home consumption. If the excise legislation has been complied with, appropriate duties will have been paid on the products that have been delivered into home consumption, and the delivery of those products will have been authorised. Any subsequent dealings with those products that are consistent with the manner in which consumption of those products would normally occur, falls outside the scope of the Excise Act.

It will be a question of fact and degree whether, in the particular circumstances, the activities undertaken by a person amount to reasonable steps taken in the course of consuming existing excisable goods. Factors that may be relevant in establishing whether the use of excisable goods that have found their way into home consumption amounts to the manufacture or production of a good for excise purposes include the scale of production, method of production, volume of goods produced and whether the products are used in making other distinct marketable goods. Issues such as quantification, packaging and the application of brand names could evidence the 'marketable' factor.

We accept that where a bartender uses duty-paid alcohol to prepare mixed alcoholic beverages (for example, cocktails) behind a bar upon a customer's request for immediate consumption, this will not amount to the manufacture or production of a good dutiable under the Schedule.

This would also apply in circumstances where a bartender uses duty-paid alcohol to prepare a mixed alcoholic beverage upon a customer's request, which is dispensed in a sealed single-serve takeaway container for consumption shortly thereafter. The single-serve container into which the beverage is dispensed should not be capable of medium to long-term storage.

The schedule of excisable goods and the duty rates

The Schedule includes a table that lists the goods manufactured or produced in Australia that are subject to excise duty. These are called 'excisable goods'. The goods that are currently subject to excise fall within 3 broad groups:

- alcoholic beverages with an alcohol by volume of more than 1.15% (but excluding products on which wine equalisation tax (WET) applies) and spirits
- cigarettes and other tobacco products, and
- fuel and oils.

Within those 3 broad groups, the Schedule provides 8 different items and those items are (in most cases) further broken down into subitems. The table contains a description of the items and subitems and provides the rate of duty applicable to them.

Figure 1 sets out the alcohol products section of the table.

Figure 1: Extract of the table in the Schedule to the Excise Tariff Act, with rates of duty as at 3 February 2025

Item	Subitem	Unit	Description of goods	Rate of Duty
1			**Beer**	
	1.1	LAL	Beer not exceeding 3% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$52.87 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.2	LAL	Beer not exceeding 3% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$10.57 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.5	LAL	Beer exceeding 3% but not exceeding 3.5% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$61.57 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.6	LAL	Beer exceeding 3% but not exceeding 3.5% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$33.11 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

		prescribed by the regulations	
1.10	LAL	Beer exceeding 3.5% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$61.57 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
1.11	LAL	Beer exceeding 3.5% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$43.39 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
1.15	LAL	Beer not exceeding 3% by volume of alcohol produced for non-commercial purposes using commercial facilities or equipment	$3.71 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
1.16	LAL	Beer exceeding 3% by volume of alcohol produced for non-commercial purposes using commercial facilities or equipment	$4.28 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
2		**Other excisable beverages not exceeding 10% by volume of alcohol**	$104.31 per litre of alcohol
3		**Spirits; Other excisable beverages exceeding 10% by volume of alcohol**	
3.1	LAL	Brandy	$97.41 per litre of alcohol
3.2	LAL	Other excisable beverages exceeding 10% by volume of alcohol	$104.31 per litre of alcohol

3.5	LAL	Spirit that: (a) a person has an approval, under section 77FD of the *Excise Act 1901*, to use for fortifying Australian wine or Australian grape must; and (b) is otherwise covered by the approval	Free
3.6	LAL	Spirit that: (a) is for use by a person who is included in a class of persons determined under section 77FE of the *Excise Act 1901*; and (b) if a quantity is specified in a determination under that section in relation to the person—does not exceed that quantity; and (c) is for an industrial, manufacturing, scientific, medical, veterinary or educational purpose	Free
3.7	LAL	Spirit that: (a) a person has an approval, under section 77FF of the *Excise Act 1901*, to use for an industrial, manufacturing, scientific, medical, veterinary or educational purpose; and (b) is otherwise covered by the approval	Free
3.8	LAL	Spirit denatured according to a formula determined under section 77FG of the *Excise Act 1901*, other than spirit for use as fuel in an internal combustion engine	Free
3.10	LAL	Spirits not elsewhere included	$104.31 per litre of alcohol

You can find the current rates of duty, along with those applicable prior to 3 February 2025 at Excise duty rates (referred to in this Guide as the Tariff working page or working tariff).

Indexation of the duty rate

The rates of excise duty are set in the Schedule. However, section 6A of the Excise Tariff Act provides that the rates of duty may increase every 6 months (generally 1 February and 1 August). The amount of any increase is calculated by reference to the All Groups Consumer Price Index published quarterly by the Australian Bureau of Statistics.

These increases are commonly referred to as indexation. We publish these in the Commonwealth Gazette and, for ease of reference, we provide a working tariff which shows an up-to-date rate taking account of the indexation increases.

Indexation increases also apply to rates set under a tariff proposal.

Tariff proposals

Tariff proposals[5] are a means of changing the excise tariff so that the change is effective from the time it is proposed rather than after the enactment of an Excise Tariff Amendment Act. Rates may be adjusted up or down or products may be added or removed under a tariff proposal.

Changes to the excise tariff can be notified in the Parliament or, if the Parliament is not sitting, by notice in the Gazette. We then apply the proposal as if it is law.

The tariff proposal is required to be validated by an Act within 12 months giving retrospective effect to the date of the proposal.[6]

You cannot commence proceedings against us for any action taken to collect the amount set by the tariff proposal during the periods specified in section 114 of the Excise Act unless it is sanctioned by a Supreme Court of a state or territory.[7]

Effectively, this means you need to pay in line with a tariff proposal. Any increases in rates or introduction of new products through a tariff proposal must ultimately be levied by an amending Act, but we will protect the revenue by collecting amounts in line with the proposal.

If an amending Act validating the changes outlined within the tariff proposal is not passed within the prescribed periods, any additional amounts will be refunded to you.

1.3.2 *Excise Act 1901*

All excisable goods are subject to our control

Under section 61 of the Excise Act, all excisable goods are subject to the CEO's control until they are delivered for home consumption or exported to a place outside Australia. Excisable goods subject to the CEO's control are called 'underbond' goods.

The CEO is the Commissioner of Taxation.

Goods are delivered for home consumption when they are released into the Australian market in an authorised manner, whether through the lodgment and passing of an entry or under a periodic settlement permission.

[5] For an explanation of customs and excise tariff proposals, see About Tariff Proposals.

[6] In the absence of a tariff amendment bill, tariff proposals then before the House may be affirmed towards the end of a period of sittings by means of a tariff validation bill.

[7] Section 115 of the Excise Act.

Manufacture, storage and movement of excisable alcohol products

Before you can legally manufacture 'excisable alcohol products' you need a manufacturer licence granted under the Excise Act.[8] Under this licence you are also permitted to store excisable goods of a kind specified in the licence upon which duty has not been paid, including like products that you did not manufacture. It is an offence to manufacture excisable goods unless you have an excise manufacturer licence that specifies the goods you intend to manufacture.

If you are not a manufacturer, or you wish to store excisable goods upon which duty has not been paid and that are not of a kind specified in your manufacturer licence, you need a storage licence granted under the Excise Act that specifies the kind of excisable goods you wish to store.[9]

Before you can remove excisable alcohol products from premises covered by a licence, on which duty has not been paid, you need permission (a movement permission) granted under the Excise Act.[10]

There are several types of movement permission that we can issue. These include:

- a 'one-off' permission to move goods specified in the permission to another place specified in the permission
- an ongoing permission to move goods of a kind specified in the permission to another place specified in the permission (and such a permission remains in place until revoked)
- an ongoing permission to move goods of a kind specified in the permission to any other place licensed to manufacture or store goods of that kind
- permission to deliver goods for export.

Generally, we will not grant permission to move underbond excisable alcohol products on which duty has not been paid to a place that is not covered by either a manufacturer licence or a storage licence or unless the place is a wharf or airport and the goods are for export.

For more information about the excise licensing regime, refer to Chapter 2 Licensing: Applications.

For more information about movement permissions, refer to Chapter 5 Movement permissions.

Payment of duty on excisable alcohol products

The Excise Tariff Act imposes duty when excisable alcohol products are manufactured. The Excise Act specifies when the duty must be paid, how and what you must report to us, the relevant time to determine the rate of duty in force and provides a mechanism to require payment where duty has not been correctly accounted for on excisable alcohol products.

[8] Section 25 of the Excise Act.

[9] Subsection 4(1) (definition of 'storage licence') and Part IV of the Excise Act.

[10] Section 61A of the Excise Act.

In general terms, duty must be paid on the goods before they are delivered into home consumption (other than being delivered to another premises covered by a licence). Permission may be granted to deliver the goods prior to paying the duty.

For more information about payment of duty, refer to Chapter 6 Payment of duty.

1.3.3 *Excise Regulation 2015*

The Excise Regulation sets out provisions in relation to excisable goods such as:

- refunds and remissions, and
- drawbacks.

For more information about remissions, refunds and drawbacks, refer to Chapter 7 Remissions, refunds, drawbacks and exemptions.

1.4 ADMINISTRATION OF EXCISE

The Commissioner of Taxation has the general administration of the Excise Act and the Excise Tariff Act.[11] This means you deal with the Australian Taxation Office (ATO) when you are involved in the manufacture or storage of alcohol products manufactured in Australia.

Customs duty applies to imported alcohol products. The Australian Border Force (ABF) is responsible for administration of the *Customs Act 1901* (Customs Act) and *Customs Tariff Act 1995* (Customs Tariff Act); however, the ATO has been delegated responsibility for administering imported alcohol that is warehoused under the Customs Act.

1.5 INVOLVEMENT IN THE EXCISE SYSTEM

You are involved in the excise system if you:

- manufacture excisable alcohol products
- store or own excisable alcohol products upon which excise duty has not been paid.

[11] Section 7 of the Excise Act and section 1A of the Excise Tariff Act.

1.6 MORE INFORMATION

If you need more information on excise, as it relates to alcohol, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days and finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

Most of your business reporting and transactions can be done through ATO Online services.

1.7 TERMS USED

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are manufactured or produced in Australia and are listed in the Schedule to the Excise Tariff Act or an Excise Tariff alteration.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- spirit for non-beverage use, including denatured spirit.

1.8 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 4 – definitions
  - section 7 – general administration of Act
  - section 25 – only licensed manufacturers to manufacture excisable goods

  - Part IV – manufacturer, storage, producer and dealer licences
  - section 61A – permission to remove goods that are subject to CEO's control
  - section 114 – time for commencing action
- *Excise Tariff Act 1921*
  - section 1A – general administration of Act
  - section 5 – duties of excise
  - section 6A – indexation of CPI indexed rates
  - The Schedule
- *Commonwealth of Australia Constitution*
  - section 90 – exclusive power over customs, excise, and bounties

Amendment history

27 June 2025

Part	Comment
1.3.1	Updated to reflect the current duty rates.
Throughout	Updated in line with current ATO style and accessibility requirements.

2 LICENSING: Applications

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2 LICENSING: Applications

2.1 PURPOSE

This Chapter deals with:

- why there is a licensing regime
- what a licence is
- different licence types
- how long a licence is valid for
- whether licences are transferable
- disclosure of your licensing information
- how to register for excise
- how to apply for a licence
- how to change your licence details, and
- penalties that can apply to offences in relation to licences.

2.2 INTRODUCTION

2.2.1 WHY THERE IS A LICENSING REGIME

The excise duty attached to 'excisable alcohol products' forms a significant component of the overall value of the goods. A licensing regime helps the CEO maintain control of excisable goods and ensure the correct amount of duty is paid.

2.2.2 LICENSING RULES

A licence enables you to manufacture or store excisable goods, or both. If you undertake these activities without a licence, or contravene your licence conditions, you are committing an offence and may be prosecuted.

A licence is issued to a specific entity and specifies the premises[12] where the activities may be undertaken. A licence may specify one or more premises and an entity may have multiple licences.

[12] Section 38 of the Excise Act.

Licences can be issued to:

- individuals
- partnerships and companies in their own right, and
- individuals and companies in their capacity as trustees.

There may be different licensing processes depending on the type of entity applying for the licence.

2.3 POLICY AND PRACTICE

2.3.1 DIFFERENT LICENCE TYPES

There are 2 licence types for excisable alcohol products:

- manufacturer
- storage.

A licence may specify one or more premises at which excisable goods may be manufactured or stored. A licence that only specifies one premises (single premises licence) also includes details of the kinds of goods allowed to be manufactured or stored and any conditions to which the licence is subject.

A licence issued to an entity in respect of multiple premises (entity level licence) will contain a schedule showing the address for each premises covered, goods allowed to be manufactured or stored in those premises and any conditions to which the licence is subject.

Broadly, if you have a manufacturer licence covering one premises and a separate storage licence covering another premises and you want to consolidate your licences, you will need an entity level manufacturer licence. This is because by limitation of the definition of the 2 licence types, an entity cannot undertake manufacture of excisable goods at premises that are not licensed for that manufacture.

If you have an entity level licence, you may also receive a general movement permission, which will allow you to move 'underbond' goods of a kind specified in your permission from any premises covered by your licence to any other premises licensed to manufacture or store goods of that kind.

Manufacturer licence

You need a manufacturer licence to manufacture excisable goods.[13] The goods can only be manufactured at premises specified in your licence.[14]

[13] Section 4 of the Excise Act. The term 'licensed manufacturer' means 'a person or partnership who holds a manufacturer licence'.

[14] Division 1 of Part III of the Excise Act.

'Manufacture' is defined in the Excise Act to include all processes in the manufacture of excisable goods.[15]

Guidance on how the courts would interpret the term 'manufacture' may be found in court decisions examining the meaning of 'manufacture' in the context of other legislation.

In summary, the courts have given the word 'manufacture' the meaning of either producing a thing which is different from its inputs, or bringing a new article into existence by skill or knowledge.[16]

Processes that involved the application of knowledge, the application of skill, experience, services or labour which results in the conversion of materials into a saleable commodity may fall within the definition of 'manufacture'. The commodity must be different from the inputs which went into making it.

In an excise context, the conversion may result in a change in physical or chemical properties (or both) of goods, for example, in colour, shape, density, viscosity, distillation temperature, composition, texture, aroma or taste.

The Excise Act is directed towards controlling commercial operations. It would not be consistent with those controls for us to grant a licence for the production of excisable goods for personal use. In particular, commercial operations would not include home distillation of spirit for personal use.[17]

We do not grant licences to manufacture excisable goods for non-commercial use. While it is permitted to make beer or wine (or other fermented beverages) for personal use, it is illegal to use a still of any size to distil spirits for personal or any other use without the appropriate licence.[18]

The Excise Act definition of manufacture includes the manufacture of beer, for non-commercial purposes, using commercial facilities or equipment. This is what occurs at brew on premises shops (BOPS).

BOPS are premises which provide commercial brewing facilities for customers to make beer for their own consumption. Only the operator or proprietor of the BOPS is required to hold an excise licence, even though the customers may be seen to be carrying out the manufacturing activity.

For more information regarding BOPS, see Chapter 10 Beer.

[15] Section 4 of the Excise Act.

[16] *Commissioner of Taxation v Jax Tyres Pty Ltd* [1984] FCA 466; *M.P. Metals Pty Ltd v Commissioner of Taxation (Cth)* [1968] HCA 89]; *Commissioner of Taxation v Softex Industries Pty Ltd (formerly Cosco Holdings Pty Ltd* [2001] FCA 397; *Re Searls Ltd* (1933) 33 SR (NSW) 7.

[17] Paragraph 2.28 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

[18] See Stills used for other purposes.

Where beer undergoes a repackaging process, it is considered manufacture for excise purposes and is required to be done in accordance with a manufacturer licence. A repackaging process is considered as follows:

- beer is entered for home consumption in an individual container that is
  - greater than 48 litres, or
  - at least 8 litres but not exceeding 48 litres, and is designed to connect to a pressurised gas delivery system (or other system prescribed by the regulations), and
- subsequently repackaged into an individual sealed container that is
  - less than 8 litres, or
  - at least 8 litres but not exceeding 48 litres and is **not** designed to connect to a pressurised gas delivery system (or other system prescribed by the regulations).

However, an exemption to this applies to the first 10,000 litres of beer that is repackaged at particular premises in a financial year where:

- the beer is repackaged into exempt beer containers for the purposes of retail sale, and
- the retail sale occurs immediately after the repackaging of the beer.

An exempt beer container is a sealed individual container, of no more than 2 litres, that is not pressurised.

For businesses that repackage beer at more than one premises, each premises is subject to its own 10,000 litre threshold.[19]

Example 2A

Beer manufacturer XYZ sells duty-paid beer in 50 litre kegs to restaurant ABC, and restaurant ABC repackages the beer into pressurised containers for resale within the restaurant. ABC is therefore a manufacturer of beer and will require a licence as the containers are not 'exempt beer containers'.

Example 2B – repackaging that is not manufacture

The operator of a hotel purchases 50 litre kegs of beer on which excise duty has been paid. Customers are able to bring in empty containers (for example, growlers and squealers) to be refilled over the bar, from the duty-paid kegs. Provided the containers have a capacity of no more than 2 litres, the first 10,000 litres of beer at the hotel premises during the financial year will not be taken to be the manufacture of beer. The operator of the hotel will not require an excise manufacturer licence unless

[19] Subsection 77FC(2) of the Excise Act.

and until it repackages more than 10,000 litres of beer in this manner or otherwise undertakes excise manufacture.

We consider that these common activities in relation to alcohol are manufacture for excise purposes:

- fermentation (except for products covered by the wine equalisation tax (WET))
- distillation
- the addition of flavours or colours or both (including in-line mixing as part of packaging into bottles, cans or kegs)
- reduction (adding water)
- blending*
- denaturing spirits
- maturation of spirits in wood, and
- repackaging of duty-paid beer from bulk containers (subject to the 10,000 litre exemption discussed in Section 2.3.1).

*Specifically in relation to blending spirits, section 77FM of the Excise Act provides that spirit blending to produce spirit constitutes the manufacture of that spirit for the purposes of the Excise Act. A consequence of this section is that where imported high strength spirit is blended in Australia with other high-strength spirit the resulting spirit is excisable.

However, section 77FM also provides for the Commissioner to specify circumstances where blending of spirits does not constitute manufacture. Excise (Spirit blending exemptions) Determination 2020 (No.1) specifies that the following circumstances are not considered to be manufacture:

- the incidental blending that occurs where spirit, whether previously entered for home consumption or not, is placed in a vessel or container with remnants of a spirit or another substance
- the blending of spirit that has been previously entered for home consumption under subitems 3.5, 3.6 and 3.7 of the Schedule with like spirit also previously entered for home consumption under the same tariff subitem, or another substance, by a person who has approval under the Excise Act to use that spirit and the blending occurs as an incident of employing the spirit in a manner commensurate with the tariff subitem
- the blending of denatured spirit that has been previously entered for home consumption under subitem 3.8 of the Schedule with denatured spirit also previously entered for home consumption under the same tariff subitem or another substance (other than goods classified to items 1, 2 or 3 of the Schedule) except in order to produce a beverage
- the blending of spirit that has been previously entered for home consumption with like spirit also previously entered for home consumption where these spirits attract the same rate of excise duty.

Excise manufacturer licences specify the manufacturing activity or activities permitted such as:

- brewing
- brew on premises shops (BOPS) operations
- distillation
- maturation
- denaturing of spirit
- manufacturing other excisable beverages, or
- any combination of these.

You cannot commence manufacture of excisable alcohol products without a licence. This means that you cannot test your manufacturing equipment or produce samples to market to potential buyers if you do not hold a licence.

Imported alcohol products (other than alcohol which is subject to wine equalisation tax) are subject to customs duty at a rate that is equivalent to the duty on excisable alcohol products (except for an additional *ad valorem* duty that is payable on certain spirits). If you intend to use imported alcohol products in the manufacture of excisable products[20] you will not need to pay the customs duty (except any *ad valorem* duty that is payable) if you follow the provisions in the Customs Act.[21]

This Guide does not address the requirements of the Department of Home Affairs, however, in general, the provisions provide that if your premises are covered by an excise manufacturer licence and also by a Customs warehouse licence you can enter the imported alcohol products for warehousing and then use the imported alcohol products to manufacture excisable goods. The liability to pay the customs duty on the imported alcohol products is extinguished (except for any *ad valorem* duty that is payable) upon the manufacture of excisable goods. You will then be liable to pay excise duty on the excisable alcohol products.

You can only manufacture goods at the premises covered by your licence.[22] We may also give you written directions in regard to what parts of your factory any manufacturing process is to be carried on and where inputs used in manufacture, and excisable alcohol products, respectively, are to be kept.[23]

Storage licence

If you have a manufacturer licence and wish to store your excisable alcohol products 'underbond' at a place that is not covered by your licence, you will require a separate storage licence for that premises or you will need to vary your existing licence to cover an additional premises.

[20] This includes the blending of imported high-strength neutral spirit with domestically produced high-strength neutral spirit.

[21] Part VAA of the *Customs Act 1901*.

[22] Section 27 of the Excise Act.

[23] Section 51 of the Excise Act.

If you are in the business of wholesaling and distribution, you may wish to store underbond excisable alcohol products, whether owned by you or someone else. In either case, you would require a storage licence.

Even if you are not the owner of the excisable alcohol products, you are still responsible for the security of the goods and may be liable to pay an amount equivalent to the duty if the excisable goods, which are subject to the Commissioner's control, are not kept safely or are not satisfactorily accounted for.[24]

A storage licence will specify the type of excisable alcohol products and all the premises covered by the licence. It will also specify the activities, if any, you can undertake in relation to those goods[25], and whose excisable goods you can store, for example:

- goods you own
- goods owned by certain people
- storage only of underbond packaged product
- storage only of bulk product (apart from storage in wood for maturation purposes)
- packaging (in bottles, cans, kegs) that does not involve in-line mixing[26]
- repacking (outer cartons only), or
- filtering (except when filtering is combined with other processes and becomes part of an excise manufacturing process).

2.3.2 RESPONSIBILITIES OF A LICENCE HOLDER

You are responsible for the safe custody of all excisable alcohol products held on your premises and for the observance of the Excise Act at premises covered by your licence.[27]

You may be responsible for paying an amount equal to the duty that would have been payable on any stolen, missing or unaccounted for underbond excisable alcohol products.[28]

We may take stock of the excisable alcohol products you have manufactured and the materials used manufacturing them. If it appears to us that duty has not been paid on everything correctly, and you cannot satisfactorily account for the difference, you must pay the difference between the amount that has been paid and the amount that should have been paid.[29]

[24] Section 60 of the Excise Act.

[25] Definition of 'storage licence' in subsection 4(1) of the Excise Act.

[26] Note that this does not apply to repackaged beer where section 77FC of the Excise Act applies.

[27] Section 53 of the Excise Act.

[28] Section 60 of the Excise Act.

[29] Section 62 of the Excise Act.

If you wish to destroy any excisable alcohol products, you must first obtain permission from us to do so. This does not apply to the destruction of beer of up to 125 litres of alcohol per quarter, provided certain conditions are met. For more information, refer to Section 7.3.1 Applying for a remission of excise duty.

You must not move excisable alcohol products, without approval from us. This includes moving excisable alcohol products from premises covered by your licence to any other location or for export.[30]

For more information about obtaining permission to move excisable alcohol products, refer to Chapter 5 Movement permissions.

You are also responsible for ensuring that you comply with the Excise Act and all conditions of your licence.[31]

You must keep, retain and produce records in accordance with 'section 50' of the Excise Act.

If you are a manufacturer, you will also need to:

- ensure excisable alcohol products are only delivered for home consumption with appropriate authority, such as in accordance with a periodic settlement permission or Delivery authority[32]
- pay the correct amount of excise duty[33]
- provide all reasonable facilities to enable us to exercise our powers under the Excise Act[34], and
- provide sufficient lighting, correct weights and scales, and all labour necessary for
  - weighing material received into your factory
  - weighing all excisable goods manufactured in your factory, and
  - taking stock of all material and excisable goods contained in your factory.[35]

If you have a storage licence, you will also need to:

- ensure excisable alcohol products are only delivered into the Australian domestic market with appropriate authority, such as in accordance with a periodic settlement permission or Delivery authority, and

[30] Section 61A of the Excise Act.

[31] Section 26 of the Excise Act.

[32] Sections 58 and 61C of the Excise Act.

[33] Section 54 of the Excise Act.

[34] Section 49 of the Excise Act.

[35] Section 52 of the Excise Act.

- pay the correct amount of excise duty[36] if you are the owner or manufacturer.

For more information about duty liability and methods of payment, refer to Chapter 6 Payment of duty.

2.3.3 WHAT ELSE WE CAN DO

Access

We have the right to enter premises covered by your licence at any time and can examine and take account of all the goods at the premises.[37] Note: we will usually only seek to enter your premises during normal business hours.

Stop vehicles

We can stop any vehicle leaving premises covered by your licence and check that there is proper documentation for excisable alcohol products leaving the premises. We can question the driver about any goods in the vehicle. We can direct that the vehicle be unloaded and goods taken to particular parts of the premises for further examination. We must not detain a vehicle for longer than is necessary to do the checking.[38]

Search vehicles

We can stop and search any vehicle (not just vehicles leaving premises covered by a licence) without a warrant if we have reasonable grounds for believing that the vehicle contains excisable alcohol products and that the vehicle has been used, is being used or will be used in committing an offence under the Excise Act (and certain offences in the *Crimes Act 1914*[39] and Criminal Code[40] relating to accessory after the fact, attempt to commit an offence, aid and abet someone to commit an offence and conspiracy to commit an offence).[41]

Examine goods

We can open packages and examine, weigh, mark and seal any excisable alcohol products that are subject to 'excise control' and, if you are a manufacturer, lock up, seal, mark or fasten any plant in or on your factory.[42]

[36] Section 54 of the Excise Act.

[37] Subsection 86(2) of the Excise Act.

[38] Section 87 of the Excise Act.

[39] Section 6 of the *Crimes Act 1914*.

[40] Sections 11.1, 11.2 and 11.5 of the Schedule to the *Criminal Code Act 1995*.

[41] Section 87AA of the Excise Act and section 9 of the *Crimes Act 1914*.

[42] Section 91 of the Excise Act.

We can also:

- supervise the manufacture of excisable alcohol products[43], and
- take, utilise and dispose of samples of materials, partly manufactured excisable alcohol products and excisable alcohol products subject to excise control, and alcohol products that we have reasonable grounds for suspecting are excisable alcohol products on which duty has not been paid.[44]

2.3.4 KEEPING RECORDS

The Excise Act provides that a licence holder shall[45]:

(a) keep such records and furnish such 'returns' as directed

(b) keep these records for the period directed, and

(c) on demand, produce those records to us.

Any such direction will be in writing and included as a condition on your licence.

We can inspect and take copies of any records kept as directed.

If you cease to hold an excise licence you must still keep all records of your previously licensed activities. Records must be kept for the period of time as directed.

For more information about the type of records you may need to keep, see the chapter relevant to your industry.

2.3.5 LICENCE DURATION

A licence is ongoing until it is cancelled – either by the Collector[46] or at your request.[47]

2.3.6 TRANSFERRING A LICENCE

Generally, you cannot transfer your licence to another individual or business entity. The proposed new licence holder must apply for a new licence. You must also request cancellation of your current licence if you are no longer carrying out an excise activity. It is important that you advise us of any change in advance of it taking effect.

[43] Section 46 of the Excise Act.

[44] Section 106 of the Excise Act.

[45] Section 50 of the Excise Act.

[46] Subsection 4(1) of the Excise Act defines the Collector as the CEO or in relation to a section of an Excise Act for which a person is an authorised officer—that authorised officer.

[47] Section 39E of the Excise Act.

The exception to the above rule arises when a licence holder dies. If this is the case, the licence is taken to be transferred to the person's legal personal representative. This allows for the finalisation of the affairs and, unless cancelled earlier, the licence is taken to be automatically cancelled 3 months after the licence holder dies.[48]

For more information about cancelling licences, refer to Chapter 4 Licensing: suspension and cancellation.

2.3.7 DISCLOSING LICENSING INFORMATION

As well as the protection provided by the *Privacy Act 1988,* the tax laws have secrecy provisions about using and disclosing taxpayer information.[49] We can only look at, record, discuss or disclose information about you when it is a necessary part of our work, or where the law specifies that we may.

Subdivision 355-B of Schedule 1 to the *Taxation Administration Act 1953* (TAA) allows us to record or disclose information about you in certain circumstances. For example, it specifically allows us to disclose information about you to the ABF.

In relation to licensing information, the TAA allows us to disclose information for the purpose of enabling an entity to understand or comply with their tax obligations.[50] This includes:

- whether another person holds a current excise licence, and
- any conditions that apply to their licence.

The ATO is lawfully required to publish and maintain a public register on the ATO website, disclosing the name of the licence holders, their Australian Business Number (ABN) and the name of the Act under which the licence was granted.[51] This will assist business to identify entities that are licensed to manufacture and store excisable goods and excise equivalent goods.

Information may be disclosed by taxation officers in the performance of their duties and would cover disclosing information:

- to a person dealing or proposing to deal with another person in relation to goods subject to excise control, and
- provided we are satisfied that disclosure is necessary for the purposes of ensuring the dealing or proposed dealing is in accordance with excise law.[52]

[48] Section 39O of the Excise Act.

[49] Division 355 of Schedule 1 to the TAA.

[50] Section 355-50 of Schedule 1 to the TAA.

[51] Section 40 of the Excise Act.

[52] Section 355-50 of Schedule 1 to the TAA.

Example 2C

You need to find additional storage space for your finished alcohol products and, therefore, need to check that the entity who offers to store your products has a licence to store excisable alcohol products. Information on whether a business holds an excise licence could be located by you on the excise and excise-equivalent warehouse licences register*.*

If you require further information and we decide that the disclosure is necessary, we must provide the information in writing to the person who requires it. If the matter is urgent, we may advise by phone. However, we must later confirm the information by letter.

A disclosure may be initiated by us or by you when you request information.

Anyone who receives such information should use it only for the purpose for which it was given. Any other use may be unlawful.

Note: the TAA imposes certain obligations on you concerning the on-disclosure of information that affects another person.[53] The *Privacy Act 1988* also imposes certain obligations on you concerning the privacy of information that you have received about an individual. Further information can be obtained from the Office of the Australian Information Commissioner.

Our decision in relation to the disclosure of protected information is not a reviewable decision. However, you have the right to make a complaint to the Commonwealth Ombudsman about a range of administrative actions we take or the Australian Information Commissioner if you think we have breached the *Privacy Act 1988* in dealing with your personal information.

For information about your review rights, refer to Chapter 8 Reviews and objections.

When you provide details of the authorised person we should contact if we need to know more about your application, or the operations of your business, you are giving us authority to disclose information. This could be yourself, as the applicant, or another person you nominate.

[53] Subdivision 355-C of Schedule 1 to the TAA.

2.4 PROCEDURES

2.4.1 REGISTERING FOR EXCISE

If you will be making payments of excise duty but do not hold (and are not applying for) an excise licence, periodic settlement permission or movement permission you need to register by completing an Excise registration.

While it is not compulsory to provide an ABN or tax file number (TFN) for registration, it will help us to process your application.

To register for excise, complete an Excise registration.

2.4.2 APPLYING FOR A LICENCE

If you would like to apply for a licence, you should:

- contact us, and
- lodge an application form together with all the required supporting documents.

You can contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

Our staff will:

- discuss your particular circumstances with you
- give you advice about the appropriate licence or licences
- explain how to apply
- explain your ongoing obligations as a licence holder, and
- provide you with a licence application form.

There is no charge for an excise licence.

Lodging an application

You need to complete the relevant form to apply for a manufacturer or storage[54] licence.

Before lodging your application form, make sure you have included the required supporting documents. Your application form contains information to help you work out which supporting documents you must provide. You may also need to complete other excise forms, depending upon your proposed activities.

Supporting documents include:

- an accurate plan of the premises that clearly indicates the area for manufacture or storage
- a Fit and proper person declaration
- an application for permission to move underbond goods
- if requested by us, by us, a *Consent to a national criminal history check – excise*.

For more information about movement permissions refer to Chapter 5 Movement permissions.

You should contact our Client Services staff on **1300 137 290**, for advice about the forms and supporting documents that you will need to lodge.To lodge your completed application form and supporting documents, send them to Excise and EEG Client Services via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office

  PO Box 3514

  ALBURY NSW 2640

You must not manufacture or store excisable goods before your licence has been granted.[55]

When you lodge your application, you can expect a decision within 28 days of us receiving all the necessary information.

Applying to vary a licence

Where you hold an existing manufacturer or storage licence, you can apply to vary your licence[56] to:

- add a new premises to your existing manufacturer or storage licence
- remove a premises from your licence that covers more than one premises
- consolidate your existing licenses into one licence that covers multiple premises.

[54] Section 39 of the Excise Act.

[55] Sections 25 and 117 of the Excise Act.

[56] Sections 39FA and 39LA of the Excise Act.

Example 2D

LoneWolf Brewery Pty Ltd, operating under one ABN, holds one manufacturer and 2 storage licences and wants to consolidate these into one licence. LoneWolf Brewery therefore apply to vary their existing manufacturer licence to cover the additional premises covered by the 2 storage licences.

The ATO approves the variation, with the existing manufacturer licence now also covering the premises previously covered by the storage licences and notifies in writing of the cancellation of the storage licenses, as they no longer cover a premises.[57] *As part of the new entity level licence, LoneWolf Brewery are issued a schedule which specifies the premises covered, the type of excisable goods that can be manufactured and stored, activities authorised to be undertaken at the premises and any special conditions imposed on the licence.*

2.4.3 CHANGING LICENCE DETAILS

We can amend your licence for changes that do not involve a change of entity. This includes a change of business name (that is, your trading name).

A change in composition of a partnership does not affect the continuity of that partnership. Any one or more of the partners may act on behalf of the partnership in notifying changes.[58]

You must advise us of any of these changes within 30 days. We will then provide you with an amended licence.

2.4.4 MORE INFORMATION

If you need more information on licensing matters, you can contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

[57] Subsection 39FB(2) of the Excise Act.

[58] Section 6A of the Excise Act.

We will ordinarily respond to electronic requests within 28 business days and finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

2.5 PENALTIES THAT CAN APPLY IN RELATION TO LICENCES

The following are the penalties that may apply after conviction for an offence.

Manufacture

If you manufacture excisable alcohol products without a manufacturer licence, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[59]

If you manufacture excisable alcohol products contrary to the Excise Act or any conditions specified in your licence the penalty is a maximum of 2 years in prison or 500 penalty units.[60]

If you manufacture excisable alcohol products at premises that are not specified as manufacturing premises in your licence, the penalty is 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[61]

Keep or store without permission

If you possess or have custody or control of excisable alcohol products without permission, the penalty is 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[62]

False or misleading statements

If you make a false or misleading statement to us, the penalty is a maximum of 50 penalty units.

If you make a false or misleading statement, or an omission from a statement in respect of duty payable on particular goods, to us, a penalty not exceeding the sum of 50 penalty units and twice the amount of duty payable on those goods.[63]

[59] Section 25 of the Excise Act.

[60] Section 26 of the Excise Act.

[61] Section 27 of the Excise Act.

[62] Section 117 of the Excise Act.

[63] Section 120 of the Excise Act.

Records

If you do not keep, retain and produce records in accordance with section 50 of the Excise Act, the penalty is a maximum of 30 penalty units.

Directions

If you do not comply with a direction in regard to what parts of the factory can be used for various matters, the penalty is a maximum of 10 penalty units.[64]

Facilities, etc.

If you do not provide all reasonable facilities for enabling us to exercise our powers under the Excise Act, the penalty is a maximum of 10 penalty units.[65]

If you do not provide sufficient lights, correct weights and scales, and all labour necessary for weighing material received into, and all excisable alcohol products manufactured in, your factory and for taking stock of all material and excisable alcohol products contained in your factory, the maximum penalty is 10 penalty units.[66]

Marks and seals

If we mark or seal excisable alcohol products or fasten, lock or seal any plant in your factory and you alter, break or erase the mark, seal, fastening or lock, the maximum penalty is 50 penalty units.[67]

2.6 TERMS USED

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are manufactured or produced in Australia and listed in the Schedule to the Excise Tariff Act or an Excise Tariff alteration.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits

[64] Section 51 of the Excise Act.

[65] Section 49 of the Excise Act.

[66] Section 52 of the Excise Act.

[67] Section 92 of the Excise Act.

- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- high strength spirit for non-beverage use, including denatured spirit.

Excise control

Goods are subject to excise control from the point of manufacture until they have been delivered into the Australian domestic market or for export.

Goods subject to excise control cannot be moved, altered or interfered with except as authorised under the Excise Act.

Excise return

An excise return is the document that you use to advise us of:

- the volume of excisable alcohol products that you have delivered into the Australian domestic market during the period designated on your periodic settlement permission, or
- the volume of excisable alcohol products that you wish to deliver into the Australian domestic market following approval.[68]

For information about when duty is payable under periodic settlement refer to Chapter 6 Payment of duty.

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

Section 50 direction

This is a written instruction issued under section 50 of the Excise Act to a licensed manufacturer, or proprietor of premises covered by a storge licence, to keep specified records, furnish specified returns, retain records for a specified period and produce those records on demand by us. This written direction is included as a condition of your licence.

Underbond

This is an expression not found in excise legislation but it is widely used to describe goods that are subject to excise control. Excisable goods that are subject to the Commissioner's control are commonly referred to as 'underbond goods' or as being 'underbond'. This includes goods that have not yet been

[68] The term used in section 58 of the Excise Act is 'entry for home consumption'.

delivered into the Australian domestic market and goods moving between premises under a movement permission.

2.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 4 – definitions
  - section 6A – how this Act applies to partnerships
  - section 24 – excisable goods and goods liable to duties of Customs may be used in manufacturing excisable goods
  - section 25 – only licensed manufacturers to manufacture excisable goods
  - section 26 – licensed manufacturers to manufacture in accordance with Act and licence
  - section 27 – licensed manufacturers to manufacture only at licensed premises
  - section 39 – applications for licences
  - section 39E – duration of licences
  - section 39FA – application for variation
  - section 39FB – variation of licence
  - section 39O – death of licence holder
  - section 46 – supervision by officers
  - section 49 – facilities to officers
  - section 50 – record keeping
  - section 51 – collector may give directions
  - section 52 – weights and scales
  - section 53 – responsibility of manufacturers
  - section 54 – liability to pay duty
  - section 58 – entry for home consumption etc.
  - section 60 – persons to keep excisable goods safely etc.
  - section 61A – permission to remove goods that are subject to CEO's control
  - section 61C – permission to deliver certain goods for home consumption without entry
  - section 62 – deficiency in duty
  - section 77FC – repackaged beer
  - section 86 – officers to have access to factories and approved places
  - section 87 – power to stop conveyances about to leave an excise place

  - section 87AA – searches of conveyances without warrant
  - section 91 – examine all goods
  - section 92 – seals etc. not to be broken
  - section 106 – samples
  - section 117 – unlawful possession of excisable goods
  - section 120 – offences
- *Excise Tariff Act 1921*
  - The Schedule
- *Customs Act 1901*
  - section 105B – extinguishment of duty on excise-equivalent goods
- *Crimes Act 1914*
  - section 4AA – penalty units
  - section 6 – accessory after the fact
- *Criminal Code Act 1995* – The Schedule
  - section 11.1 – attempt
  - section 11.2 – complicity and common purpose
  - section 11.5 – conspiracy
- *Taxation Administration Act 1953 – Schedule 1*
  - Division 355 – confidentiality of taxpayer information
  - Subdivision 355-B – disclosure of protected information by taxation officers
  - Subdivision 355-C – on-disclosure of protected information by other people

Amendment history

27 June 2025

Part	Comment
Throughout	This chapter was updated to take into account the law changes as a result of the Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023 and Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024. This includes: • new applications for entity level licenses • repackaging of keg beer into containers of no more than 2 litres, that is not pressurised, up to the first 10,000 litres • variation of licenses • duration of licenses • lawful requirement for the ATO to publish and maintain a public register of licences on the ATO website.
Throughout	Updated in line with current ATO style and accessibility requirements.

3 LICENSING: Assessing applications

3.1 PURPOSE

3.2 INTRODUCTION

3.3 POLICY AND PRACTICE

3.3.1 LICENSING CRITERIA

3.3.2 LICENCE CONDITIONS

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3.5 PENALTIES THAT CAN APPLY IN RELATION TO APPLICATIONS

3.6 TERMS USED

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3 LICENSING: Assessing applications

3.1 PURPOSE

This Chapter deals with:

- licensing criteria
- licence conditions
- securities
- what happens if your licence is not granted
- what will happen if your licence is granted
- records you need to keep, and
- penalties that can apply to offences in relation to making an application.

3.2 INTRODUCTION

We have the discretion whether to grant or refuse a licence. We base our decision on the information you supply.

Subsection 39A(2) of the Excise Act provides that, if we consider certain criteria exist, they can be the basis for refusal.

Those criteria include:

- you, or a director, officer, shareholder or associate are not 'fit and proper'
- you do not have, or do not have available to you, the skills and experience required to carry out the activity that would be authorised by the licence
- the physical security of the premises is not adequate
- the plant and equipment to be used at the premises are not suitable
- you will not have a market for the goods
- you would not be able to keep proper books of account for audit purposes
- the grant of a storage licence would delay liability for duty, or
- it is necessary to refuse to grant the licence to protect the revenue.

These criteria are explained in more detail below.

How any of these criteria affects a particular licence application depends on the facts in each particular case. There are, however, some criteria that are critical, for instance:

- whether you are not 'fit and proper', and
- protection of the revenue.

3.3 POLICY AND PRACTICE

3.3.1 LICENSING CRITERIA

(1) 'Fit and proper' person or company

The nature of the entity applying for the licence will affect who is assessed as being fit and proper[69]:

- if it is an individual, the individual is assessed
- if it is a partnership, each partner is assessed, and
- if it is a company, the company is assessed.

Persons other than the applicant can also be assessed as to whether they are fit and proper. These persons are:

- another person who would participate in the management or control of the premises that is the subject of the licence application
- if the applicant is a company, any director, officer, or shareholder of the company that would participate in the management or control of the company, and
- certain associates of the applicant (associates can be people or companies).

What does fit and proper mean?

The term 'fit and proper' is not defined in the Excise Act or Excise Regulation.

Fit and proper is dependent on the purpose of the legislation and the proposed activities of the person concerned. In general qualities of diligence, honesty and the likelihood of observance of the law are pivotal characteristics to be taken into account in considering fitness and propriety. In an excise context, we are assessing the suitability of the people who will have access to and control over 'excisable alcohol products' if a licence is granted.

The Excise Act provides a definitive list of factors that we will take into account in determining whether a person or company is fit and proper. These factors generally relate to:

- any prosecution history
- solvency and financial resources
- the honesty of information provided by the applicant, and
- compliance with tax obligations, and
- licensing history.

[69] Sections 39B and 39C of the Excise Act.

In assessing these factors we will consider whether your circumstances demonstrate that you are diligent, honest, and likely to observe excise laws.

A single factor will not necessarily be determinative of whether a person or company is 'fit and proper'. It will depend on the facts and circumstances of each case.

The weight afforded to each factor in reaching a decision about whether a person or company is 'fit and proper' is a matter for us to decide after considering all relevant information.

Some factors apply to both individuals and companies; others are specific to individuals or to companies.

Where a person makes false or misleading statements in their application

It is important that you provide information that is accurate and complete. If your application (that is, your completed application form, any supporting documentation and any oral statements made), contains false or misleading statements we will take this into account.[70]

Misleading statements

The term 'mislead' is not defined in the Excise Act. *The Australian Oxford Dictionary*[71] defines 'mislead' as follows:

1. cause (a person) to go wrong, in conduct, belief, etc.
2. lead astray or in the wrong direction.

A misleading statement does not have to successfully mislead us, but it can be taken into account if it was reasonably foreseeable that we could have been misled when assessing the application.

Misleading may be by omission as well as what has been said.

[70] Paragraphs 39B(e) and 39B(f) of the Excise Act.

[71] Moore, B (2004) *The Australian Oxford Dictionary,* 2nd edn, Oxford University Press, Melbourne.

Example 3A

You advise us that you have installed a state-of-the-art security system at your premises. You failed to advise us that a design fault has resulted in repeated false alarms to the point where you have switched off the security system and have no intention of re-engaging it. The design fault cannot be remedied. The only security in operation at the premises is a rusty padlock.

The information you provided, whilst not false, could lead us to believe that your premises are secure. This is misleading and may be taken into account in determining whether you are 'fit and proper'.

False statements

If you make a false statement in an application, we will consider whether you knew the statement was false.[72]

In essence, a statement is false if it is not true. A false statement may be made expressly, or via omission, such as stating you have no criminal convictions when in fact you have been convicted. A false statement may also be made by omission, such as leaving a blank response to the question on your application form in relation to criminal convictions when in fact you have been convicted.

Associates that can be assessed under the fit and proper person test

To avoid situations where people with a high risk of non-compliance can exercise control over licence holders or excisable goods, certain associates[73] can be assessed under the fit and proper person test.

The word associate effectively takes it meaning from the *Income Tax Assessment Act 1936* and is summarised below.

An associate of a natural person (otherwise than in the capacity of trustee) includes:

- a relative[74] of the individual, for example, their spouse, parent, sibling, uncle, aunt
- a partner of the individual or a partnership in which the individual is a partner
- if a partner of the individual is a natural person otherwise than in the capacity of trustee, the spouse or child of the partner

[72] Subsection 39B(f) of the Excise Act.

[73] Paragraph 39A(2)(f) of the Excise Act; section 995-1 of the *Income Tax Assessment Act 1997*; subsection 318(1) of the *Income Tax Assessment Act 1936*.

[74] See section 995-1 of the *Income Tax Assessment Act 1997* for the definition of 'relative' for this purpose.

- a trustee of a trust under which the individual or their associate benefits, or
- a company under the control of the individual or their associate.[75]

Although an associate includes a spouse, a legally married spouse of a person who lives separately and apart on a permanent basis is not an associate.[76]

An associate of a company includes[77]:

- a partner of the company or a partnership in which the company is a partner
- if a partner of the company is an individual, the spouse or child of the partner
- a trustee of a trust under which the company or their associate benefits
- another entity (a company, partnership, trustee or an individual), or its associate or associates who controls the company, or
- another company which is under the control of the company or the company's associate.

The control of a company looks to whether another entity (including individuals):

- has sufficient influence over the company, or
- holds a majority voting interest in the company.

An associate of a trustee includes an entity or an associate of the entity that benefits or is capable of benefiting either directly or indirectly under the trust.[78]

For a partnership an associate includes each partner of the partnership or associate of the partner.[79]

(2) Skills and experience

Skills and experience[80] are not defined in the Excise Act or Excise Regulation. There is no case law regarding skills and experience in an excise context.

In forming an opinion as to whether you have the required skills and experience, we will consider your ability to:

- carry out the activity requiring a licence
- conduct a business, and
- comply with excise obligations.

It is important to note that you, as the applicant, do not necessarily need to possess the skills and experience yourself provided that you can demonstrate that you will use another person's relevant skills

[75] Subsection 318(1) of the *Income Tax Assessment Act 1936*.

[76] Subsection 318(7) of the *Income Tax Assessment Act 1936*.

[77] Subsection 318(2) of the *Income Tax Assessment Act 1936*.

[78] Subsection 318(3) of the *Income Tax Assessment Act 1936*.

[79] Subsection 318(4) of the *Income Tax Assessment Act 1936*.

[80] Paragraph 39A(2)(fa) of the Excise Act.

and experience, for example, by hiring them or using a consultant. Should that be the case, we will assess the other person's skills or experience.

Example 3B

Mr X, as a Director of Z Transport and Logistics Pty Ltd, applies for a storage licence.

Neither Mr X nor any of his staff have the skills and experience to comply with the company's excise obligations. This poses a risk that excisable alcohol products may be sold without adequate record keeping and may adversely affect revenue and compliance.

Therefore, when assessing this element of subsection 39A(2) of the Excise Act in isolation, Z Transport and Logistics Pty Ltd would fail the requirements of skills and experience. However, a decision on granting a licence is made based on an assessment of all elements of subsection 39A(2).

Z Transport and Logistics Pty Ltd may choose to address the deficiency in skills and experience by appointing a Manager who has the relevant skills and experience.

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(3) Physical security of the premises

Physical security of the premises[81] relates to measures that prevent unauthorised access to excisable alcohol products and thus protects against theft or loss of goods and excise revenue.

In forming an opinion about the physical security at the premises, we will consider:

- the nature of the site
- the kinds and quantities of goods to be kept, and
- the procedures and methods adopted to ensure the security of goods.

Consideration of the nature of the site can include:

- construction (for example, floor, walls, ceiling, windows and doors) and whether material is difficult to penetrate or remove
- barriers (for example, fences or wire) to a standard that would prevent unauthorised access
- locks and bars
- alarms, security lighting, security guard patrols or closed-circuit TV cameras
- physical security of all warehouse facilities within the site, and

[81] Paragraphs 39A(2)(g) and (h) of the Excise Act.

- fire alarms, smoke detectors, sprinklers etc.

Consideration of the kind and quantity of goods to be kept at the site can include the:

- ease with which goods can be handled, for example, bottles of spirits are easier to move than beer in a bright beer tank
- rate of excise duty applicable to the goods (goods that attract a greater rate of excise duty represent a greater revenue risk), and
- greater the quantity of excisable goods to be dealt with, the higher the level of physical security that would be required.

Consideration of the security procedures and methods can include:

- gate security system that would identify all people entering and leaving the site, and confirm their right to do so
- gate security system that would identify the type and quantity of all goods entering and leaving the site
- surveillance system
- procedures to handle and retain information from surveillance system (if there is one)
- access control, for example, by limited distribution of keys and access swipe cards or codes
- security responses when breaches are detected, for example, back to base system, and
- an independent security audit function to oversee all of the above.

(4) Suitability of plant and equipment

Plant and equipment are considered suitable[82] if they are capable of performing the intended tasks and will allow you to properly account for excisable alcohol products and calculate the correct amount of excise duty.

Plant and equipment that are used in relation to goods at premises covered by a licence include:

- temperature measuring equipment
- storage tanks and manufacturing vessels such as fermenters
- packing machines, for example, bottling equipment, etc.
- weighing equipment, for example, scales and weighbridges
- counting equipment to determine number of bottles
- strength determining equipment, and
- volume measuring equipment.

[82] Paragraph 39A(2)(i) of the Excise Act.

(5) Market for the goods

We are primarily concerned with the presence of an available market within Australia.[83] That market must be legal. Licensing is concerned with minimising the risk of excisable alcohol products entering an illicit market in Australia and the resultant loss of revenue.

You must provide sufficient information to identify your proposed market.

You may be able to demonstrate that you have a market by, for example, supplying:

- evidence of contracts (including 'in principle' contracts) you have negotiated, or
- a business plan which outlines the market you have identified.

A legitimate market may exist overseas for locally manufactured excisable alcohol products. Applications relating to overseas markets may be subject to additional scrutiny and you may be required to provide additional information or documentation as evidence of the legitimacy of your overseas market.

Therefore, market should be taken to mean that there exists a proven or demonstrated demand for a commodity, or an opportunity for (legally) buying or selling (trading in) a specified commodity. In such cases a market can be either in Australia or overseas.

If you intend to manufacture excisable goods and use them within the operation of your business, you do not need to meet the market test.

Examples of this situation are:

- a tertiary education facility which distils alcohol for research purposes, or
- a business which redistils contaminated spirit to re-use in a manufacturing process, such as production of essential oil and perfume.

As the licensing provisions of the Excise Act are directed at controlling commercial operations, it would be inconsistent with those controls to grant a licence for the production of excisable goods for personal use, for example, home distillation.[84] As such, you will not meet the market test where spirit and excisable beverages containing spirit are manufactured for personal consumption.

(6) Ability to keep proper books of account

This criterion relates to whether you can keep 'proper books of accounts and records'[85] that enable us to audit those records.

You may be asked to demonstrate:

- the recording systems you intend to use, whether they are manual or electronic

[83] Paragraph 39A(2)(ia) of the Excise Act.

[84] Paragraph 2.28 of the Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures) Bill 2006.

[85] Paragraph 39A(2)(j) of the Excise Act.

- where an electronic record-keeping system is used, systems documentation showing details such as screens, reports available and security controls, and
- the internal documentation supporting the recording systems, ensuring that the recording systems will record sufficient detail.

(7) Delay liability for duty (storage licence only)

This criterion only relates to an application for a storage licence where the granting of the licence would delay liability for duty.[86]

The liability for excise is imposed on goods at the time of manufacture.[87] However, it is not actually paid until a later point.

The wording in paragraph 39A(2)(k) of the Excise Act, '... delay the liability for duty' suggests that one is able to delay the point in time in which the liability arises. However, this is not possible as the imposition of excise, and therefore the time at which the liability arises, is not dependent on any further dealings or processes on those goods. It is only the payment of the liability, the duty, which can be delayed depending on how the goods are dealt with.

We consider that the only possible interpretation of paragraph 39A(2)(k) of the Excise Act is that it operates to delay the time the liability must be paid. A storage licence allows for the storage of excisable goods on which duty has not been paid. It effectively allows a manufacturer to defer the payment or transfer the liability to a storage licence holder. The question then arises as to how far down the distribution chain payment of an excise liability may be deferred.

It is our view that we may refuse to grant a storage licence where the granting of the licence would delay payment of duty beyond the point of storage occurring in the normal wholesale distribution of the goods. Using a different perspective, we may refuse to grant a storage licence when refusal is necessary to ensure that excise duty is paid before goods reach the retail level in the distribution chain.

In forming an opinion as to whether the granting of an excise storage licence would delay liability for duty, we will consider:

- the purpose for which the goods are to be stored, and
- whether the premises in question are for storage occurring in the normal wholesale distribution of the goods, or for storage beyond the normal wholesale distribution of the goods (for example, storage for a retail premises).

[86] Paragraph 39A(2)(k) of the Excise Act.

[87] Section 5 of the Excise Tariff Act.

(8) Protect the revenue

The term 'necessary to protect the revenue'[88] is not defined in the Excise Act.

The meaning of 'protect the revenue' was considered by Deputy President Forgie in *Martino and Australian Taxation Office*.[89] She said, at [50–52]:

> … The expression *"protect the revenue"* is not defined in the Act and I am not aware of any authorities that have considered it. The word *"revenue"* has been considered in *Stephens v Abrahams* (1902) 27 VLR 753 by Hodges J … Hodges J took:
>
> *"… the 'revenue' to be moneys which belong to the Crown, or moneys to which the Crown has a right, or moneys which are due to the Crown*
>
> …
>
> The ordinary meanings of the word "protect" include "keep safe, take care of" … and they would seem to be the senses in which the word is used in the expression "protect the revenue". Mr Martino's licence may only be cancelled if it is necessary to take care of the money belonging to the Crown in right of the Commonwealth. That has the aspect of ensuring that the Commonwealth receives all that it should in the form of any excise that is ultimately payable in respect of tobacco originally grown on Mr Martino's farm and keeps all that it receives. It also has the aspect of not spending more of the Commonwealth's money than need be spent in carrying out its supervisory duties and responsibilities under the Act and in ensuring that the tobacco is not marketed illegally in Australia, and so avoid the payment of excise duty, if it cannot be marketed legally.
>
> What is meant by the word "necessary"? I have taken the view that the meaning adopted by Allen J in State Drug Crime Commission of NSW v Chapman (1987) 12 NSWLR 447:
>
> "As to the word 'necessary' it does not have, in my judgment, the meaning of 'essential'. The word is to be subjected to the touchstone of reasonableness. The concept is one as to what reasonably is necessary in a commonsense way.

While this case was in relation to tobacco growing, the finding is equally applicable to alcohol. 'Protect the revenue' therefore means ensuring that the Commonwealth receives the full amount of excise duty that is ultimately payable and we do not spend more Commonwealth funds than necessary to carry out our responsibilities.

[88] Paragraph 39A(2)(l) of the Excise Act.

[89] *Martino and Australian Taxation Office* [2002] AATA 1242.

3.3.2 LICENCE CONDITIONS

Licence conditions form part of your licence. If you fail to comply with a condition, we may suspend or cancel your licence.[90]

For information about when we can suspend or cancel your licence, refer to Chapter 4 Licensing: suspension and cancellation.

All excise licences are subject to certain conditions imposed by:

- the Excise Act
- us (special conditions).

We are able to add, vary or revoke conditions even after the licence has been granted.[91] We will notify you in writing if we do so and provide you with an amended licence that includes the amended conditions.

Conditions imposed under the Excise Act

You must advise us in writing within 30 days if[92]:

- you become bankrupt
- a person not listed in the licence application starts to participate in the management or control of premises covered by the licence or company, as the case may be
- there is a change in the membership of a partnership that holds a licence
- a company that holds a licence comes under receivership, administration or begins to be wound up
- there is a change that substantially affects the physical security of premises covered by the licence or plant and equipment used in relation to excisable goods at the premises
- you hold a manufacturer licence and you cease to manufacture excisable goods at premises covered by the licence
- you hold a storage licence and you cease to keep and store goods at premises covered by the licence, or
- you or any person participating in the management or control of a licensed company or premises is charged with or convicted of:
  - an offence against a provision of the Excise Act, or
  - an offence against a law of the Commonwealth, a state or a territory that is punishable by imprisonment for a period of one year or longer or by a fine of 50 'penalty units' or more.

[90] Paragraph 39G(1)(k) of the Excise Act.

[91] Subsection 39D(4) and section 39DA of the Excise Act.

[92] Subsection 39D(1) of the Excise Act.

Special conditions

We can also impose special conditions on your licence if we find it necessary to protect the revenue or ensure compliance with the Excise Act.[93] Directions issued under section 50 of the Excise Act to keep specified records, furnish specified returns, retain records for a specified period and produce those records on demand are included as a special condition on each licence.

Examples of other conditions that have been imposed under this provision are:

- the trustee for a trust to notify the Collector of the appointment of a new trustee in writing and prior to the appointment of the new trustee
- restrict the storage of excisable goods (by a storage licence holder) to ship's stores and aircraft's stores, or
- restrict the quantity of excisable goods that a licensed manufacturer may manufacture.

The examples of special conditions given above are only for illustrative purposes. The decision to impose special conditions is considered on a case-by-case basis.

You can apply to have these special conditions varied, revoked or added. We will consider and advise you of our decision.

If you are not satisfied with our decision, you can ask for a review by lodging an objection within 60 days of the day we notify you.[94]

For more information about your review rights, refer to Chapter 8 Reviews and objections.

3.3.3 SECURITIES

We can use conditions as a mechanism to increase the level of protection of the revenue or to ensure compliance with the Excise Act. However, prior to granting the licence, we may also require you to provide a security to achieve the same result. Even if we don't require a security prior to the granting of the licence, we may ask for a security at a later time. We can also ask you to increase the value of any security you may already have given.[95]

A security can be a bond, guarantee, cash deposit or similar financial product for an amount of money which may be forfeited if there is a failure to comply with the Excise Act. It is not necessary for a liability to arise as a result of the failure to comply, for the security to be forfeited. There is no statutory limit to the amount of a security but the amount is generally set by reference to the level of revenue at risk.

We review securities every 3 years, at which time they may be extended, revised or cancelled.

[93] Subsection 39D(3) of the Excise Act.

[94] Section 39Q of the Excise Act.

[95] Sections 16 to 22 of the Excise Act.

You cannot object to a decision to require a security. However, there may be other avenues for review, for example, you may seek an informal review of our decision.

For more information about your review rights, refer to Chapter 8 Reviews and objections.

3.4 PROCEDURES

3.4.1 IF A LICENCE IS NOT GRANTED

If we do not grant a licence, (or we grant you a licence that does not cover all the premises applied for) we will notify you of the decision and provide you with reasons.

If you are not satisfied with our decision, you can ask for a review by lodging an objection within 60 days of the day we notify you.[96]

For more information about your review rights, refer to Chapter 8 Reviews and objections.

3.4.2 IF A LICENCE IS GRANTED

If we grant you a licence, we will post it to you. We will also provide you with an establishment number (or numbers) for the premises covered by the licence. This will be needed in some of your dealings with us.

You may receive a visit or phone call from us to ensure you understand your obligations and check whether you need further assistance.

3.4.3 MORE INFORMATION

If you need more information on licensing matters, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

[96] Section 39Q of the Excise Act.

3.5 PENALTIES THAT CAN APPLY IN RELATION TO APPLICATIONS

You commit an offence punishable upon conviction if you[97]:

- intentionally make a statement to an officer, reckless as to the fact that the statement is false or misleading in a material particular, or
- intentionally omit from a statement made to an officer any matter or thing, reckless as to the fact that without the matter or thing the statement is misleading in a material particular.

The maximum penalty is 50 penalty units.[98]

3.6 TERMS USED

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are manufactured or produced in Australia and listed in the Schedule to the Excise Tariff Act or an Excise Tariff alteration.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- spirit for non-beverage use, including denatured spirit.

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

3.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

[97] Paragraph 120(1)(iv) of the Excise Act.

[98] Paragraph 120(2)(d) of the Excise Act.

- *Excise Act 1901*
  - section 16 – right to require security
  - section 17 – form of security
  - section 18 – general security may be given
  - section 19 – cancellation of bonds
  - section 20 – new sureties
  - section 21 – form of security
  - section 22 – effect of security
  - section 38 – kinds of licences
  - section 38A – premises that licences may cover
  - section 39 – applications for licences
  - section 39A – it is in the Collector's discretion whether to grant licence
  - section 39B – determining whether a natural person is fit and proper
  - section 39C – determining whether a company is fit and proper
  - section 39D – conditions of licence
  - section 39DA – changing licence conditions on own initiative
  - section 39G – when the Collector may suspend a licence
  - section 39H – determining whether a natural person is fit and proper
  - section 39I – determining whether a company is fit and proper
  - section 39Q – review of decisions
  - section 120 – offences
- *Excise Tariff Act 1921*
  - section 5 – duties of excise
  - The Schedule
- *Income Tax Assessment Act 1997*
  - section 995-1 – definitions
- *Income Tax Assessment Act 1936*
  - section 318 – associates
- *Corporations Act 2001*
  - section 9 – dictionary
  - Part 5.3A – administration of a company's affairs with a view to executing a deed of company arrangement
- *Crimes Act 1914*
  - 4AA – penalty units

Amendment history

27 June 2025

Part	Comment
Throughout	This chapter was updated to take into account the law changes as a result of the Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024.
Throughout	Updated in line with current ATO style and accessibility requirements.

4 LICENSING: Suspension and cancellation

4.1 PURPOSE

4.2 INTRODUCTION

4.3 POLICY AND PRACTICE

4.3.1 IF YOU CEASE YOUR EXCISE BUSINESS

4.3.2 SUSPENSION OR CANCELLATION OF A LICENCE

4.4 PROCEDURES

4.4.1 SERVICE OF NOTICES

4.4.2 MORE INFORMATION

4.5 PENALTIES THAT CAN APPLY IN RELATION TO SUSPENSIONS AND CANCELLATIONS

4.6 TERMS USED

4.7 LEGISLATION (quick reference guide)

4 LICENSING: Suspension and cancellation

4.1 PURPOSE

This Chapter deals with:

- what happens when you cease your business
- when your licence can be suspended or cancelled
- service of notices, and
- penalties that can apply to offences in relation to suspensions and cancellations.

4.2 INTRODUCTION

Your licence remains in force until it is cancelled. However, activities approved under your licence may be restricted if we suspend your licence. Suspension may be a temporary measure or may lead to the cancellation of your licence.

Where your licence covers more than one premises, we can also vary your licence to no longer cover particular premises if we:

- have reasonable grounds to suspend your licence in relation to those premises
- receive written notice from you requesting the variation.

We can cancel your licence if:

- you ask us to do so (for example, where you intend to cease business), or
- we make a decision to do so because one or more of the following criteria are present
  - you or an associate are not 'fit and proper' as an individual or company
  - a director, officer or shareholder who participates in the management or control of the company is not a 'fit and proper' person
  - a person who participates in the management or control of the premises is not a 'fit and proper' person
  - you do not have, or have available to you, the skills and experience required to carry out the activity authorised by the licence
  - the physical security of the premises is inadequate
  - the plant and equipment used at the premises are such that there is inadequate protection of the revenue in relation to the goods at the premises
  - you have no market for the goods covered by the licence
  - you are not keeping proper books of account for audit purposes
  - you have breached a condition of your licence

- you have made a false or misleading statement to us[99]
- cancellation is necessary for the protection of the revenue
- cancellation is necessary to ensure you comply with excise law
- you have not, for a period of at least 3 years, conducted any activities authorised by the licence at any premises covered by the licence.

4.3 POLICY AND PRACTICE

4.3.1 IF YOU CEASE YOUR EXCISE BUSINESS

Your licence conditions require you to notify us within 30 days if you permanently cease activities that require an excise licence. To finalise your excise obligations you must request in writing a cancellation of your licence.

Before we can cancel your licence, we must be satisfied that you no longer have any 'excisable alcohol products'. To be satisfied of this we may:

- arrange a final audit of goods at premises covered by the licence, and
- work out if you are liable to pay any excise duty.

Although your licence conditions require you to notify us within 30 days of cessation of activities, you are encouraged to notify us at the earliest opportunity. This will enable us to assist you to check your records and any stock on hand prior to closure of the site for excise purposes.

If you want to sell your business with the stock included, we can coordinate your licence cancellation with the licence approval for the new owner. (This does not mean that the new owner will automatically be granted a licence.) This will ensure the premises and goods are covered by a licence at all times.

If you do not intend to sell the goods with your business, you can[100]:

- pay any outstanding excise duty on goods held at premises covered by the licence and then dispose of them as you wish, or
- move the goods to another licence holder's premises, provided you have permission from us to move goods to those premises.

We will cancel your licence by giving you written notice.[101]

[99] Note that this is different to the consideration for granting a licence. In granting a licence we can take into account any misleading statement, or if you knowingly made a false statement, in your application. For suspension or cancellation we can consider any statement you make to us in relation to excise matters.

[100] Subsection 39I(4) of the Excise Act.

[101] Subsection 39L(3) of the Excise Act.

4.3.2 SUSPENSION OR CANCELLATION OF A LICENCE

The difference between suspension and cancellation

Suspension of a licence is a temporary measure we may take that limits the activities you can undertake during the period of suspension. It could be followed by cancellation of the licence or revocation of the suspension. Cancellation is a permanent measure which has the effect of prohibiting you from undertaking the activities for which you were previously licensed.

Where your licence covers more than one premises, we may also suspend your licence in relation to particular premises, limiting the activities you can undertake during the period of suspension at those premises. It could be followed by variation of your licence to remove particular premises prohibiting you from undertaking the activities for which you were previously licensed at those premises.

When your licence can be suspended or cancelled

We can suspend or cancel your licence if we have reasonable grounds for believing[102]:

- you are not 'fit and proper' as an individual or company*
- a director, officer or shareholder who participates in the management or control of the company is not a 'fit and proper' person*
- a person who participates in the management or control of the premises is not a 'fit and proper' person*
- you are an associate of a person or a company that is not 'fit and proper'*
- you do not have, or have available to you, the skills and experience required to carry out the activity authorised by the licence*
- the physical security of the premises is inadequate*
- the plant and equipment used at the premises are such that there is inadequate protection of the revenue in relation to the goods at the premises
- you have no market for the goods covered by the licence*
- you are not keeping proper books of account for audit purposes
- you have breached a condition of your licence
- you have made a false or misleading statement to us
- suspension is necessary for the protection of the revenue*
- suspension is necessary to ensure that you comply with excise law, or
- you have not for a period of at least 3 years, conducted any activities authorised by the licence at any premises covered by the licence.

*For an explanation of these criteria, refer to Section 3.3.1 Licensing criteria.

[102] Subsections 39G(1) and 39L(1) of the Excise Act.

The criteria that have not been the subject of previous discussion in this Guide are covered below:

- You are not keeping proper books of account for audit purposes. For this criterion, we are assessing your actual record-keeping practices during the licence period and whether they are in an adequate state for an audit.
- You have breached a condition of your licence. A breach means you have not complied with a condition. In deciding whether or not to suspend we will take into account the following
  - the severity of the breach
  - the circumstances surrounding the breach
  - what the condition is (that is, the risk it is addressing).
- You have made a false or misleading statement to us. In considering your initial application, the false or misleading statements we take into account are in your application. Once you have been granted a licence, we can take into account any statements (including, for example, in a return, letter or response to a question) you have made in relation to your excise activities.
- Suspension is necessary for the protection of the revenue to ensure you comply with excise law. Where we consider that you are not complying with your obligations under the Excise Act, for example, if you have been manufacturing excisable alcohol products in contravention of your manufacturer licence.[103]
- You have not for a period of at least 3 years, conducted any activities authorised by the licence at any premises covered by the licence. We will consider suspending the licence where, for example, you have not manufactured or stored excisable alcohol for the previous 3 years at any premises covered by the licence and it is unlikely you will do so in the near future.

If your licence is suspended

If we believe your conduct warrants consideration of suspension of your licence, or of particular premises covered by your licence, we will generally advise you of our concerns prior to proceeding with suspension and provide you with an opportunity to rectify the issues identified.

If we decide to proceed with the suspension, this will be done by serving a Notice of suspension. The notice may be served on you or given to a person who appears to participate in the management or control of any of the premises covered by the licence.

A Notice of suspension will state that, if you want to stop the cancellation of your licence (or variation of your licence to no longer cover particular premises), you must provide us with a written statement, within 7 days of the notice being served, giving reasons why your licence should not be cancelled (or

[103] Sections 26 and 39K of the Excise Act.

varied). We will include our reasons for deciding to suspend your licence, or particular premises covered by your licence, with the Notice of suspension.

The notice will also state when the suspension takes effect, which could be immediately.

When your licence is suspended, unless you have written permission from us, it is against the law to[104]:

- manufacture excisable alcohol products if you are the holder of a manufacturer licence, or
- keep or store excisable alcohol products at premises covered by your licence if you are the holder of a storage licence.

During the period of suspension we may give you written permission to[105]:

- keep or store goods at premises covered by your licence
- carry out a process at premises covered by your licence, or
- move goods from premises covered by your licence to another place.

As a result of a suspension, we may:

- require the owner (you or a third party) of excisable alcohol products to move the goods from your premises covered by your licence to another place
- require payment of any costs incurred by us as a result of the suspension
- carry out a stocktake so that the total excise liability is known, and
- take control of premises covered by your licence and any excisable alcohol products stored at these premises.

If we suspend your licence, we have 28 days to cancel your licence. During this period we can revoke the suspension if you satisfactorily address the issues which led to the suspension. If we revoke a licence suspension we will do so in writing. We may impose additional conditions or allow you to resume your excise activities under the existing conditions.

Where your licence covers more than one premises, the aforementioned suspension processes can be applied in the same manner to particular premises covered by the licence.

All decisions in relation to the suspension of a licence or to particular premises covered by the licence are reviewable by lodging an objection within 60 days of the day we notify you.

For more information about your review rights, refer to Chapter 8 Reviews and objections.

[104] Section 39K of the Excise Act.

[105] Subsection 39K(6) of the Excise Act.

If your licence is cancelled

We can cancel your licence, or vary your licence to remove particular premises, for the same reasons we can suspend your licence.

We can cancel your licence without suspending your licence first. This may occur where we consider the issues require immediate action – for example, repeated delivery of excisable alcohol products without payment of required duty.
If we cancel your licence we will serve you with a Notice of cancellation. If we cancel your licence, you are not permitted to manufacture or store excisable alcohol products. You are also not permitted to move excisable alcohol products without our permission.

The notice may be served on you or given to a person who appears to participate in the management or control of the premises covered by your licence. We will include our reasons for deciding to cancel your licence with the Notice of cancellation.

At the same time, we will serve the owner of the excisable alcohol products (whether that is you or someone else) notice in writing to either:

- pay the duty on the goods, or
- move the goods to another place in accordance with our permission.

This notice is served in the same manner as the Notice of cancellation.
If the owner does not comply with the notice to pay duty or move the goods, we may sell or dispose of the excisable alcohol products.[106]

If we cancel your licence, you must retain all records that you have been directed to keep, for the period you have been directed.

Where your licence covers more than one premises, the aforementioned cancellation processes can be applied to particular premises in the same manner by variation of the licence to remove those particular premises.[107]

Special provisions in regard to cancellation of a licence relating to beer manufacture

The law differs in some respects with regard to a licence cancellation where you have a licence to manufacture beer[108]:

- We may dispose of any beer remaining at brewery premises formerly covered by your licence after one month, if duty has not been paid. Disposal includes moving the beer from your premises.

[106] Subsection 39N(2) and paragraph 39L(4)(b) of the Excise Act.

[107] Section 39LA of the Excise Act.

[108] Section 77F of the Excise Act.

- If the beer is unsaleable or unlikely to realise the amount of the duty and costs associated with its removal and sale, we may destroy it.

If you are not satisfied with our decision to cancel your licence, vary your licence to remove particular premises or dispose of your excisable goods, you can request a review of our decision by lodging an objection within 60 days of the day we notify you.[109]

For more information about your review rights, refer to Chapter 8 Reviews and objections.

Applying for another licence after a licence cancellation

You can apply for another licence after you have had a licence cancelled. However, we will take the reasons for the cancellation into account when considering any new application.

4.4 PROCEDURES

4.4.1 SERVICE OF NOTICES

Notices of suspension or cancellation and directions to deal with excisable alcohol products will be served either[110]:

- personally or by post[111] on you, or
- personally on a person who, at the time the notice is served, appears to participate in the management or control of premises covered by the licence.

4.4.2 MORE INFORMATION

If you need more information on suspension, variation or cancellation of a licence, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28

[109] Section 39Q of the Excise Act.

[110] Subsections 39J(2) and 39L(5) of the Excise Act.

[111] Section 39P of the Excise Act.

days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

4.5 PENALTIES THAT CAN APPLY IN RELATION TO SUSPENSIONS AND CANCELLATIONS

The following are the penalties that may apply after conviction for an offence.

Manufacture

If you intentionally manufacture excisable alcohol products knowing or being reckless as to whether they are excisable goods, when your manufacturer licence (or particular premises covered by your licence) is suspended, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[112]

Keep or store

If you intentionally store excisable alcohol products knowing or being reckless as to whether they are excisable goods, when your storage licence (or particular premises covered by your licence) is suspended, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[113]

Remove

If your licence has been cancelled or varied to remove premises, you must not without our permission remove excisable alcohol products, on which duty has not been paid, from the premises formerly covered by the licence. The penalty is 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[114]

If your brewery premises was covered by a licence that has been cancelled, or is varied to no longer cover the brewery premises, you must not, without permission, remove or cause to be removed from the premises any beer on which duty has not been paid. The penalty is a maximum of 50 penalty units.[115]

[112] Paragraph 39K(1)(a) of the Excise Act.

[113] Paragraph 39K(1)(b) of the Excise Act.

[114] Subsection 39M(1) of the Excise Act.

[115] Section 77E of the Excise Act.

4.6 TERMS USED

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are manufactured or produced in Australia and listed in the Schedule to the Excise Tariff Act or an Excise Tariff alteration.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- high strength spirit for non-beverage use, including denatured spirit.

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

4.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 39G – when the Collector may suspend a licence
  - section 39J – method of suspension
  - section 39K – activities that are prohibited during suspension
  - section 39L – cancellation of licences
  - section 39LA – variation of certain licences to remove premises
  - section 39M – removal of goods if licence ceases to be in force or is varied
  - section 39N – removal of goods by Collector if licence ceases to be in force or is varied
  - section 39P – service of notices
  - section 39Q – review of decisions
  - section 77E – removal of beer if licence ceases to be in force or is varied to no longer cover a particular brewery

  - section 77F – disposal of beer by Collector if licence ceases to be in force or is varied
- *Excise Tariff Act 1921*
  - The Schedule
- *Crimes Act 1914*
  - section 4AA – penalty units

Amendment history

27 June 2025

Part	Comment
Throughout	This chapter was updated to take into account the law changes as a result of the Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024. This includes: • a new ground for the suspension and cancellation of a licence where you have not, for a period of at least 3 years, conducted any activities authorised by the licence at any premises covered by the licence s applications for entity level licenses • suspension of particular premises where a licence covers more than one premises • cancellation of particular premises by variation of the licence where a licence covers more than one premises.
Throughout	Updated in line with current ATO style and accessibility requirements.

5 MOVEMENT PERMISSIONS

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5 MOVEMENT PERMISSIONS

5.1 PURPOSE

This Chapter deals with:

- why you need a movement permission
- different movement permission types
- whether you can get a movement permission
- what is included in a movement permission
- whether the receiving premises have to be covered by a licence
- whether you will need to pay a security
- what happens when your movement permission is granted
- your responsibilities
- what happens if your application for a movement permission is not approved
- when and how a movement permission can be revoked or cancelled
- how to apply for a movement permission
- how to amend a continuing movement permission, and
- penalties that can apply to offences in relation to movement permissions.

5.2 INTRODUCTION

Under the excise system, control of goods from the time of creation to the point of authorised delivery of the goods into the Australian domestic market, or export, lies with the Commissioner. To maintain this control, the Excise Act requires that excisable goods are not to be moved without permission.[116]

We refer to this form of permission as a movement permission. It is a permission we provide in writing that authorises you to move specified goods from a specified place to another.[117] This permission may be subject to conditions.

The permission holder retains responsibility for any excise liability arising on the 'excisable alcohol products' until they are taken up into the stock of the new premises.

[116] This does not mean movement within the bounds of premises covered by your licence, rather movement from those premises to another place.

[117] Section 61A of the Excise Act.

5.3 POLICY AND PRACTICE

5.3.1 PERMISSION TYPES

Depending on your circumstances, you may apply for a permission to move excisable alcohol products once (single permission) or excisable alcohol products of a particular kind on a continuing basis (continuing permission). Continuing permissions are used where you have a need to move excisable alcohol products in a regular pattern (for example, a delivery each week to the same premises). A single permission is used when movements are not on a continuing or regular pattern to the same premises.

There are 5 types of movement permission:

- single movement permission (non-export) – a permission to move excisable alcohol products from one specified place to another specified place (effective for one movement)
- continuing movement permission (non-export) – a permission to move excisable alcohol products of a kind specified from one specified place to another specified place on a continuing basis
- general movement permission – a permission to move excisable alcohol products of a kind from any premises covered by your licence to any other premises covered by a licence which are authorised to keep those goods, on a continuing basis
- single movement permission (export) – a permission to move excisable alcohol products only to a place of export (effective for one movement), or
- continuing movement permission (export) – a permission to move excisable alcohol products only of a kind specified to a place of export on a continuing basis.

An export movement permission is ***not*** an authority to export. You must obtain this separately from the Department of Home Affairs.

5.3.2 OBTAINING A MOVEMENT PERMISSION

You can be granted a movement permission if you are the licence holder of:

- the place covered by a licence from where the goods are despatched or
- the place covered by a licence where the goods are received.

You can also be granted a movement permission if you are the owner of the excisable alcohol products even if you do not hold an excise licence.

A general movement permission can only be granted to the holder of an excise licence, which will allow the licence holder to despatch excisable alcohol products from any premises covered by that licence. If you are granted a licence that covers more than one premises, you may also receive a general movement permission by default.

5.3.3 WHAT IS INCLUDED IN A MOVEMENT PERMISSION

Each movement permission we approve contains 3 parts:

1. The permission

This specifies the:

- permission holder
- goods by tariff item or general description that can be moved under the permission.

The type of goods may be expressed generally (for example, 'excisable goods', 'excisable alcohol products') or specifically, by tariff item number or description.

A single movement permission will specify the kind and quantity of the goods that can be moved, for example, 12 (cartons) × 24 (cans) × 375 ml rum and cola @ 5% alcohol by volume = 5.4 litres of alcohol (LALs) classified to excise tariff item 2.

2. The conditions

Movement permissions can be subject to conditions that are necessary to protect the revenue or ensure compliance with the Excise Act. In general, the conditions listed below are considered necessary to do that.

As a standard condition, you must provide to both the despatching and receiving premises a consecutively numbered document with each movement of goods that specifies:

- the despatching premises and destination
- the date of despatch
- the number and type of packages
- a description of the goods
- a statement that the goods are 'underbond', and
- any other information necessary to permit the goods to be dealt with at the destination.

A condition can also have a restriction limiting the volume of goods that can be moved within a specific period of time, or at any one time.

A copy of the movement document is to be sent separately to the specified destination place. It should be sent within 24 hours of the dispatch of the goods. Note that this condition does not apply to export movement permissions.

3. The schedule

This specifies:

- the premises from which the goods can be removed
- the premises to which the goods can be moved
- the goods by tariff item that can be moved under the permission, and

- for single movement permissions, the period or dates when the goods may be moved.

If both premises between which goods are being moved are covered by your licence, the schedule may not specify all these details but only that any movement of goods between premises is approved.

Note that general movement permissions will not contain a schedule, as the permission allows the permission holder to move excisable alcohol products of a kind from any premises covered by their licence to any other premises covered by a licence that are authorised to keep those kinds of goods.

5.3.4 RECEIVING PREMISES AND LICENCES

Generally, the receiving premises should be covered by a licence. However, we may authorise underbond movement of goods to a 'specified place' not covered by a licence, for example, a waste destruction facility.

For a general movement permission the receiving premises must be covered by a licence that authorises those kinds of goods may be kept there.

5.3.5 PAYING A SECURITY

Prior to granting a movement permission, we may also require you to provide a security to protect the revenue or ensure compliance with the Excise Act. Even if we don't require a security prior to the granting of the movement permission, we may ask for a security at a later time. We can also ask you to increase the value of any security you may already have given.[118]

A security can be a bond, guarantee, cash deposit or similar financial product for an amount of money which may be forfeited if there is a failure to comply with the Excise Act. It is not necessary for a liability to arise as a result of the failure to comply, for the security to be forfeited. There is no statutory limit to the amount of a security but the amount is generally set by reference to the level of revenue at risk.

As part of assessing your application for a movement permission, we will decide whether you must provide a security. We will take into account:

- whether you currently hold an excise licence
- whether the despatching and receiving premises are covered by a licence
- the type of goods involved
- the amount of the liability on the goods
- the tax compliance record of
  - the applicant for the permission
  - the owner of the despatching premises
  - the owner of the receiving premises, and

[118] Sections 16 to 22 of the Excise Act.

- the susceptibility of the goods to be lost or diverted into the Australian domestic market without the payment of duty.

We review securities linked to continuous movement permissions every 3 years, at which time they may be extended, revised or cancelled. Compliance with a single movement permission is assessed on completion of the movement of the excisable goods covered by the permission.

The decision to require a security is not a reviewable decision under the objection process. However, there may be other avenues for review, for example, you may seek an informal review of our decision.

For more information about your review rights, refer to Chapter 8 Reviews and objections.

5.3.6 ONCE A MOVEMENT PERMISSION IS GRANTED

When your movement permission is granted, it will be sent to you. You can then move your goods in accordance with the permission or the schedule attached to the permission. You will need to keep appropriate records to track the movement of your goods.

5.3.7 YOUR RESPONSIBILITIES

Where you have had possession, custody or control of goods we may request you (the permission holder) to account for the goods. If you are able to demonstrate that the goods have been lawfully moved under a movement permission, this will be considered a satisfactory accounting. It is important that you keep satisfactory records of any movements of goods from your premises.

If you cannot satisfactorily account for the goods or have failed to keep them safe, we may demand an amount equal to the duty that would have been payable on the goods.[119]

The permission holder is accountable for the goods:

- from the time they are removed from the despatching premises, and
- until they are delivered to the receiving premises.

Accountability then transfers to the receiving premises. If the permission holder is the owner of the receiving premises, transfer of accountability occurs when the goods leave the despatching premises. If the permission holder owns the goods but is not licensed, they would generally be accountable for the goods from the time they are removed from the despatching premises until they are delivered to the receiving premises and taken up into stock.

If you transfer goods to another premises and there is a discrepancy between the quantity shown in the delivery documentation and the physical quantity received you should contact us.

[119] Section 60 of the Excise Act.

In the exceptional case where the goods are moved to premises not covered by a licence, this explanation alone will be insufficient to satisfactorily account for the goods.

5.3.8 IF AN APPLICATION IS NOT APPROVED

If we do not approve your application for a movement permission, or to amend your existing movement permission, we will notify you in writing. You will not be able to move the goods to the place nominated in the application. If you are not satisfied with our decision, you can ask us to review it.

For more information about your review rights, refer to Chapter 8 Reviews and objections.

5.3.9 REVOCATION OR CANCELLATION OF A MOVEMENT PERMISSION

Continuing and general movement permissions remain in effect until they are cancelled.[120]

We can cancel your movement permission if:

- you ask us to do so
- we consider that there is a risk to the revenue, or
- we have cancelled the licence of the receiving or despatching premises (in the case of a continuing movement permission).

If we decide to cancel your movement permission, we will notify you in writing. The cancellation will take effect from the time:

- you are served with the cancellation notice, or
- specified on the cancellation notice.

A decision to revoke or cancel a movement permission is not a reviewable decision.

For more information about your review rights, refer to Chapter 8 Reviews and objections.

5.4 PROCEDURES

5.4.1 APPLYING FOR A MOVEMENT PERMISSION

Relevant forms to apply for a movement permission are available at Permission to move excisable alcohol products.

[120] While there is no specific provision in the Excise Act which allows permissions to be cancelled (unlike licences), in accordance with subsection 33(3) of the *Acts Interpretations Act 1901* the power to grant the permission provides the power to cancel the permission.

If you wish to be granted a general movement permission, contact us on **1300 137 290** or via ATO Online Services to discuss. In the case of a continuing movement permission, if you do not have control of the proposed receiving premises (whether covered by a licence or not), we require you to obtain a letter from the operator of these premises stating that they will accept responsibility for the underbond goods when received. The instructions for the movement permission application forms contain details of the statement required from the operator of the receiving premises.

If you need to deliver goods to new premises within specified periods, ensure that you allow sufficient time for your application to be determined. Generally, we will make a decision on your application within 28 business days unless we need further information.

If you are granted a licence that covers more than one premises, or your existing licence is varied to cover more than one premises, you may also receive a general movement permission by default with your licence.

5.4.2 AMENDING A CONTINUING MOVEMENT PERMISSION

If you wish to amend your existing continuing movement permission (for example, change the schedule of receiving premises), you must send us either a:

- new application form with the amending details, or
- letter including the permission number and necessary changes.

If you wish to add new receiving premises to your existing permission, you must also provide us with a letter from the operator of the receiving premises accepting responsibility for the underbond goods when received. The instructions for the movement permission application form contain details of the statement required from an operator of the receiving premises.

We will consider your request and send you a new or amended permission if approved. In the meantime, you cannot move goods outside your current permission.

5.4.3 MORE INFORMATION

If you need more information on movement permissions, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

5.5 PENALTIES THAT CAN APPLY IN RELATION TO MOVEMENT PERMISSIONS

The following are the penalties that may apply after conviction for an offence.

Move

If you move excisable alcohol products without a movement permission, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.[121]

If you move excisable alcohol products contrary to your movement permission, the penalty is 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.[122]

5.6 TERMS USED

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are listed in the Schedule to the Excise Tariff Act, or an excise tariff alteration, and manufactured in Australia.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- high strength spirit for non-beverage use, including denatured spirit.

Penalty units

The value of a penalty unit is contained in section 4AA of the Crimes Act 1914, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

[121] Section 117A of the Excise Act.

[122] Section 61A of the Excise Act.

Underbond

This is an expression not found in excise legislation but it is widely used to describe goods that are subject to excise control. Excisable goods that are subject to the Commissioner's control are commonly referred to as 'underbond goods' or as being 'underbond'. This includes goods that have not yet been delivered into the Australian domestic market and goods moving between premises under a movement permission.

5.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 16 – right to require security
  - section 17 – form of security
  - section 18 – general security may be given
  - section 19 – cancellation of bonds
  - section 20 – new sureties
  - section 21 – form of security
  - section 22 – effect of security
  - section 60 – persons to keep excisable goods safely etc.
  - section 61A – permission to remove goods that are subject to the CEO's control
  - section 117A – unlawfully moving excisable goods
- *Excise Tariff Act 1921*
  - The Schedule
- *Crimes Act 1914*
  - section 4AA – penalty units
- *Acts Interpretation Act 1901*
  - section 33 – exercise of powers and duties

Amendment history

27 June 2025

Part	Comment
Throughout	This chapter was updated to take into account the law changes as a result of the Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024. This includes: • a new general movement permission to move excisable alcohol products of a kind from any premises covered by your licence to any other premises covered by a licence which are authorised to keep those goods, on a continuing basis • general movement permission may be granted by default if you are granted a licence that covers more than one premises, or your existing licence is varied to cover more than one premises.
Throughout	Updated in line with current ATO style and accessibility requirements.

6 PAYMENT OF DUTY

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6.3.2 WHEN DUTY IS PAYABLE UNDER A PERIODIC SETTLEMENT PERMISSION

6.3.3 WHEN DUTY IS PAYABLE UNDER PREPAYMENT OF EXCISE DUTY

6.3.4 WHEN DUTY IS NOT PAYABLE

6.3.5 WORKING OUT THE AMOUNT OF DUTY TO PAY

6.3.6 RULES FOR MEASURING VOLUME AND ALCOHOLIC STRENGTH

6.3.7 DISPUTES AS TO THE DUTY

6.3.8 ACCOUNTING FOR EXCISABLE ALCOHOL PRODUCTS

6.3.9 STOCK MANAGEMENT

6.4 PROCEDURES

6.4.1 OBTAINING A PERIODIC SETTLEMENT PERMISSION

6.4.2 WHAT A PERIODIC SETTLEMENT PERMISSION INCLUDES

6.4.3 DELIVERING ALCOHOL PRODUCTS INTO THE AUSTRALIAN DOMESTIC MARKET

6.4.4 LODGING EXCISE RETURNS AND PAYING EXCISE DUTY

6.4.5 MAKING AN ERROR ON AN EXCISE RETURN

6.4.6 MORE INFORMATION

6.5 PENALTIES THAT CAN APPLY IN RELATION TO PAYMENT OF DUTY

6.6 TERMS USED

6.7 LEGISLATION (quick reference guide)

6 PAYMENT OF DUTY

6.1 PURPOSE

This Chapter deals with:

- when duty is payable
- when duty is payable under periodic settlement
- when duty is payable under prepayment of excise duty
- when duty is not payable
- how to work out the amount of duty you're liable to pay, including tariff proposals and quotas
- whether you have to account for excisable alcohol products
- how to get a periodic settlement permission (PSP)
- what your PSP will include
- what to do to deliver alcohol products into the Australian domestic market
- how to lodge excise returns and pay excise duty
- what to do if you have made an error on your excise return, and
- penalties that can apply to offences in relation to payment of duty.

6.2 INTRODUCTION

Excise duty is imposed at the time of manufacture of '[excisable alcohol products]'.[123] However, the duty is not required to be paid at the time of manufacture.

This Chapter focuses on the payment of duty and when and how much duty is payable.

To ensure the duty is ultimately acquitted, excisable alcohol products remain subject to our control until they are delivered[124]:

- into the Australian domestic market, or
- for export to a place outside Australia.

[123] Subsection 5(1) of the Excise Tariff Act.

[124] Section 61 of the Excise Act.

The liability for duty, imposed at the time of manufacture, can be acquitted by:

- payment of the duty
- export of the goods
- 'remission', or
- use of the goods in the manufacture of other excisable goods.

Alternatively, the liability can be transferred with the goods if they are sold while 'underbond'.

6.3 POLICY AND PRACTICE

6.3.1 WHEN DUTY IS PAYABLE

When the liability for duty becomes payable depends on how authority is given to deliver the excisable alcohol products into the Australian domestic market. If goods are delivered for home consumption in accordance with a continuing permission issued under section 61C of the Excise Act, duty is payable at the same time the return for the relevant period is due for lodgment.[125] If goods are entered on an ad hoc basis, you will have to pay duty in order for the entry to be passed.[126]

6.3.2 WHEN DUTY IS PAYABLE UNDER A PERIODIC SETTLEMENT PERMISSION

Under a PSP, the duty is paid *after* the excisable alcohol products are delivered into the Australian domestic market.

A PSP allows you to deliver goods for home consumption and then, for each period, report those deliveries and pay duty at the rates applicable at the time of each delivery.[127] Periodic settlement is the most common arrangement for the delivery of goods into the Australian domestic market.

PSPs may be granted on a weekly, monthly or quarterly basis.

Weekly PSPs: you may apply for a PSP that covers any recurring 7-day reporting period.[128] You may specify in your application the 7-day period you wish to use, for example, Wednesday to Tuesday.[129] The application must be made in the approved form.[130]

[125] Section 61C of the Excise Act.

[126] Paragraph 58(1)(a) of the Excise Act.

[127] Section 61C of the Excise Act.

[128] Paragraph 61C(1)(a) of the Excise Act.

[129] Subsection 61C(1A) of the Excise Act.

[130] Subsection 61C(1B) of the Excise Act.

Monthly PSPs – you may apply for a monthly PSP if you are either:

- a small business entity or eligible business entity[131], or
- included in a particular class of business or you deliver goods that are of a particular kind as prescribed by the Excise Regulation.[132]

The class of business or particular kind of goods must be prescribed in the Excise Regulation. The Excise Regulation does not currently prescribe any class of business and there are no goods prescribed relevant to alcohol.

You may only apply for a quarterly PSP if you are an eligible business entity.

A 'small business entity'[133] is an entity with an aggregated turnover for the previous year of less than $10 million or one that is likely to have an aggregated turnover for the current year of less than $10 million. Aggregated turnover includes the turnover of any entities connected with you and any of your affiliates. However it excludes any turnover from dealings between you, and any entities connected with you or your affiliates.

An 'eligible business entity'[134] is an entity that would be a small business entity if the turnover thresholds were $50 million rather than $10 million.

A PSP is given in writing and includes:

- your name as the holder of the PSP
- the kind of goods to which the PSP applies
- the place from which the goods may be delivered
- the start date of the PSP and whether it is for a 7-day, monthly or quarterly period, and
- any special requirements of the periodic settlement.[135]

In considering your application for a PSP, we will take into account various issues including compliance with the law and the protection of the excise revenue. We will also consider whether you have complied with the requirements of any previous permission you have been given. If we refuse to give a PSP, we will issue you a notice in writing setting out the reasons for the refusal.[136]

[131] Subparagraph 61C(1)(b)(ia) of the Excise Act.

[132] Subparagraphs 61C(1)(b)(i) and (ii) of the Excise Act.

[133] Defined in subsection 4(1) of the Excise Act by reference to section 328-110 (other than subsection 328-110(4)) of the *Income Tax Assessment Act 1997*.

[134] Defined in subsection 4(1) of the Excise Act by reference to subparagraph 61C(a)(b)(ia) and section 61C(1AA) of the Excise Act.

[135] Subsections 61C(1C), (1D) and (1E) and subsections 61C(5) to (7) of the Excise Act.

[136] Paragraph 61C(1C)(b) of the Excise Act.

A decision we make in relation to the period of a PSP or any condition for a PSP is a reviewable decision.[137]

For information about your review rights, refer to Chapter 8 Reviews and objections.

If you have a 7-day PSP:

- You must lodge an 'excise return', on the due date specified in your PSP (that is, the first business day following the end of the 7-day period). The return details the goods you have delivered into the Australian domestic market during the settlement period.[138]
- You must pay the duty, on the first business day following the end of the 7-day period, on the goods you have delivered within the settlement period.[139]

A 'business day' is a day that is not a Saturday or Sunday or a public holiday in the place where you lodge your return.[140]

If you have a monthly PSP, the same requirements apply however you must give your return and pay any excise duty on or before the 21st day of the month following the end of the monthly period.[141]

If you have a quarterly PSP, you must give your return and pay any excise duty:

- for a quarter ending on 31 March, 30 June or 30 September, the 28th day after the end of the quarter
- for a quarter ending on 31 December, the 28th day of the February after the end of the quarter.

We may also determine a different PSP period if:

- you do not have any excise duty to pay[142]
- you are an eligible business entity and have a PSP for a monthly period and have advised us in writing that the business has ceased to be an eligible business entity[143], or
- you are included in a particular class of business and have a PSP for a monthly period and have advised us in writing that your business has ceased to be included in the class.[144]

The class of business must be prescribed in the Excise Regulation. The Excise Regulation does not currently prescribe any such businesses.

[137] Paragraphs 162C(1)(d), 162C(1)(e) or 162C(1)(f) of the Excise Act.

[138] Paragraph 61C(3)(a) of the Excise Act.

[139] Paragraph 61C(3)(g) of the Excise Act.

[140] Section 2B of the *Acts Interpretation Act 1901*.

[141] Paragraphs 61C(3)(c) and (g) of the Excise Act.

[142] Subsection 61C(3A) of the Excise Act.

[143] Paragraphs 61C(8)(a), (b) and (c) of the Excise Act.

[144] Paragraphs 61C(8)(a), (b) and (c) of the Excise Act.

If we change your PSP period, we will advise you in writing that your PSP is revoked from the date specified in the notice. We will give you another PSP for a 7-day period.[145]

If you are no longer eligible for a monthly or quarterly settlement period, it is a condition of your licence that you notify us in writing and we will revoke your permission from a specified day and give you another PSP for a 7-day period.[146]

If you advise us in writing that you wish to change the period relating to your 7-day period of your PSP, we may, in writing, revoke your current PSP and give you a new permission for the preferred period. We will notify you of the day the change comes into effect.[147]

You do not need to have an excise licence to have a PSP.

Example 6A

Buy Me Pty Ltd (Buy Me) does not hold an excise licence and does not qualify as a small business entity or eligible business entity. A licensed manufacturer manufactures excisable alcohol products for Buy Me under contract. Under the terms of the contract, Buy Me has title to the goods from the time of manufacture and will pay the excise duty.

Buy Me applies for and is granted a PSP.

The PSP is for the period Monday to Sunday. Therefore, Buy Me is able to arrange delivery of excisable alcohol products into the Australian domestic market and defer payment of excise duty, on those goods, until after the end of that period. On the first business day after the end of the period (that is, Monday, unless it is a public holiday in which case it will be due on Tuesday) Buy Me must lodge an excise return for any excisable alcohol products delivered during the prior Tuesday to Monday and pay the excise duty owing on those goods.

We will send Buy Me written confirmation, after the excise return has been processed.

6.3.3 WHEN DUTY IS PAYABLE UNDER PREPAYMENT OF EXCISE DUTY

Under prepayment, the duty is paid *before* the excisable alcohol products are delivered into the Australian domestic market.

If you do not hold a PSP, you must receive a Delivery authority from us before you are allowed to deliver the excisable alcohol products into the Australian domestic market. We require you to pay any applicable

[145] Paragraphs 61C(8)(d) and (e) of the Excise Act.

[146] Paragraph 61C(3)(e) of the Excise Act.

[147] Subsection 61C(9) of the Excise Act.

duty before we give you a Delivery authority. To request a Delivery authority you need to lodge an excise return.

That is, you must[148]:

- lodge an excise return
- pay the relevant duty, and
- receive a Delivery authority from us.

You must not deliver excisable alcohol products into the Australian domestic market before receiving the Delivery authority.

6.3.4 WHEN DUTY IS NOT PAYABLE

There are circumstances in which no duty will be payable. These include where:

- goods are classified to an item or subitem with a free rate of duty
- goods are exported
- a remission circumstance applies, or
- excisable alcohol products that are subject to our control are used in the manufacture of other excisable alcohol products.

6.3.5 WORKING OUT THE AMOUNT OF DUTY TO PAY

To work out how much duty you need to pay you will need to:

- check whether your alcohol products are excisable alcohol products according to the Schedule to the Excise Tariff Act[149] and identify the correct duty rate
- work out the volume of alcohol subject to duty, in each tariff subitem, that you 'deliver into the Australian domestic market'
  - total volume × (strength – 1.15%)[150] = dutiable litres of alcohol for beer
  - total volume × strength = dutiable litres of alcohol for all other excisable alcohol products
- multiply the dutiable litres of alcohol by the rate of duty on the excisable alcohol products, and
- add up the total for each subitem to work out total duty to be paid.

Further information on these steps is set out below.

[148] Section 58 of the Excise Act.

[149] You can find the current excise rates of duty, along with those applicable pre 3 February 2025 at our tariff working page Excise duty rates for alcohol.

[150] For beer, the rate of duty is only applied to the litres of alcohol in excess of 1.15%, as per the rates specified in the Schedule. This is referred to as the dutiable content.

(i) Classifying excisable alcohol products

The Schedule to the Excise Tariff Act lists those goods that, if manufactured or produced in Australia, are subject to excise. The Schedule also contains the rate of duty applicable to the goods. For excisable alcohol products the relevant part of the Schedule as of 3 February 2025 is:

Figure 2: Extract of the table in the Schedule to the Excise Tariff Act with current rates of duty

Item	Subitem	Unit	Description of goods	Rate of Duty
1			Beer	
	1.1	LAL	Beer not exceeding 3% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$52.87 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.2	LAL	Beer not exceeding 3% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$10.57 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.5	LAL	Beer exceeding 3% but not exceeding 3.5% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$61.57 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.6	LAL	Beer exceeding 3% but not exceeding 3.5% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$33.11 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

	1.10	LAL	Beer exceeding 3.5% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$61.57 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.11	LAL	Beer exceeding 3.5% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$43.39 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.15	LAL	Beer not exceeding 3% by volume of alcohol produced for non-commercial purposes using commercial facilities or equipment	$3.71 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.16	LAL	Beer exceeding 3% by volume of alcohol produced for non-commercial purposes using commercial facilities or equipment	$4.28 per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
2			**Other excisable beverages not exceeding 10% by volume of alcohol**	$104.31 per litre of alcohol
3			**Spirits; Other excisable beverages exceeding 10% by volume of alcohol**	
	3.1	LAL	Brandy	$97.41 per litre of alcohol
	3.2	LAL	Other excisable beverages exceeding 10% by volume of alcohol	$104.31 per litre of alcohol

3.5	LAL	Spirit that: (a) a person has an approval, under section 77FD of the *Excise Act 1901*, to use for fortifying Australian wine or Australian grape must; and (b) is otherwise covered by the approval	Free
3.6	LAL	Spirit that: (a) is for use by a person who is included in a class of persons determined under section 77FE of the *Excise Act 1901*; and (b) if a quantity is specified in a determination under that section in relation to the person—does not exceed that quantity; and (c) is for an industrial, manufacturing, scientific, medical, veterinary or educational purpose	Free
3.7	LAL	Spirit that: (a) a person has an approval, under section 77FF of the *Excise Act 1901*, to use for an industrial, manufacturing, scientific, medical, veterinary or educational purpose; and (b) is otherwise covered by the approval	Free
3.8	LAL	Spirit denatured according to a formula determined under section 77FG of the *Excise Act 1901*, other than spirit for use as fuel in an internal combustion engine	Free
3.10	LAL	Spirits not elsewhere included	$104.31 per litre of alcohol

You can find the current excise rates of duty, along with those applicable pre 3 February 2025 at our tariff working page Excise duty rates for alcohol.

Working out quantities of excisable alcohol products

Duty for excisable alcohol products is levied on the quantity of alcohol in the goods and not on the quantity of the goods themselves (for example, you do not pay duty on the water contained within the product).

Alcohol quantity is measured in litres of alcohol (LALs), which is calculated by measuring the total volume and multiplying it by the strength, after taking into consideration the *rules for measuring volume and strength* (see Section 6.3.6 Rules for measuring volume and alcoholic strength).

Example 6B

Bottler Brandies manufacturers high quality brandy for the Australian market.

The dutiable quantity of alcohol in 100 cartons, each containing 12 × 700 ml bottles of brandy, at 37.2% alcohol by volume is:

100 cartons × 12 bottles × 0.7 litres = 840.0 litres × 37.2% = 312.48 LALs

Example 6C

Bottler Brandies also manufactures brandy, which is used to manufacture brandy and cola (RTD) in 250 ml bottles for the Australian market.

The dutiable quantity of alcohol in 400 bottles at 5% alcohol by volume is:

400 bottles × 0.25 litres = 100 litres × 5% = 5.00 LALs

Example 6D

Bevy Brewing manufactures a boutique beer for the Australian market.

The rates of duty for beer specify that duty only applies to the amount of alcohol calculated on the alcohol content above 1.15%. We refer to this amount as the dutiable quantity of beer. The dutiable quantity of alcohol in 100 litres of beer at 5% alcohol by volume is:

100 litres × (5% − 1.15%) = 3.85 LALs

6.3.6 RULES FOR MEASURING VOLUME AND ALCOHOLIC STRENGTH

To work out your alcoholic quantity for excise duty purposes, you should determine the alcoholic volume and strength based on what the volume and strength would have been if the alcohol was measured at a temperature of 20 degrees Celsius.[151] Conversion tables (Practical alcohol tables volume 1, Commission of the European Communities) allow alcoholic strength, as measured by alcoholmeters or alcohol hydrometers, to be converted to the 20 degree Celsius standard.

Legislation allows us to make rules for the measurement of volume and alcoholic strength of excisable goods.[152] These rules are detailed in 2 legislative determinations and ensure an acceptable degree of

[151] Preamble in the Schedule to the Excise Tariff Act.

[152] Section 65 of the Excise Act.

accuracy exists in the measurement of volume and strength. They also provide you with certainty that if your procedures and practices comply, you will be paying the correct amount of duty.

(i) Excise (Volume – Alcoholic excisable goods) Determination 2019

The Excise (Volume – Alcoholic excisable goods) Determination 2019 provides guidance on the following key areas of volume measurement.

Sampling and analysis

Sufficient samples must be taken from each production or packaging run to ensure the average fill volume of the samples taken accurately reflects the average fill volume of all the containers.

Measuring and equipment

The volume of alcoholic excisable goods must be measured in accordance with legal requirements pertaining to measurements and must consistently produce an accurate result.

The National Measurement Institute (NMI) website provides information on volume measurement and if required the NMI should be contacted for further information.

Permitted variations

Permitted variations in filling volume for alcoholic goods depend on whether or not the goods are packaged in a bulk container (that is, a container that has the capacity to have packaged in it more than 2 litres of liquid).

Table 1: Permitted variations for bulk containers

Volume of contents	**Dutiable volume**
Not nominated	Actual volume
Nominated and actual volume does not exceed 101% of the nominated volume	Nominated volume
Nominated and actual volume exceeds 101% of the nominated volume	Actual volume

Table 2: Permitted variations for containers that are not bulk containers

Volume of contents	**Dutiable volume**
Not indicated on the container	Actual volume
Is indicated on the container and actual volume does not exceed 101.5% of the indicated volume	Indicated volume

Is indicated on the container and actual volume exceeds 101.5% of the indicated volume	Actual volume

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Example 6E

Bottler Brandies needs 100 cartons of brandy to fill an urgent order. As they have no packaged product in stock, they need to bottle some brandy. They use a flow meter to transfer 850 litres of brandy to their bottling tank.

Just prior to commencing the bottling operation, they use a calibrated dip stick to check the volume of brandy in the bottling tank. It contains 850 litres. They also check the temperature of the brandy in the bottling tank. It is 18 degrees Celsius. Using their conversion tables, they calculate that the actual volume of brandy in the bottling tank, at 20 degrees Celsius, is 850.85 litres.

During the bottling run, samples are taken and tested by weighing bottles that had earlier been weighed empty and their weights recorded. The average volume of the bottles tested was found to be 705 ml at a temperature of 20 degrees Celsius.

Volume stated on label is 700 ml

Actual volume is 705 ml

The difference between labelled and actual volume is 5 ml = 0.7%

As this product is not packaged in a bulk container, the tolerance for this product is 1.5%. Therefore, the volume of brandy within each bottle is accepted as being 700 ml for this production run (that is, based on indicated volume, as actual volume did not exceed the 1.5% tolerance).

Example 6F

Bevy Brewing has completed a racking run of 10 kegs of beer.

Each of the kegs has been endorsed with a weight when empty. The actual volume of each keg has been determined by weight and the average volume found to be 52 litres.

In their records, they have nominated that their kegs will be filled with 50 litres.

Nominated volume is 50 litres

Actual volume is 52 litres

Difference between nominated and actual volume is 2 litres = 4%

As this product is packaged in a bulk container, the tolerance for the product is 1%. Therefore, the volume of beer within each keg is accepted as being 52 litres (that is, based on actual volume, as the actual volume exceeded the tolerance of 1%).

(ii) Excise (Alcoholic strength of excisable goods) Determination 2019

The Excise (Alcoholic strength of excisable goods) Determination 2019 provides guidance on the following key areas of alcoholic strength measurement.

Sampling and analysis

The alcoholic strength must be measured using samples of the alcoholic excisable goods after it has reached its final alcoholic strength.

Table 3 summarises the point at which strength sampling must occur.

Table 3: Point at which strength sampling must occur

Type of product	Time of strength measurement
Packaged alcoholic excisable goods	Either: • in the header vessel immediately prior to packaging, or • directly from the packaging line
Bulk excisable goods	Any point in time after final alcoholic strength is reached
Non-commercial beer produced at a BOPS	Obtained from the test brew of each recipe Strength should be re-established where there has been a change to the recipe

Where sampling is required, sufficient samples must be taken to ensure an accurate actual strength is established. The alcoholic strength of a particular excisable good:

- is taken to be the average of the strength of all the sample measurements for that particular alcoholic excisable good
- is to be expressed as a percentage, if the alcohol were measured at 20°C, and
- when calculating volume by reference to the specific gravity of alcohol, the calculation is to be made on the basis that the specific gravity of alcohol in relation to water is 0.79067 (based on a temperature of 20°C and in a vacuum).

Measuring and equipment

The instruments used to measure the alcoholic strength of alcoholic excisable goods, including hydrometers, thermometers and weighing instruments, must conform to legal requirements pertaining to measurement.

The methods that may be used are:

- gas chromatography

- near infra-red spectrometry
- distillation followed by the gravimetric measurement of the distillate or by measurement in a density meter, or
- any other method that consistently produces a similar result by a documented testing process.

Alcohol manufacturers producing less than 100,000 litres of fermented beverages (including beer) in a financial year may use a hydrometer and a formula to determine the alcoholic strength of each fermented beverage, provided the formula is supported by a documented testing process that shows the formula produces accurate results.

Permitted variations

Permitted variations applicable to alcoholic strength are summarised in Table 4 below.

Table 4: Permitted variations for the purpose of working out excise duty payable

Product	Actual strength	Alcoholic strength
Alcoholic excisable goods (excluding beer subject to secondary fermentation)	does not exceed the labelled (or otherwise indicated) strength by more than 0.2 percentage points	Labelled (or otherwise indicated) strength
Alcoholic excisable goods (excluding beer subject to secondary fermentation)	exceeds the labelled (or otherwise indicated) strength by more than 0.2 percentage points	Actual strength
Beer subject to secondary fermentation	does not exceed the labelled (or otherwise indicated) strength by more than 0.3 percentage points	Labelled (or otherwise indicated) strength
Beer subject to secondary fermentation	exceeds the labelled (or otherwise indicated) strength by more than 0.3 percentage points	Actual strength

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Example 6G

Bottler Brandies take samples during their bottling run and test the strength. The alcoholic strength of the bottles tested was found to be 37.3% at a temperature of 20 degrees Celsius.

Strength stated on label is 37.2%

The difference between labelled and actual strength is 0.1%

The tolerance for this product is 0.2%. Therefore, the strength of the bottles of brandy is accepted as being 37.2%.

Example 6H

Bevy Brewing has completed a racking run of 10 kegs of beer. The beer is not subject to secondary fermentation.

Testing has revealed that the strength of the beer is 5.3%.

In their records, they have nominated that their kegs will be filled at a strength of 5.0%.

The difference between nominated and actual strength 0.3%

As the tolerance for this product is 0.2%, the strength of the beer is accepted as being 5.3% (that is, the actual strength of the product).

(iii) Calculating duty payable on each excisable alcohol product

The rates of duty are set in the Schedule to the Excise Tariff Act. The rates of duty on excisable alcohol products are subject to change. They are indexed twice a year in accordance with increases in the CPI (usually on 1 February and 1 August).[153] For ease of reference we provide a 'working tariff', incorporating indexation changes.

The rate of duty you use is the rate contained in the working tariff for the subitem. It will also depend on whether you have a PSP. If you do it is the rate applicable at the time you deliver the excisable alcohol products into the Australian domestic market. If you do not have a PSP, it is the rate applicable at the time you make the pre-payment.[154]

Precision requirements for calculations and reporting

When calculating quantities, the acceptable level of precision for working out total volume or LALs is 2 decimal places.

Example 6I

When goods are delivered into the Australian domestic market under a PSP, the rate of duty that applies is the rate in force at the time the goods are delivered.

On 3 February 2025, a manufacturer delivers RTD beverages not exceeding 10% alcohol by volume under its PSP.

[153] Section 6A of the Excise Tariff Act.

[154] Section 59 and paragraph 61C(3)(g) of the Excise Act.

The RTDs are 'other excisable beverages' classified to item 2 of the Schedule to the Excise Tariff Act. The rate of duty that applies is the rate in force on 3 February 2025 – $104.31 per litre of alcohol.

Example 6J

When goods are entered on an ad hoc basis prior to being delivered into the Australian domestic market, the rate that applies is the rate in force at the time payment is made.

On 31 January 2025, a manufacturer that does not hold a PSP prepays duty for the delivery of RTD beverages not exceeding 10% by volume of alcohol. The RTDs are delivered on 6 February 2025.

The RTDs are 'other excisable beverages' classified to item 2 of the Schedule to the Excise Tariff Act. The rate of duty that applies is the rate in force on 31 January 2025 – $103.89 per litre of alcohol.

The amount of duty payable is then calculated by multiplying the quantity of excisable alcohol products by the applicable rate of duty.

Example 6K

My Liquor Wholesalers makes the following deliveries during a one-week period:

- *beer, under subitem 1.1 of the Schedule to the Excise Tariff Act*
  - *day 1 – 756.23 LALs delivered*
  - *day 2 – 497.54 LALs delivered*
  - *day 3 – 1103.02 LALs delivered*
  - *total = 2356.79 LALs*
- *brandy, under subitem 3.1 of the Schedule to the Excise Tariff Act:*
  - *day 4 – 985.47 LALs delivered*
  - *day 5 – 899.14 LALs delivered*
  - *total = 1884.61 LALs*

The dutiable total for goods delivered under subitem 1.1 is 2356.79 LALs and for goods delivered under subitem 3.1 is 1884.61 LALs.

However, when completing your excise return, the dutiable quantity in LALs for goods classified to a particular tariff item or subitem may be truncated to one decimal place. Truncation to one decimal place means that anything after the first decimal place is disregarded.

Example 6L

Following on from Example 6K, the dutiable total for goods delivered, by My Liquor Wholesalers, under subitem 1.1 of the Schedule to the Excise Tariff Act is 2356.79 LALs and for goods delivered under subitem 3.1 of the Schedule to the Excise Tariff Act is 1884.61 LALs.

On the excise return, My Liquor Wholesalers reports the dutiable totals as:

- *subitem 1.1: 2356.7 LALs*
- *subitem 3.1: 1884.6 LALs*

Excise duty is worked out on the basis of the truncated totals.

Example 6M

Bottler's Gin delivers 100 cartons, each containing 12 × 700 ml bottles of gin, at 37.2% alcohol by volume, into the Australian domestic market on 10 February 2025.

The gin is classified to subitem 3.2 of the Schedule to the Excise Tariff Act and has a duty rate of $104.31 per litre of alcohol (as at 3 February 2025).

Therefore, the duty payable is calculated as follows:

- *100 cartons × 12 bottles × 0.7 litres each = 840.0 litres*
- *840 litres × 37.2% = 312.48 LALs*
- *312.48 LALs truncated to one decimal point = 312.4 LALs*
- *312.4 LALs × $104.31 = $32,586.444*
- *$32,586.444 of duty is truncated to 2 decimal points = $32,586.44.*

(iv) Calculating total duty payable

Duty payments are notified to us by including details on your excise return. Excisable alcohol products classified to different items or subitems in the Schedule to the Excise Tariff Act must be shown separately on your excise return on what are referred to as lines.

Example 6N

My Liquor Wholesalers needs to report deliveries for the period ended 15 February 2025.

On their excise return, My Liquor Wholesalers reports their deliveries and duty liability as:

Figure 3: Extract from My Liquor Wholesalers excise return

Line	Tariff subitem	Quantity	Units	Duty rate	Excise amount
1	1.1	2356.7	LALs	$52.87	$124,598.72
2	3.1	1884.6	LALs	$97.41	$183,578.88
TOTAL					$308,177.60

If the rate changes during the settlement period

If the rates of duty change within your settlement period, you may lodge 2 excise returns or, alternatively, include separate lines for the same product on one return – that is:

- one return or line for goods delivered under the old rates, and
- one return or line for goods delivered under the new rates.

Example 60

The rate of duty per litre of alcohol for other excisable beverages not exceeding 10% by volume of alcohol (item 2 of the Schedule to the Excise Tariff Act) increases on and from 3 February 2025 (a Monday) from $103.89 to $104.31.

Beverage2Go is a licensed excise manufacturer of RTDs classifiable to item 2 of the Schedule to the Excise Tariff Act and holds a PSP with a settlement period that commences each Saturday.

Beverage2Go delivers RTDs containing 189.5 LALs on Sunday 2 February and RTDs containing 1,041.3 LALs over the course of the next few days.

In its excise return for Saturday 8 February, Beverage2Go uses separate line entries for RTDs delivered at the old rate and at the new rate:

Figure 4: Extract from Beverage2Go's excise return for 8 February

Line	Tariff subitem	Quantity	Units	Duty rate	Excise amount
1	2	189.5	LALs	$103.89	$19,687.15
2	2	1041.3	LALs	$104.31	$108,618.00

Alternatively, on Saturday 8 February, Beverage2Go uses separate excise returns for RTDs delivered at the old rate and at the new rate:

Figure 5: Extract from Beverage2Go's separate excise return for 8 February at old rate

Line	Tariff subitem	Quantity	Units	Duty rate	Excise amount
1	2	189.5	LALs	$103.89	$19,687.15

and

Figure 6: Extract from Beverage2Go's separate excise return for 8 February at new rate

Line	Tariff subitem	Quantity	Units	Duty rate	Excise amount
1	2	1041.3	LALs	$104.31	$108,618.00

In addition to indexation, as described above, the applicable rate of excise duty can also be affected by:

- changes to the Excise Tariff Act (including tariff proposals), or
- quotas.

Changes to the Excise Tariff Act

Where the government decides to change the rate of excise applying to excisable goods, or to apply excise to new goods or stop applying excise to certain goods, it notifies its intention to do this with a tariff proposal.

For more information on tariff proposals, refer to Section 1.3.1 *Excise Tariff Act 1921*.

Quotas

Quotas are a means of ensuring that people cannot gain an advantage by anticipating rises in excise rates and then delivering more excisable alcohol products than they would normally. Effectively quotas restrict the quantity of excisable alcohol products you can deliver into the Australian domestic market at the existing excise rate. If you exceed your quota for the period you will need to pay the duty at the new rate.

Where we believe that persons are anticipating an increase in the rate of duty, and as a result the clearances of excisable alcohol products in a particular period are likely to be greater than usual, we will

publish a notice in the Commonwealth Gazette. This notice will state that a particular period is a 'declared period'.[155]

The 'declared period' is the period during which quotas will operate. To establish your quota for the declared period we will consider the amounts of your past deliveries.[156]

Once we have established your quota, we will give you a written quota order that specifies the maximum level (which can be nil)[157] of excisable alcohol products that you can deliver into the Australian domestic market at the applicable excise rate in force during the declared period.

If at any time during the declared period you exceed your quota you are required to pay the duty on the excess goods at the existing rate, and in addition we may require you to pay a security, by cash deposit, equal to the duty on the excess goods.[158]

If you have a PSP and you have exceeded your quota, the PSP stops being the authority for you to deliver goods during the declared period.[159] This means you will need to prepay the duty on any further deliveries into the Australian domestic market during the declared period.
At the end of the declared period we will reconcile your deliveries with your quota. If you delivered into the Australian domestic market more than your quota, the duty for the amount in excess of the quota is calculated at the rate in force the day after the declared period ends. Therefore if the rate has gone up you will pay the higher rate of duty on the amount in excess of your quota.

We can vary or revoke a quota order any time before the end of the declared period or 60 days after the making of the quota order whichever occurs last.[160]

For more information about our role in determining and applying quotas refer to Law Administration Practice Statement PS LA 2012/3 *Determining and applying quotas under the Excise Act 1901*.

6.3.7 DISPUTES AS TO THE DUTY

You may deposit with us the amount of duty demanded if you dispute[161]:

- the amount of duty
- the rate of duty, or

[155] Subsections 59A(1) and (2) of the Excise Act.

[156] Subsection 59A(5) and section 65 of the Excise Act.

[157] This allocation considers your normal delivery activity over a period of time. This period will take into account any aberrations and will be long enough to allow a representative average to be calculated.

[158] Subsection 59A(8) of the Excise Act.

[159] Subsection 61C(5) of the Excise Act.

[160] Subsection 59B(1) of the Excise Act.

[161] Section 154 of the Excise Act.

- the liability of goods to duty (for example, whether the goods are excisable).

The deposit of this duty is to be made on an excise return. The excise return should be accompanied by a letter which sets out the details of the dispute. Upon receipt of the amount deposited we will authorise delivery of the goods. You have 6 months after making the deposit to commence court action. If that action is decided in your favour, we are obliged to refund you the deposit along with interest of 5% per annum unless we are of the opinion that any evasion under the Excise Act has been committed or attempted. If the action is not commenced within 6 months or the court does not find in your favour the amount deposited is taken to be the correct amount of duty.

However, if you have received a private ruling and subsequently lodge an objection that relates to the amount or rate of duty, or the liability of goods to duty, you cannot commence court action to recover your deposit on grounds that are, or could have been, in your objection.

These disputes do ***not*** apply to changes brought about by a tariff proposal.

For more information on tariff proposals, see Section 6.3.5 Working out the amount of duty to pay.

We consider that section 154 of the Excise Act, because it permits you to deliver goods provided you pay the amount of duty determined by the Collector, has no application where you are delivering goods under a PSP. Under a PSP goods are delivered prior to the lodgment of returns or payment of duty. If you wish to avail yourself of your options under section 154, you can lodge an ad hoc entry for the goods rather than delivering them under your permission. Alternatively, you can deliver the goods under your PSP, pay the duty determined by the Collector and then apply for a refund of the amount you believe has been overpaid (subject to time limits).

6.3.8 ACCOUNTING FOR EXCISABLE ALCOHOL PRODUCTS

If you have or had, or have been entrusted with possession, custody or control of any excisable alcohol products[162] (subject to our control), you have to be able to satisfactorily account for them.

If we ask you to account for excisable alcohol products, and you cannot satisfactorily do so, we may demand payment of an amount equal to the duty. Our demand will be given in writing. The amount you are required to pay is calculated using the rate of duty in force on the day the demand is made.

When requested to account for excisable alcohol products you must be able to show that:

- the goods are still at your premises
- duty has been paid
- duty was not payable (for example, where a remission applied), or

[162] Section 60 of the Excise Act.

- the goods have otherwise been dealt with in accordance with the excise law (for example, moved under a movement permission or included on an excise return at a concessional rate).

Even where you are able to account satisfactorily for the goods, you may be required to pay an amount equal to the duty if you failed to keep the goods safely. This would include where the goods were:

- given away for promotional purposes[163]
- stolen from premises covered by your licence[164], or
- delivered into the Australian domestic market under the mistaken belief that they were not excisable, including those where WET has been paid.

Our decision to demand payment is a reviewable decision.[165]

For information about your review rights, refer to Chapter 8 Reviews and objections.

6.3.9 STOCK MANAGEMENT

You are required to keep your excisable goods safely at all times, and properly account for them should you be requested by the Commissioner to do so.

You will only be able to evidence that you have kept your excisable goods safely, and you will only be able to properly account for your excisable goods if you have adequate stock management practices, and you have kept proper stock management records.

Unless you are subject to specific conditions to the contrary, the following section outlines what you need to do if you identify a shortage or surplus of stock on-hand or both, and how you should manage duty-paid goods returned to stock.

Managing stock shortages and surpluses

Shortages

Following a stocktake, where your record of underbond stock on-hand of a particular excisable good exceeds the actual underbond stock you physically have on-hand, you have a stock shortage. A stock shortage indicates that underbond goods have been delivered into home consumption without them being recorded as having been delivered. That is, excisable goods have been delivered without excise duty being paid on them.

[163] ATO Interpretative Decision ATO ID 2004/61 *Excise: goods given away without payment of excise duty.*

[164] ATO Interpretative Decision ATO ID 2001/595 *Excise: Liability to pay an amount equal to the excise duty on excisable goods stolen from the premises of a licensed excise manufacturer or a licensed storage place.*.

[165] Section 162C of the Excise Act.

Depending on the circumstances, you need to report the amount of your excise liability for the shortage in one of the following ways:

- Excise amendment form – Where you can identify that the shortage arose in a particular settlement period, you can report the amount of the excise duty payable on the shortage on an Excise amendment form. You must reference the number of the original return on the amendment form and pay duty on the shortage at the rate in force at the time you lodged the original return.

  To obtain an Excise amendment form

  – see Excise amendment, or
  – phone **1300 137 290**.

  Help to complete the form is available at Excise amendment.

- Current excise return – Where you are unable to attribute the shortage to a particular settlement period, you need to report the excise shortfall resulting from the shortage in the next Excise return you lodge (for the period in which the shortage was identified), and pay duty on the shortage at the rate in force at the time the shortage was identified.

Once you have reported and paid excise duty on the shortfall in one of the ways set out above, you can then adjust your stock records to reflect the quantity of underbond goods physically on-hand.

Surpluses

Where actual underbond stock you physically have on-hand *exceeds* your record of underbond stock on-hand, this indicates that excisable goods have been manufactured or received without being recorded in your records. To ensure the correct amount of duty is ultimately paid, your stock records should be adjusted to reflect the actual underbond stock you physically have on-hand.

Offsetting

Offsetting is a method you can use to determine the net excise duty that should be reported on an excise amendment form or on your current excise return. Offsetting only applies to the amount of excise duty that applies to goods on a dollar duty basis.

Where you have a surplus of underbond stock, it is possible that you may have recorded the wrong stock as having been delivered to a customer and paid excise duty accordingly. It would follow that a reconciliation of your stock records and actual stock on-hand will show a surplus of one stock item and a shortage of another. Where you can establish that the difference is due to a mistake of this kind, you can generally offset the shortage in excise duty against the excise duty for the surplus stock in your records.

If you have a net excise duty surplus after offsetting the excise duty component of your surplus stock against the excise duty component of the shortage, you can simply adjust your records accordingly.

If you have a net excise duty shortage after offsetting the excise duty component of your surplus stock against the excise duty component of the shortage, you must report and pay the net excise duty shortage. Instructions on how to report and pay duty on a stock shortage (which includes an offsetting shortage) are set out above under 'Shortages'.

Restrictions on offsetting

Offsetting may be applied generally across excisable alcoholic goods. For example, beer, spirits, liqueurs and other excisable beverages may be offset against each other.

To avoid becoming liable to excise duty twice, offsetting is only permitted against underbond excisable stock. That is, you *must not* offset underbond goods against returned duty-paid goods. Refer to 'Returning duty-paid goods to stock' below for information on what you need to do where duty-paid goods are returned to you (because, for example, they were mis-picked or the customer over-ordered).

You are also not permitted to offset a shortage or surplus of underbond excisable stock against a shortage or surplus of imported goods.

Importantly, offsetting cannot be applied to overcome deficiencies in record keeping or manufacturing processes. If your record keeping is found to be unsatisfactory, we may issue a demand for an amount equivalent to the excise duty. This may result in you being personally liable for an amount equivalent to the excise duty.

Example 6P

On 30 June 2024, My Liquor Wholesalers finalises a stocktake and finds there is a surplus of 1500 cans of Brand X underbond beer at 5% by volume of alcohol and a shortage of 2000 cans of Brand Y underbond beer at 5% by volume of alcohol. All cans have a capacity of 375ml and the beer is manufactured in Australia.

My Liquor Wholesalers is able to offset the excise duty on the surplus stock against the excise duty on the shortage. This results in net excise duty payable.

My Liquor Wholesalers corrects its book stock to take up the surplus floor stock of 1500 cans of Brand X beer.

My Liquor Wholesalers was unable to identify the settlement period in which the stock shortage arose. As such, My Liquor Wholesalers needs to report the excise duty payable on the net shortage of 500 cans on its next excise return (for its settlement period covering 30 June 2024), and pay the duty on the 500 can shortage based on the rate in force on 30 June 2024. My Liquor Wholesalers can then write off the shortage of 2000 cans of Brand Y beer in its records.

Example 6Q

Continuing on from Example 6P, a couple of months later My Liquor Wholesalers decides to conduct another stocktake. They find a surplus of 2500 bottles of 700ml Brand A underbond rum at 38% by volume of alcohol and a shortage of 1000 bottles of 700ml Brand B underbond whisky at 38% by volume of alcohol. The beverages are manufactured in Australia.

My Liquor Wholesalers decides to offset the excise duty on the surplus stock against the excise duty on the shortage. Therefore, there are no bottles that have not been accounted for but there is a net excise duty surplus relating to the Brand A underbond rum.

My Liquor Wholesalers corrects its records to reflect the excise duty relating to the surplus floor stock of 2500 bottles of rum less the excise duty relating to the shortage of 1000 bottles of whisky. In this case there is no shortfall in the payment of the duty.

Returning duty-paid goods to stock

Where goods are delivered into home consumption and excise duty is paid, the goods have left the Commissioner's control. These are commonly referred to as duty-paid goods. Duty-paid goods can subsequently be sold without any excise duty implications, unless they are subject to further manufacture.

If you have delivered excisable goods for home consumption, paid duty on the goods, and they are returned to you (for example, due to a mis-pick or an over-order), the goods can be returned to the same location as your underbond stock and do not need to be stored separately.

Importantly, this only applies to duty-paid goods that you wish to take back up into stock for sale in the future. Where duty-paid goods are returned for the purposes of being destroyed (for example, they are unfit for human consumption), they must be physically stored separately from your underbond stock.

In addition, where returned duty-paid goods are to be taken back up into stock, you must keep proper records of the returned duty-paid goods that adequately identify full particulars of the stock (for example, product description, brand, alcoholic strength or container size).This ensures that the goods on which duty has been paid can easily be located and identified relative to any underbond goods you have on-hand.

Where duty-paid goods are returned, the Commissioner accepts the subsequent sale of precisely the same type of good in precisely the same type of container, as a sale of duty-paid goods. That is, those exact same duty-paid goods can be sold with no additional excise duty liability.

Example 6R

Spawn Brewery manufactures a pale ale at 5% alcohol and sells 10 kegs to customers in April 2024. The kegs have a 50 litre capacity. Spawn Brewery lodges its excise return on 21 May 2024 and pays the duty.

Of the 10 kegs sold, 5 kegs are returned by a customer on 22 May 2024 due to them over-ordering. Spawn Brewery keeps a record of the returned goods and the goods are physically moved back to the same location where the underbond pale ale is stored.

On 30 May 2024 Spawn Brewery sells 40 units of its 50 litre pale ale kegs (all of which are 5% alcohol). Because the kegs being delivered are precisely the same type of product and in precisely the same volume of container (50 litre kegs) as the previously returned duty-paid kegs, Spawn Brewery may treat the sale of the first 5 kegs of pale ale as being the sale of duty-paid goods, and reduce its records of stock on-hand of returned goods accordingly.

On 21 June 2024, when calculating the excise duty payable on sales in May 2024, Spawn Brewery will pay excise duty on the sale of 35 kegs of its pale ale. The remaining 5 kegs that were sold are treated as the sale of duty-paid goods. All subsequent sales of excisable goods will be subject to excise duty.

6.4 PROCEDURES

6.4.1 OBTAINING A PERIODIC SETTLEMENT PERMISSION

If you apply for a manufacturer or storage licence, you can use your application form to indicate whether you intend to apply for a periodic settlement permission or pay excise duty on an ad hoc basis prior to delivery. We will contact you to discuss your requested payment option.

If you do not have a licence, or you originally chose not to pay excise duty periodically, contact us and provide us in writing your:

- licence details (if you have one), and
- reasons for applying for a PSP.

If we approve your PSP, we will notify you in writing within 7 days of receiving your request.

A PSP is not transferable to another person and remains in force until revoked.

A request to add or delete delivery establishments from a PSP is treated as a request for a new permission. However, your PSP number will remain unchanged.

We may also:

- refuse to grant a PSP
- impose conditions on a PSP, or
- cancel a PSP.

Failure to comply with a condition may result in the cancellation of the PSP.[166] In such an instance, we would take into account a variety of factors, including your payment history.

A decision to refuse, impose conditions on, or to revoke a PSP is a reviewable decision.[167]

For information about your review rights, refer to Chapter 8 Reviews and objections.

For more information about PSPs, contact us by phoning **1300 137 290** or emailing us at **alcohol@ato.gov.au.**

6.4.2 WHAT A PERIODIC SETTLEMENT PERMISSION INCLUDES

Your PSP in relation to excisable alcohol products will include:

- permission to deliver excisable alcohol products into the Australian domestic market
- conditions, such as:
  - your settlement period – the period during which goods can be delivered[168]
  - the type of goods that may be delivered from each premises
  - quantity limits (if any)
  - when and how to lodge your excise return
  - when you must pay the duty
  - how you must pay – permitted methods (for example, electronic funds transfer, cheque, at a Post Office)
  - record-keeping requirements
- a schedule listing one or more premises from which deliveries may be made.

[166] Subsection 61C(7) of the Excise Act.

[167] Paragraphs 162C(1)(d), (e) and (f) of the Excise Act.

[168] The settlement period usually specified in a PSP is 7 days with lodgment of your excise return required by 4:00 pm on the first working day after the end of your settlement period. However, if you only deliver concessional spirit into the Australian domestic market the settlement period specified in, your PSP may be monthly.

Example 6S

A PSP specifies a settlement period starting on Saturday and ending on Friday. It states that excise returns must be lodged by 4:00 pm on the first business day after the end of the settlement period. It also says that the duty on deliveries made during the settlement period must be paid at the same time as the excise return is required to be lodged.

An excise return must be lodged, and the duty paid, by 4:00 pm on Monday for all goods delivered during the settlement period.

When a public holiday falls on a Monday, the excise return is due for lodgment and duty is to be paid by 4:00 pm on Tuesday, the next business day.

Where you have deliveries in different states of Australia there may be different public holidays in those states. If your returns are prepared by an office in a state different from that in which the delivery into the Australian domestic market occurs, lodgment is due on the next business day in the state where the return is prepared.[169]

6.4.3 DELIVERING ALCOHOL PRODUCTS INTO THE AUSTRALIAN DOMESTIC MARKET

Delivery under periodic settlement permission

If we provide you with a PSP, you must take the following steps to deliver excisable alcohol products into the Australian domestic market:

- deliver the alcohol products into the Australian domestic market (the products are now no longer subject to 'excise control')
- complete and submit your excise return in accordance with the timeframes in the permission, and
- pay the duty to us in accordance with the timeframes in the permission.

Delivery after prepaying the excise duty

If you do not have a PSP, you must take the following steps to deliver excisable alcohol products into the Australian domestic market:

[169] Subsection 8AAZMB(2) of the TAA.

- complete and submit your excise return
- pay the duty to us
- obtain a Delivery authority from us, and
- deliver the alcohol products into the Australian domestic market.

6.4.4 LODGING EXCISE RETURNS AND PAYING EXCISE DUTY

Lodge your excise return via:

- ATO Online Services, or
- mail to:

  Australian Taxation Office
  PO Box 3007
  PENRITH NSW 2740

You can pay excise duties:

- by electronic funds transfer, including direct credit and BPAY
- in person at a Post Office,
- by credit or debit card, or
- by mail (cheque or money order).

If you are required to pay your other tax debts electronically, you must also make your payment for excise duty by electronic funds transfer.

If you pay the excise duty at a Post Office, you must use a payment advice. To obtain a payment advice booklet, phone us on **13 72 26** or **1800 815 886** and supply us with your Australian Business Number (or Excise Identification Number) and client account number.

Lodgment of an excise return and payment of any duty must be made by the day and time stated on your PSP.[170]

Failure to pay on time may result in the cancellation of your PSP.

To obtain an excise return:

- see Excise return, or
- phone **1300 137 290**.

Instructions to help you complete your excise return can be found on Excise return.

[170] Paragraphs 61C(3)(a), (b), (c) and (g) of the Excise Act.

6.4.5 MAKING AN ERROR ON AN EXCISE RETURN

You may correct errors in your excise return or add new lines by lodging an amending excise return and referencing the number of your original return. This can be done by using ATO Online Services or by filling out and lodging a PDF form.

If your amendment results in a shortfall in excise duty paid, you must pay the additional duty when you lodge the amending return.

If your amendment results in an overpayment of excise duty, you may apply for a refund or treat the amount as a credit and offset it against the duty you are liable to pay in your next excise return. In this situation, time limits may apply in which to lodge your amended return.

Time limits apply for making an application for a refund of excise duty. In most cases an application must be submitted within 4 years of the date on which the excise duty was paid.

An amending return can only be used to change product details.

If you wish to change other information in your original excise return (for example, your individual details or the settlement period) you must lodge a new excise return as the amending excise return does not cater for changes to these sections. The new return must contain the amended details and refer to the original return. You should also request cancellation of the original return.

To obtain an Amending excise return:

- see Excise amendment, or
- phone **1300 137 290**.

Help to complete the form is available at Excise amendment.

6.4.6 MORE INFORMATION

If you need more information on payment of duty, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- post it to

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

6.5 PENALTIES THAT CAN APPLY IN RELATION TO PAYMENT OF DUTY

The following are the penalties that may apply after conviction for an offence.

Move, alter or interfere

If you move, alter or interfere with excisable alcohol products that are subject to excise control, without permission, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.[171]

Deliver

If you deliver excisable alcohol products into the Australian domestic market contrary to your permission, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would be payable if the goods had been entered for home consumption on the penalty day.[172]

Evade

If you evade payment of any excise duty which is payable, the maximum penalty is 5 times the amount of duty on the excisable alcohol products or where a court cannot determine the amount of that duty the penalty is a maximum of 500 units.[173]

False or misleading statements

If you make a false or misleading statement, or an omission from a statement in respect of duty payable on particular goods, to us, a penalty not exceeding the sum of 50 penalty units and twice the amount of duty payable on those goods.[174]

[171] Section 61 of the Excise Act.

[172] Section 61C of the Excise Act.

[173] Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.

[174] Paragraph 120(1)(vi) of the Excise Act.

6.6 TERMS USED

Deliver into the Australian domestic market

'Deliver into the Australian domestic market'[175] is the term we use in this Guide for when excisable alcohol products are released into domestic consumption. The term used in the legislation is 'deliver for home consumption'.

Normally this will be by delivering the goods away from premises covered by a licence but includes using those goods yourself (for example, sales to staff).

The term 'home consumption' is not defined in the Excise Act and there is no definitive case law that looks at the issue in question. However, there are several cases where issues closely related to it are considered.[176]

The conclusion drawn from those cases is that 'home consumption' refers to the destination of goods as being within Australia as opposed to exporting them.

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are listed in the Schedule to the Excise Tariff Act, or an Excise Tariff alteration, and manufactured in Australia.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- spirit for non-beverage use, including denatured spirit.

Excise control

Goods are subject to excise control from the point of manufacture until they have been delivered into the Australian domestic market or for export.

[175] Note the legislation uses the term 'delivered for home consumption' (see for example sections 61 and 61C of the Excise Act).

[176] See *R v Lyon* [1906] HCA 17; *Collector of Customs (NSW) v Southern Shipping Co Ltd* [1962] HCA 20; *Carmody v F C Lovelock Pty Ltd* [1970] HCA 35; *Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* [2008] FCA 1951 and *Moama Refinery Pty Ltd v Chief Executive Officer of Customs* [2001] FCA 1287.

Goods subject to excise control cannot be moved, altered or interfered with except as authorised by the Excise Act.

Excise return

An excise return is the document that you use to advise us the volume of excisable alcohol products that you:

- have delivered into the Australian domestic market during the period designated on your PSP, or
- wish to deliver into the Australian domestic market following approval.[177]

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

Remission

A remission of excise duty extinguishes the liability for duty that was created at the point of manufacture, in prescribed circumstances.

For more information about remissions, see Chapter 7 Remissions, refunds, drawbacks and exemptions.

Underbond

This is an expression not found in excise legislation but it is widely used to describe goods that are subject to excise control. Excisable goods that are subject to the Commissioner's control are commonly referred to as 'underbond goods' or as being 'underbond'. This includes goods that have not yet been delivered into the Australian domestic market and goods moving between premises under a movement permission.

6.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*

[177] The term used in section 58 of the Excise Act is 'entry for home consumption'.

  - section 24 – excisable goods and goods liable to duties of Customs may be used in manufacturing excisable goods
  - section 58 – entry for home consumption etc.
  - section 59 – payment of duty
  - section 59A – declared period quotas – effect on rates of Excise duty
  - section 60 – persons to keep excisable goods safely etc.
  - section 61 – control of excisable goods
  - section 61C – permission to deliver certain goods for home consumption without entry
  - section 65 – rules for working out the volume or weight etc. of excisable goods
  - section 77FA – excise duty to be paid according to labelled alcoholic strength of certain beverages
  - section 114 – time for commencing action
  - section 120 – offences
  - section 154 – deposit of duty
  - section 162C – review of decisions
- *Excise Tariff Act 1921*
  - section 5 – duties of excise
  - section 6A – indexation of CPI indexed rates
  - The Schedule
- *Crimes Act 1914*
  - section 4AA – penalty units
- *Taxation Administration Act 1953*
  - Part IVC

Amendment history

27 June 2025

Part	Comment
Section 6.3.5	Updated to reflect the current duty rates
Throughout	This chapter was updated to take into account the law changes as a result of the Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023 and Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024. This includes permissions to lodge excise returns and pay the applicable excise duty on a quarterly basis.
Throughout	Updated in line with current ATO style and accessibility requirements.

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7 REMISSIONS, REFUNDS, DRAWBACKS AND EXEMPTIONS

7.1 PURPOSE

This Chapter deals with:

- when you can apply for a remission, refund or drawback
- what happens if you are overpaid a refund or drawback
- when alcohol products are exempt from excise duty
- who can access alcohol products free of excise duty
- how to apply for a remission, refund or drawback, and
- penalties that can apply to offences in relation to remissions, refunds, drawbacks and exemptions.

7.2 INTRODUCTION

A remission of excise duty extinguishes the liability for duty that was created at the point of manufacture. In other words, no excise duty will ever be paid on goods subject to remission.

A refund is the return of the excise duty that has already been paid.

A drawback is a refund that applies where duty-paid goods are exported.

In some circumstances, the duty you pay on goods may be subject to a complete or partial refund or drawback.[178]

7.3 POLICY AND PRACTICE

7.3.1 APPLYING FOR A REMISSION OF EXCISE DUTY

You can apply for a remission of excise duty payable on your 'excisable alcohol products' if the following circumstances apply while the goods are subject to 'excise control'.

[178] Section 78 of the Excise Act.

Where the alcohol products have deteriorated or been damaged, pillaged, lost or destroyed, or become unfit for human consumption

You can apply for a remission of excise duty where the alcohol products have deteriorated or been damaged, pillaged, lost or destroyed, or become unfit for human consumption while they are subject to excise control.[179]

'Pillage' means to strip of money or goods by open violence, as in war; plunder.[180] This does not cover simple cases of theft.

'Lost' in this context does not simply mean can't be found. For example, a tank may spring a leak and it is known that the alcohol has drained away. The alcohol has been lost.

Brewers no longer need to apply for a remission to destroy beer they manufacture that is damaged or not fit for consumption if:

- they destroy less than (or equal to) 125 litres of pure alcohol in a quarterly period
- the goods are under our control, and
- they haven't paid excise duty on them.

Brewers must keep a detailed record of the goods they destroyed and be able to present them to us upon request.

For more information about payment of duty, see Chapter 6 Payment of duty.

The approval of a remission does not constitute permission to remove goods from an excise establishment prior to destruction. Off-site destructions require a movement permission from us.

For more information, refer to Chapter 5 Movement permissions.

Example 7A

A pallet of bottled beer is dropped inside the brewery's bond store, damaging the contents. The brewery applies for a remission of duty on the damaged goods. On receiving approval, the brewery destroys the damaged goods and retains records of the destruction.

Example 7B

RTDs containing milk products remain unsold in a licensed manufacturer's premises and have deteriorated to a point where they are unfit for human consumption. The manufacturer applies for a

[179] Table item 1 of subclause 1(1) of Schedule 1 to the Excise Regulation.

[180] Pan Macmillan Australia (2025) *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 16 June 2025.

remission of duty on the RTDs. On receiving approval, the manufacturer destroys the unsaleable stock and retains records of the destruction.

Where the goods are not worth the amount of excise duty payable on the goods if delivered into home consumption

You can apply for a remission of excise duty where the goods are subject to the CEO's control and not worth the amount of excise duty payable.[181]

Example 7C

A brewery produces an excess of product for export to Japan. Due to the labelling the excess product cannot be sold in Australia.[182]

The brewery applies for a remission on the basis that the amount of duty payable on the leftover stock exceeds the value of the stock, because the stock has no commercial value.

On receiving approval, the brewery destroys the unsaleable stock and retains records of the destruction.

Where the excisable alcohol products are for sale to diplomatic or consular missions and the goods are to be delivered under your periodic settlement permission

You can apply for a remission of excise duty where the excisable alcohol products subject to excise control are for sale to diplomatic or consular missions and the goods are to be delivered into home consumption under your PSP.[183]

Example 7D

A manufacturer receives an order from a diplomatic mission for beer, for official use. The manufacturer delivers the beer, into the Australian domestic market (to the diplomatic mission), under the terms of

[181] Table item 2 of subclause 1(1) of Schedule 1 to the Excise Regulation.

[182] Table item 2 of subclause 1(1) of Schedule 1 to the Excise Regulation.

[183] Clause 2 of Schedule 1 to the Excise Regulation.

their PSP. (The terms of the PSP may require the manufacturer to submit an Excise remission to us, after delivery of the beer.)

When excisable alcohol products are subject to remission without application

Under the 'excise remission scheme for manufacturers of alcoholic beverages' (Remission scheme), licensed manufacturers may be eligible for a full remission of their liability to pay excise duty on beer, spirits or other excisable beverages they have manufactured and entered into home consumption on and after 1 July 2021, up to a maximum of $350,000 per year. The remission cap increased from $350,000 to $400,000 in relation to the beverages entered for home consumption on or after 1 July 2026.

For more information about the Remission scheme, see Section 7.3.3 Eligibility under the excise Remission scheme.

You can supply excisable alcohol products exempt from duty when they are for official use but not for trade by[184]:

- the Governor-General or any member of the Governor-General's family
- state Governors or any member of a state Governor's family
- the Australian American Foundation (Australian-American Fulbright Commission)
- the Government of another country, under an agreement between that Government and the Australian Government
- persons covered by a Status of Forces Agreement, and
- the personnel of sea-going vessels of the Royal Australian Navy (RAN) or Australian Military Forces (AMF) (see below for more detail).

If you are not certain whether someone falls into one of these categories, you should contact us by phone on **1300 137 290**.

Some restrictions apply to alcohol products for the RAN and AMF. The goods must be for consumption by the personnel of sea-going vessels of the RAN or the AMF when:

- such vessels are in full commission, and
- the products are consumed on such vessels.[185]

Only certain excisable alcoholic products are eligible for this concession, including:

[184] Clause 2 of Schedule 1 to the Excise Regulation.

[185] Clause 2 of Schedule 1 to the Excise Regulation.

- ale, porter and other beer
- brandy
- whisky
- rum
- gin, and
- liqueurs.

RTDs (for example, pre-mixed rum and cola or other mixers in bottles or cans) do not qualify for this concession.

To supply alcohol products under these circumstances, you must first ensure the receiver meets the relevant criteria. For example, you should only accept orders, stating that the goods are for official use, on the official stationery, or official order, of eligible people or organisations. You must keep a copy of this documentation.

Brewers can destroy beer they manufactured that is damaged or not fit for consumption for up to 125 litres of pure alcohol in a quarterly period.

You do not have to apply for a remission in these circumstances.

7.3.2 APPLYING FOR A REFUND OF EXCISE DUTY

You can apply for a refund of excise duty paid on excisable alcohol products if the following circumstances apply.

Duty has been paid on alcohol that was lost or destroyed

You can apply for a refund of excise duty paid on excisable alcohol products if it is later found that, while the goods were subject to excise control (that is, while they were at the site covered by a licence), they deteriorated or were damaged, pillaged, lost or destroyed, or become unfit for human consumption.[186]

Example 7E

A storage licence holder, who does not have a PSP, pays the excise duty on alcohol products in accordance with a pre-payment return. They receive a Delivery authority. Before the alcohol products are removed from the premises covered by the licence, they are destroyed by fire.

[186] Table item 1 of subclause 1(1) of Schedule 1 to the Excise Regulation.

As the alcohol products were still subject to excise control when they were destroyed, the licence holder can apply for a refund of duty on the alcohol products.

Duty-paid alcohol products, while the goods are subject to excise control, are not worth the amount of excise duty paid

You can apply for a refund of duty paid on excisable alcohol products, if, while the goods are subject to excise control, they are not worth the amount of excise duty paid.[187]

Example 7F

A storage licence holder who does not have a PSP pays the excise duty on RTDs in accordance with a pre-payment return. They receive a Delivery authority. Before the RTDs are removed from the premises covered by the licence they become unsaleable, due to changed packaging requirements, and they cannot be sold (but are not unfit for human consumption). As the RTDs were still subject to excise control when they became unsaleable, the licence holder can apply for a refund of duty on the RTDs.

Duty has been paid through manifest error of fact or patent misconception of the law

You can apply for a refund of duty paid on excisable alcohol products if duty has been paid through manifest error of fact or patent misconception of the law.[188] This circumstance applies to an error that is evident, obvious or apparent and also in situations where duty has been paid on goods entering the Australian domestic market that are not excisable. In both cases a refund of the duty paid would be payable.

Example 7G

A manufacturer delivers wine-based RTDs that are 11% alcohol by volume into the Australian domestic market. The goods were entered under subitem 3.2 of the Schedule on the 'excise return' as 'other

[187] Table item 2 of subclause 1(1) of Schedule 1 to the Excise Regulation.

[188] Table item 3 of subclause 1(1) of Schedule 1 to the Excise Regulation.

excisable beverages exceeding 10% alcohol by volume'. The goods fit the description of wine based products and are subject to WET, but are not excisable.

The manufacturer applies for a refund of the duty paid through patent misconception of the law and pays WET on the goods.

Duty-paid goods that have been taken up as ship's stores or aircraft's stores

Ship's stores on overseas ships and aircraft's stores[189] on international flights are not subject to excise duty. Where duty has been paid and the excisable alcohol products are subsequently re-directed for use on ships or aircraft travelling overseas, this refund circumstance may apply.

Unused duty-paid goods returned to premises

From April 2015, you may apply for a refund where duty-paid goods that haven't been used are returned to premises covered by a licence, or to a person authorised by the manufacturer of the goods to receive them on their behalf, and the goods are destroyed, or are subjected to further manufacture or production.[190]

The goods do not have to be returned to the premises covered by a licence of the original manufacturer. The law provides that they may be returned to premises covered by a licence under section 39A of the Excise Act or to a person authorised by the manufacturer (for example, a destruction facility).

Example 7H

A retailer has cartons of cream-based RTDs that have passed their use-by date. The retailer returns them to the licensed manufacturer where they are destroyed. The manufacturer claims a refund of the duty that was paid on the goods when they were entered for home consumption.

Duty-paid goods that are sold

You may apply for a refund where duty-paid goods are sold in the following circumstances[191]:

- for the official use of diplomatic or consular staff of foreign countries

[189] Table item 5 of subclause 1(1) of Schedule 1 to the Excise Regulation.

[190] Table item 7 of subclause 1(1) of Schedule 1 to the Excise Regulation.

[191] Table items 19 and 20 of subclause 1(1) of Schedule 1 to the Excise Regulation.

- for use by the Government of another country, under an agreement between that Government and the Australian Government and not for trade
- for the official use of a foreign country under a Status of Forces Agreement with the Australian Government and not for re-sale, or
- for the official use of an international organisation, or personal use of the holder of a high office of an international organisation, to which the *International Organisations (Privileges and Immunities) Act 1963* applies.

Under the 'excise refund scheme for alcohol manufacturers' (Refund scheme), licensed manufacturers of beer, spirits and other excisable beverages may be eligible to claim a refund of 60% of the excise duty they have paid on beer, spirits or other excisable beverages they have manufactured, up to a maximum of $100,000 per year. From 1 July 2021, the Refund scheme was replaced by the 'Excise remission scheme for manufacturers of alcoholic beverages' (Remission scheme), however under the transitional measures a refund may still be available in limited circumstances.

For more information about the Refund and Remission schemes, see Section 7.3.3 Eligibility under the Excise Remission scheme.

7.3.3 ELIGIBILITY UNDER THE EXCISE REMISSION SCHEME

The 'Excise remission scheme for manufacturers of alcoholic beverages' (Remission scheme) applies to licensed alcohol manufacturers who have a 'liability to pay' excise duty on the manufacture of an alcoholic beverage that has entered home consumption on or after 1 July 2021.

The Remission scheme replaces the 'Excise refund scheme for alcohol manufacturers' (Refund scheme), which itself replaced the 'Brewery refund scheme'.[192]

The Refund scheme applies to licensed alcohol manufacturers who have:

- manufactured and paid excise duty on an alcoholic beverage entered for home consumption prior to 1 July 2021, or
- entered an alcoholic beverage for home consumption in June 2021 and paid the duty on or after 1 July 2021.

[192] *Excise Amendment (Refund Scheme for Alcohol Manufacturers) Regulations 2017.* From 1 July 2017, the 'excise refund scheme for alcohol manufacturers' took effect and expanded the 'brewery refund scheme' to include distilled and low strength fermented alcoholic beverages whether or not they are sold directly from the manufacturing premises. Between 1 July 2012 to 30 June 2017, eligible breweries were able to claim a refund of 60% of the duty paid on beer manufactured and sold directly from the manufacturing premises, up to $30,000 per year. Prior to 1 July 2012, in relation to beer manufactured at a microbrewery, individual claims for refunds were calculated at 60% of the duty paid up to a maximum of $10,000.

Determining which scheme applies

Table 5: Overview of applicable schemes, depending on when goods were entered for home consumption

Timing	Applicable scheme	Entitlement
Goods entered for home consumption and duty paid by 30 June 2021	Refund scheme	60% of the duty paid Maximum refund $100,000 per financial year
Goods entered for home consumption from 1 June to 30 June 2021 and duty paid on or after 1 July 2021	Transitional provisions apply	Refund of 60% of the duty paid Maximum refund of $8,333
Goods entered for home consumption prior to 1 June 2021 and duty paid on or after 1 July 2021	No applicable scheme	No entitlement
Goods entered for home consumption on or after 1 July 2021 to 30 June 2026	Remission scheme	100% remission of duty Maximum remission $350,000 per financial year
Goods entered for home consumption on or after 1 July 2026	Remission scheme	100% remission of duty Maximum remission $400,000 per financial year

Amount for the remission or refund

Under the Remission scheme, from 1 July 2021, you (an alcohol manufacturer) are entitled to receive an automatic remission of 100% of your excise duty liability for one or multiple kinds of eligible alcoholic beverages you manufacture. The maximum remission is $350,000 for each financial year that occurs between 1 July 2021 and 30 June 2026. This maximum remission increased to $400,000 for goods entered for home consumption on or after 1 July 2026.[193]

[193] Table item 10 of subclause 2(1) of Schedule 1 to the Excise Regulation.

For excise duty paid prior to 1 July 2021, the Refund scheme applies. On application, you are entitled to a refund of 60% of the excise duty you paid for one or multiple kinds of eligible alcoholic beverages you manufacture. The maximum refund is $100,000 for each financial year.[194]

Transitional rules

Transitional rules apply where excise duty has been paid on or after 1 July 2021 for alcoholic beverages that have been entered for home consumption between 1 June 2021 to 30 June 2021. In this circumstance, on application, you are entitled to claim a refund of 60% of the duty paid up to a maximum of $8,333.[195]

Part-year eligible manufacturers

Your maximum remission or refund is pro-rated if you commenced being an eligible alcohol manufacturer part-way through a financial year. The amount is calculated using the following formulas:

- for remission[196] – $400,000 × eligible days ÷ 365
- for refund[197] – $100,000 × eligible days ÷ 365.

Where:

- 'Eligible days' is the total days calculated from the day the entity started as an alcohol manufacturer until the end of the financial year.

When you will receive your remission or refund

Remission scheme

A remission of your liability to pay excise duty on eligible alcoholic beverages you manufacture occurs automatically once it has been entered into home consumption. You do not need to apply to receive the remission. However, you will need to specify on your excise return the alcoholic beverage to which the remission applies and the amount of remission applicable.

If you mistakenly pay your liability to excise duty on an eligible alcoholic beverage that would otherwise qualify for remission under the Remission scheme, you can apply for a refund of that amount.[198] You must claim the refund within 12 months after the day the excise duty was paid if the payment was made before 1 July 2024. For payments made after 1 July 2024, you must claim the refund within 4 years after

[194] Table item 21 of subclause 1(1) of Schedule 1 to the Excise Regulation (now repealed).

[195] Subsection 62(4) of the Excise Regulation.

[196] Subclause 2(3) of Schedule 1 to the Excise Regulation.

[197] Subclause 1(5) of Schedule 1 to the Excise Regulation (now repealed).

[198] Subclause 2(2) of Schedule 1 to the Excise Regulation; table item 3 of subclause 1(1) of Schedule 1 to the Excise Regulation.

the day the excise duty was paid.[199] The refunded amount forms part of your maximum entitlement of $400,000 for the year in which the goods to which the refund relates were entered for home consumption.[200]

Refund scheme

Your entitlement to a refund under the Refund scheme arises in the financial year in which you *pay the excise duty* on the alcoholic beverage. Where you *entered eligible alcoholic beverages for home consumption and paid excise duty on or before 30 June 2021*, you can apply for a refund up to the maximum entitlement of $100,000 for that financial year. You must apply for the refund within 12 months after the day you paid the excise duty, otherwise your entitlement will be lost.

If you entered eligible alcoholic beverages for home consumption prior to 1 June 2021 but did *not pay the excise duty on or before 30 June 2021*, your entitlement to a refund under the Refund scheme has ceased and you are not entitled to a remission under the Remission scheme for those alcoholic beverages.[201]

As part of the transitional arrangements to the Remission scheme, where eligible alcoholic beverages *entered home consumption in the period from 1 June 2021 to 30 June 2021, and you paid the excise duty on or after 1 July 2021*, you are entitled to a refund of 60% of the excise duty paid. The maximum refund is $8,333. You will have 12 months from the day after payment of the excise duty to apply for a refund, otherwise your entitlement will be lost. The refund of $8,333 in this circumstance does not count toward your maximum entitlement of $400,000 per year ($350,000 per year prior to 1 July 2026) under the Remission scheme.

Eligibility under the excise remission or refund scheme for alcohol manufacturers

You will be eligible if you meet all of the following criteria:

- you are an 'alcohol manufacturer' who
  - for the 'Remission scheme', has a *liability to pay* excise duty on an alcoholic beverage that you manufactured and entered for home consumption during the financial year
  - for the 'Refund scheme', has *paid* excise duty in respect of the financial year on an alcoholic beverage that you manufactured
- you are *legally and economically independent* of any other alcohol manufacturer that has received a remission or refund under the Remission scheme or Refund scheme in respect of goods entered during the financial year

[199] Table item 1 of section 11 of the Excise Regulation.

[200] Table item 10(c) of subclause 2(1) of Schedule 1 to the Excise Regulation.

[201] Subsection 62(3) of the Excise Regulation.

- you *fermented or distilled at least 70% of the alcohol content* of the beverage on which you had an excise duty liability (Remission scheme) or on which you paid excise duty (Refund scheme), and
- if your remission or refund is in respect of a liability to pay excise duty (Remission scheme) or excise duty paid (Refund scheme) on a distilled beverage, you satisfy the 'still ownership test' where required.

These concepts are discussed further.

Eligibility rules explained

You are an alcohol manufacturer and have manufactured the alcoholic beverage

An 'alcohol manufacturer'[202] is defined as 'a licensed manufacturer whose manufacturer licence authorises the manufacture of alcoholic beverages'.

You will only be eligible for:

- a remission under the Remission scheme, if you have a liability to pay excise duty on an alcoholic beverage you manufactured, and that you entered for home consumption during the financial year, or
- a refund under the Refund scheme, if you have paid excise duty on an alcoholic beverage you manufactured and that you entered for home consumption during a financial year.

The term 'manufacture' is defined as[203]:

> *Manufacture* includes all processes in the manufacture of excisable goods and, in relation to beer, includes the provision to the public at particular premises of commercial facilities and equipment for use in the production of beer at those premises

It is clear from this definition that, aside from the specific extension of the definition to encompass the provision of 'brew on premises' facilities to members of the public, manufacture equates to the processes (whether they be physical, mechanical or chemical) involved in the creation of an excisable good.[204]

You will not be considered to have manufactured an alcoholic beverage where you acquire alcoholic beverages from another manufacturer or acquire the business of another manufacturer, including trading stock on hand. To qualify in such circumstances, you would need to undertake further manufacture in respect of the product, such that you produce a product that can be differentiated from the product acquired.

[202] Section 6 of the Excise Regulation.

[203] Subsection 4(1) of the Excise Act.

[204] Paragraph 91 of Excise Ruling ER 2012/1 *Excise: the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts*.

Manufacturing alcoholic beverages under contract

An alcohol manufacturer must manufacture excisable goods at premises covered by its excise manufacturer licence.[205] It is an offence[206] to manufacture excisable goods:

- without an excise manufacturer licence
- at premises that are not covered by your excise manufacturer licence.

It is therefore very important that you have the requisite licence and that it covers any premises from which you intend to manufacture excisable goods.

Where you engage contractors to manufacture excisable goods, it is a matter of fact and degree whether you can be said to have manufactured the goods.

For the purposes of the Remission scheme or Refund scheme, you will be accepted as being the manufacturer of the excisable goods if you engage contractors to manufacture goods where the manufacture occurs under your supervision and direction at premises covered by your licence.

In contrast, if you engage contractors to manufacture excisable goods at the contractor's premises, you are unlikely to be considered the manufacturer of the goods. Where you enter into a contract with a contractor for the manufacture of excisable goods at the contractor's premises, you will only be considered the manufacturer if:

- you actively participate in the manufacturing process, including providing direction and supervision to the contractor
- you have ultimate control of, and responsibility for, the manufacturing process
- the contractor's premises are also covered by your excise manufacturer licence, and
- under your contract, the contractor merely provides inputs to manufacture (such as use of premises, use of equipment or provision of labour) rather than being contracted to provide you with a quantity of finished goods.

A contractor who is engaged to manufacture excisable goods is likely to be regarded as the manufacturer of excisable goods where the contract is for the manufacture and supply of a quantity of excisable goods or where the contractor is not subject to your active participation and control during the manufacturing process, or both. If the contractor is considered to be the licensed excise manufacturer that has manufactured the goods in question, you will have no entitlement to a remission (under the Remission scheme) or refund (under the Refund scheme), even where you obtain the goods underbond and enter the goods for home consumption.

[205] Subsection 27(2) of the Excise Act.

[206] Sections 25 and 27 of the Excise Act.

Example 7I

We Make Beer Co is a small brewer that holds an excise manufacturer licence. The licence authorises We Make Beer Co to manufacture and store beer at the premises covered by its licence (licensed premises).

We Make Beer Co is expanding its product range to include a number of 'ready to drink' fruit flavoured alcoholic beverages that use its beer as the base (new products).

Due to the limitations on its premises and facilities, We Make Beer Co is unable to manufacture the new products at its current licensed premises. We Make Beer Co enters into a contract with Frooty Drinx Co, to manufacture the new products on behalf of We Make Beer Co at the premises covered on Frooty Drinx Co's manufacturer licence.

Under the agreement:

- *Frooty Drinx Co will manufacture the new products at its premises using recipes and ingredients supplied by We Make Beer Co.*
- *Frooty Drinx Co will receive production fees from We Make Beer Co calculated on a 'per litre of finished product' basis.*
- *We Make Beer Co shall own the ingredients, intermediary goods and finished products at all times as well as the intellectual property associated with the recipes and branding of the new products.*
- *Frooty Drinx must ensure it has adequate insurance to cover the ingredients, intermediary goods and finished products that it holds on We Make Beer's behalf.*

Although We Make Beer Co has supplied the ingredients and recipes for the new products, and owns the inputs, intermediary goods and final products at all stages of the manufacturing process, We Make Beer Co is not actively involved in, nor has the ultimate control over or responsibility for the manufacturing process. Further, the goods are not being manufactured in premises covered by We Make Beer's excise manufacturer licence. Accordingly, We Make Beer Co is not manufacturing the new product and is ineligible for a remission or a refund.

Frooty Drinx Co did not ferment or distil at least 70% of the alcohol contained in the products (the beer base containing the alcohol was fermented by We Make Beer) and is also ineligible for a remission or refund.

Example 7J

Wishing Well Liquor Co is a distiller. It currently holds an excise manufacturer licence authorising it to manufacture and store spirits and other excisable beverages at premises covered by its licence.

Wishing Well Liquor Co has developed a new range of botanical infused gin (new products) and would like to manufacture and sell them on a larger scale than its current production capacity allows. Wishing

Well Liquor Co enters into a contract with Large Scale Liquor Co for the manufacture of these new products. The main business of Large Scale Liquor Co is manufacturing fruit infused vodka.

Under the arrangement agreed to by the parties:

- *Wishing Well Liquor Co will pay an arm's length monthly payment to Large Scale Liquor Co for the use of its designated factory space, equipment, storage space, and its staff for the manufacture of the new products.*
- *Wishing Well Liquor Co will use its own ingredients and recipes for the manufacture of the new products.*
- *Wishing Well Liquor Co owns the products at all times during the entire manufacturing process, including the intellectual property associated with the recipes and the branding of the new products.*
- *Wishing Well Liquor Co 's head distiller has oversight of the end-to-end manufacturing process. The head distiller will be onsite at all times supervising and directing the staff of Large Scale Liquor Co in manufacturing the new products, as well as bottling and packaging the finished product.*
- *Wishing Well Liquor Co will be liable for excise duty and will pay duty on these new products.*
- *Other than providing the resources and facilities to Wishing Well Liquor Co, Large Scale Liquor Co will not participate in the control and management of the manufacture of the new products.*

The arrangement is for a fixed period, with an option for Wishing Well Liquor to renew for a further period.

Wishing Well Liquor Co has applied for, and been granted, an excise manufacturer licence that covers the premises of Large Scale Liquor Co.

In this case, Wishing Well Liquor Co is directing the manufacturing process, including supervising the staff of Large Scale Liquor Co manufacturing the new products. Wishing Well Liquor Co also has ultimate control of, and responsibility for, the manufacturing process. The premises where the new products are manufactured are also covered by an excise manufacturer licence held by Wishing Well Liquor Co. As such, Wishing Well Liquor Co is the manufacturer of the new products. Wishing Well Liquor Co will be able to receive the remission or refund if it also satisfies the other eligibility criteria including legal and economic independence.

Note: as Wishing Well Liquor and Large Scale Liquor are dealing with each other on an arm's length basis, and Wishing Well Liquor has the certainty of a fixed term agreement with the option of extending the agreement, its ability to carry on its business is contractually protected and is not dependent on Large Scale Liquor's discretion. Wishing Well Liquor also manufactures and sells its products under its own label, so its marketing of its products is independent from Large Scale Liquor. In the absence of other legal or economic ties between the 2 manufacturers, Wishing Well Liquor would satisfy the independence test.

When alcohol manufacturers are legally and economically independent

Where 2 or more alcohol manufacturers are not 'legally and economically independent', only one alcohol manufacturer in that group is entitled to a remission or refund of excise duty. Once an entity has received a remission or refund for goods entered in a year it may apply further amounts for goods entered in the same year up to the relevant annual limits; other entities in the same group will not be entitled.

In determining if an alcohol manufacturer is legally and economically independent, it is necessary to consider whether, through the legal or economic connections between manufacturers, they each have capacity to make business decisions independently. The elements of the test must be considered individually – legal independence and economic independence – as well as collectively. This requires a balanced analysis of relevant factors (some of which are set out below) having regard to the facts and circumstances of the case. No one factor is determinative.

Legal independence

Whether one manufacturer is legally independent from another requires consideration of whether one manufacturer is legally capable of exerting influence over the other. This includes where one manufacturer has a controlling interest in the other as evidenced by voting rights or a third party has a controlling interest in both manufacturers.

Factors that are relevant in determining if alcohol manufacturers are legally independent of one another include:

- Whether there are 'common controlling shareholders' (for companies *only*) – an entity will be considered a controlling shareholder if, as a result of its shareholding in a company, it is capable of influencing the decision-making of that company. Where a shareholder has this influence over more than one alcohol manufacturer (that is, a common controlling shareholder), neither alcohol manufacturer will be considered to be legally and economically independent. A shareholding of greater than 50% would generally be a strong indicator that the shareholder can control the actions of a company, depending on the class of shares on issue and the rights attaching to the shares. However, a shareholding that is not greater than 50% may still amount to a degree of control depending on the circumstances. For example, the remaining shareholders may each have small shareholdings or there may be different classes of shares whereby one shareholder has the majority voting rights in the company.
- The extent to which there is 'common management and control' between 2 or more alcohol manufacturers, or whether an alcohol manufacturer has the ability to influence the decision-making of the other such that it is under an obligation to act, or can be reasonably expected to act, in accordance with its directions, instructions, or wishes.
- In the case where one or more alcohol manufacturers is a trustee of a trust, whether the terms of the trust deed govern who can control or influence the trustee (directly or indirectly) in respect of its decisions.

Economic independence

To determine whether manufacturers are economically independent from one another requires consideration of relevant arrangements. If one entity is economically reliant on the other (whether, for example, through direct monetary financing or reliance upon access to premises, equipment and other resources), the 2 manufacturers will not be independent. Similarly, if 2 manufacturers are economically reliant upon the same third party to the degree that the third party is capable of exerting influence over both manufacturers, the independence test will be failed.

Factors that are relevant in determining whether alcohol manufacturers are economically independent from one another include:

- the 'nature of any financial arrangements' between the alcohol manufacturers, including but not limited to inter-entity loans, subsidies, cost sharing or similar
- whether they share 'joint bank accounts or payment facilities'
- any 'joint capital investments'
- whether a manufacturer supervises and controls the production, testing and bottling of its own product without the other alcohol manufacturer being involved in these activities
- whether a manufacturer develops, labels and sells its own product and uses its own sales network without relying on the other alcohol manufacturer to undertake any of these activities on its behalf (2 manufacturers may still be considered independent even if they both engage the same advertising or marketing company to promote their products)
- whether each alcohol manufacturer manages its own personnel (hiring, payment, performance management)
- whether each alcohol manufacturer maintains separate accounting records and independently calculates and reports its excise and tax liabilities or entitlements (2 manufacturers may still be considered to be operating independently if they engage the same professional firm as long as the firm engages them under separate contracts of engagement and provides discrete services to each manufacturer that are billed and paid for separately)
- whether each alcohol manufacturer has 'distinct manufacturing facilities' (whether owned or leased) and is not reliant upon any other alcohol manufacturer for the right to use and access those facilities.

  Jointly owned or leased premises would not be considered distinct as one party could not act without consent of the other, or may be subject to the direction of the other. Where an alcohol manufacturer leases premises and equipment from another alcohol manufacturer at an arm's length rate, it may satisfy the legal and economic independence requirement, subject to the terms and conditions of the commercial lease agreement (see Example 7J).

  Where one manufacturer provides facilities to another manufacturer on an ad hoc informal basis, the requisite degree of independence is unlikely to exist as the second manufacturer's ability to carry on its business is subject to the ongoing agreement of the first manufacturer which could be terminated at any time.

But where they have commercial lease arrangements in place that give the second manufacturer the certainty it needs to carry on its manufacture, the 2 manufacturers may still satisfy the economic independence test (in the absence of any other factors indicating the contrary).

Testing period

An alcohol manufacturer must be legally and economically independent of another manufacturer throughout the relevant test period.[207]

If the Remission scheme applies:

- the alcohol manufacturers must be legally and economically independent of each other for the whole period between the day on which the financial year starts and the day on which a liability to excise duty arises on an alcoholic beverage that was entered for home consumption
- unless the remission of duty is made at the end of the financial year in which the alcoholic beverage was entered for home consumption – the alcohol manufacturer must have *a reasonable expectation that those circumstances will exist for the remainder of the financial year*.

If the Refund scheme applies:

- where the refund is *claimed in the financial year after excise duty was paid*, the alcohol manufacturers must be legally and economically independent of each other for the *whole financial year in which the excise duty was paid*
- where the refund is claimed before the end of the financial year in which the excise duty was paid
  - the alcohol manufacturers must be legally and economically independent of each other from the start of the financial year the duty was paid until the day the application is made, and
  - the alcohol manufacturer must have a reasonable expectation that those circumstances will exist for the remainder of the financial year.

Example 7K

Brewhouse Co has an excise manufacturer licence to manufacture beer. Distilled Co has an excise manufacturer licence to manufacture spirits.

Investor Co owns 100% of the shares in both Brewhouse Co and Distilled Co.

[207] Subclause 2(4) of Schedule 1 to the Excise Regulation; subclause 1(6) of Schedule 1 to the Excise Regulation (now repealed).

Investor Co is a common controlling shareholder in both manufacturers. Where 2 or more alcohol manufacturers are directly or indirectly controlled by the same third entity, there is prima facie a lack of independence. Therefore only Brewhouse Co or Distilled Co (whichever claims first) can receive a remission or refund in a given financial year under the relevant scheme (if it also satisfies the other eligibility criteria).

Example 7L

BB Brewers Co has an excise manufacturer licence to manufacture beer. DD Distillery Co has an excise manufacturer licence to manufacture spirits. The shareholding and directorships of the 2 entities are as follows.

All 3 directors of BB Brewers take an active part in the decision-making of the company. All shares in BB Brewers carry equal rights.

The manufacturers have separate lease arrangements in place in respect of different parts of the same premises. Each manufacturer has the exclusive use of, and control over, the part of the premises they lease.

Each manufacturer is responsible for developing, manufacturing, packaging and storing its own alcoholic beverages. Each manufacturer employs and manages its own personnel. However, both manufacturers have engaged the same independent contractor to manage their accounting and tax reporting obligations. That contractor provides discrete services to each company and invoices them separately.

Each manufacturer maintains its own separate banking facilities and there are no intercompany loans or similar financial arrangements between them.

While Dan is the sole shareholder and director of DD Distillery Co and therefore has control over its operations, he does not appear able to direct the decision-making of BB Brewers Co (based on his minority shareholding and all 3 directors take an active part in the decision-making).

The facts indicate that BB Brewers Co and DD Distillery Co have the capacity to make business decisions independently. They are therefore legally and economically independent of each other and both entities would be entitled to receive a remission or refund under the relevant scheme, subject to satisfying the remaining eligibility criteria.

Example 7M

Family Drinks Co and Cousins Craft Beer Co are family run businesses. Family Drinks Co has an excise manufacturer licence to manufacture beer and spirits. Cousins Craft Beer Co has an excise manufacturer licence to manufacture beer.

All shares in Family Drinks Co and Cousin Craft Beer Co carry equal rights. Brenda, Agnes, Dorothy and Tanya have equal shareholdings in Investor Co.

Both Family Drinks Co and Cousins Craft Beer Co have separate manufacturing, testing and bottling facilities and each develop their own products based on instruction from their own head brewer or distiller.

While operations of Family Drinks Co and Cousins Craft Beer Co appear to be independent (as they do not share facilities or have input into each other's products), Investor Co has a controlling interest (60%) in both companies and can therefore make decisions in respect of each company. That is, Investor Co is a common controlling shareholder. Prima facie, there is a lack of independence between the alcohol manufacturers. Therefore, only Family Drinks Co or Cousins Craft Beer Co (whichever claims first) will be entitled to receive remissions or refunds under the relevant scheme in a given financial year (if it also satisfies the remaining eligibility criteria).

Example 7N

Freddie's Brewery and That Beer Company both have an excise manufacturer licence to manufacture beer. The shareholdings of the 2 entities are as follows.

All shares in Freddie's Brewery and That Beer Company carry equal rights. Fred has a controlling interest (80%) in Freddie's Brewery. Fred also has a minority interest (25%) in That Beer Company but has provided substantial financing to the company that it would struggle to obtain through external sources. Without the finance provided by Fred, That Beer Company would be incapable of carrying on its operations. The interest rate and repayment terms for the finance to That Beer Company are at commercial rates.

Given the reliance That Beer Company has on Fred's finance to carry on its operations, Fred is able to exert influence over board decisions. Accordingly, despite the fact Fred only has a minority shareholding in That Beer Company, and thus no common controlling shareholding exists between the 2 breweries, he is able to influence the business decisions of both manufacturers. While Fred's control of Freddie's Brewery is legal in nature (due to his controlling shareholding), and his control over That Beer Company is economic in nature (due to their reliance upon his financing), Fred is nevertheless able to exert control over both manufacturers. Therefore, the 2 breweries are not considered to be legally and economically independent of one another.

It is not necessary that Fred actually asserts influence over the operations of either brewery – the independence test is failed where Fred is capable of asserting influence over both breweries.

Example 7O

GG Distillery Co and Never First Distillery both have an excise manufacturer licence to manufacture spirits. No common controlling shareholders exist between the 2 entities.

Capital Bank is the chief lender to both distilleries, each of whom is reliant upon the bank to finance its activities. Without the finance from Capital Bank, neither distillery would be able to operate. Capital Bank does not have an equity interest in either distillery.

Notwithstanding the reliance of both distilleries upon the same bank lender, the mere fact the distilleries have obtained funding from the same bank will not point to a conclusion that they are not legally and economically independent.

Example 7P

Easy Drink Co owns a brewery complex and focuses its production on 'easy drinking' lagers suited to consumption in warm weather. During winter, their trade shrinks and they have idle capacity in their plant.

Inventive Ales Pty Ltd is established by an acquaintance of the managing director of Easy Drink Co. Easy Drink Co wants to develop a 'winter beer' and devises a recipe and brand name which it owns. Easy Drink Co leases a portion of its brewery to Inventive Ales to enable the latter to manufacture the winter beer using Easy Drink's recipe. Inventive Ales manufactures the beer and under the terms of its agreement with Easy Drink Co, must sell the beer to Easy Drink Co at cost plus a markup. This is Inventive Ales' main activity and its profitability is dependent upon the agreement with Easy Drink Co.

While Inventive Ales has manufactured the beer, it is dependent upon Easy Drink Co for both its recipe and its market. It also has no ownership in the intellectual property so its very ability to sell the beer is dependent upon its arrangement with Easy Drink Co. Although the 2 manufacturers may be dealing with each other contractually on an arm's length basis, the economic reliance of Inventive Ales is so great that the 2 manufacturers would not satisfy the legal and economic independence requirement.

You have fermented or distilled at least 70% of the alcohol content of your alcoholic beverage

You will only be eligible for a remission or refund if you fermented or distilled at least 70% by volume of the alcohol content of the beverage on which you had an excise liability (Remission scheme) or on which you paid duty (Refund scheme).[208]

While you must have fermented or distilled at least 70% of the alcohol in the final product, in the case of spirits, we will accept that you have distilled the alcohol where you purchase a base spirit, and re-distil it, with or without other ingredients.[209]

Provided you ferment or distil at least 70% of the alcohol content of the final alcoholic beverage, the remaining alcohol content in the final beverage can come from alcohol which you have not fermented or distilled, such as purchased spirits, or other alcoholic beverages.

Where you manufacture a product by merely blending purchased spirit with other ingredients, you will not be eligible for a remission or refund in respect of that product. For example, most domestically produced ready-to-drink beverages would not qualify as most of these products are produced from spirits that are imported in bulk, and then blended with soda.

[208] Table item 10(d) of subclause 2(1) of Schedule 1 to the Excise Regulation; table item 21(d) of subclause 1(1) of Schedule 1 to the Excise Regulation (now repealed).

[209] Explanatory Statement to the *Excise Amendment (Refund Scheme for Alcohol Manufacturers) Regulations 2017*.

Example 7Q

Easy Drinks Co holds an excise manufacturer licence to manufacture other excisable beverages. It manufactures a popular ready-to-drink beverage called 'Vodka Chiller'. Easy Drinks Co sources vodka from a local supplier. Easy Drinks Co blends the vodka with other ingredients to produce the Vodka Chiller products and sells them to a retailer. Easy Drinks Co is liable for excise duty on the goods sold.

While Easy Drinks Co is considered to be an alcohol manufacturer who manufactures an alcoholic beverage, it does not distil at least 70% of the alcohol content of the Vodka Chiller. As such, it does not satisfy this requirement and is not eligible to claim a remission or refund under the relevant scheme.

'Still ownership test'

If the remission or refund is in relation to a beverage that has been distilled, you must also satisfy all of the following 'still ownership tests'[210]:

- to have sole ownership of one or more stills that have a capacity of at least 5 litres
- at least one of those stills must be installed and ready to use at the beginning of the financial year, and
- at least one of the stills must have been used during the financial year for the purposes of manufacturing any alcoholic beverages.

However, you can disregard the 'still ownership test' if you are within your first 2 financial years of being eligible under the Remission scheme or Refund scheme (this refers to eligibility in general, not just in respect of distilled beverages).

Example 7R

An alcohol manufacturer received a remission of duty for beer it manufactured and entered for home consumption in each of the 2 previous financial years. In the current financial year, the alcohol manufacturer is seeking a remission of duty on gin. The manufacturer must meet the still ownership requirements in respect of any remission under the Remission scheme for the gin as the manufacturer first became eligible to a remission under the Remission scheme in the financial year 2 years prior to the current financial year.

[210] Table item 10(e) of subclause 2(1) of Schedule 1 to the Excise Regulation; table item 21(e) of subclause 1(1) of Schedule 1 to the Excise Regulation (now repealed).

It does not matter that the remissions in each of the previous 2 financial years were not in respect of a distilled beverage, nor would it matter if the licensed alcohol manufacturer did not receive a remission until the current financial year. The period prior to having to own a still commences in the first financial year in which the manufacturer could have received a remission and extends to the end of the following financial year. For example, if an entity first commenced manufacture of alcoholic beverages in May 2021, the period prior to having to own a still would end on 30 June 2022.

The outcome would be the same if the alcohol manufacturer had received refunds under the Refund scheme rather than remissions, or a combination of the 2 in the financial year 2 years prior to the current financial year. The outcome would also be the same if the alcohol manufacturer had ceased to manufacture beer and enter it for home consumption after the first financial year.

7.3.4 APPLYING FOR A DRAWBACK

You can apply for a drawback if you export alcohol products that have had excise duty paid on them.[211]

We will only pay a drawback if[212]:

- Prior to the exportation, you advise us that you intend to claim a drawback (we can exempt you from this requirement, in writing, either on all claims for drawback or any particular claim).[213]
- Before exportation of the duty-paid alcohol products, the goods are available for our inspection.
- You keep records that show
  - that duty was paid on the alcohol products (for example, invoices), and
  - the alcohol products were exported (for example, an export declaration number or bill of lading).
- You lodge a drawback claim in the approved form no later than 12 months after the alcohol products are exported.
- The claim sets out the amount of the drawback and a statement that the goods have not been, or are not intended to be, re-landed in Australia.
- The amount of the claim or an aggregate of the claims is at least $50.

The amount of the drawback cannot exceed the amount of excise duty that was paid.[214]

[211] Section 79 of the Excise Act and section 14 of the Excise Regulation.

[212] Subsection 16(1) of the Excise Regulation.

[213] Subsection 16(2) of the Excise Regulation.

[214] Subsection 16(3) of the Excise Regulation.

Example 7S

A liquor distributor purchases a quantity of duty-paid beer and spirits which it supplies to an entity overseas.

The liquor distributor applies for a drawback of the duty component of the beer and spirits. To support the application, the company provides the ATO with copies of invoices of purchase and the bills of lading, which will include details of the export declaration notice (EDN) number.

7.3.5 IF YOU ARE OVERPAID A REFUND OR DRAWBACK

If we overpay you by way of a refund or drawback, you must pay the overpaid amount back. We can demand that you pay back the amount and if you do not repay the amount within the time specified in the demand, we can recover the amount through the courts as a debt due to the Commonwealth.[215]

7.3.6 WHEN EXCISABLE ALCOHOL PRODUCTS ARE EXEMPT FROM EXCISE DUTY

Excisable alcohol products are exempt from duty if they are:

- exported
- sold for use as ship's or aircraft's stores[216]
- with our approval, delivered as small samples[217], or
- subject to remission without application.[218]

Ship's and aircraft's stores

Ship's and aircraft's stores are goods for the use of passengers or crew on international journeys (for example, alcohol for sale to passengers on board a cruise liner).

There are limits on the quantities of excisable alcohol products that are not liable to excise duty as ship's stores.[219]

[215] Section 80 of the Excise Act.

[216] Section 160A of the Excise Act.

[217] Section 64 of the Excise Act.

[218] Clause 2 of Schedule 1 to the Excise Regulation.

[219] Section 55 of the Excise Regulation.

Alcoholic beverages (other than beer) must be sold to passengers or crew by the glass or nip.

If you supply ship's or aircraft's stores 'underbond', you must obtain a movement permission to move the goods from premises covered by a licence to the place of export.

Delivering samples without payment of duty

You may be able to deliver small samples of excisable alcohol products without payment of duty and without entry. You must apply to us for approval to deliver any sample without the payment of duty. Your application must:

- be in writing
- specify who the sample is for
- specify the quantity for approval, and
- specify the purpose of the sample.

A small sample would normally consist of less than a saleable amount or an amount that is suitable for the purpose for which the sample is required, for example, testing and evaluation. Samples of product provided to customers in order to secure an order for that product (pre-delivery samples – that is, samples that arrive separately to the bulk goods), are not considered to be 'samples' that can be approved for delivery without the payment of duty.

You do not include approved samples in your excise return; however, you must keep records of any samples you deliver.

To apply for approval, send your application to us via:

- ATO Online Services, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

7.4 PROCEDURES

7.4.1 APPLYING FOR A REMISSION OR REFUND

An application for a remission (excluding automatic remissions in clause 2 of Schedule 1) or a refund of excise duty must be submitted in writing. However, table item 1(b) of Schedule 1 to the Excise Regulation provides that where a remission may be allowed and the goods have been totally lost or

destroyed or otherwise ceased to exist an application is not required. Records to substantiate your claims must be maintained and produced when requested.[220]

From 1 July 2024, an application for a refund must be lodged within 4 years after the day when the excise duty was paid for the following refund circumstances (which apply to excisable alcohol)[221]:

- goods that, while subject to the CEO's control, has deteriorated, been damaged, pillaged, lost or destroyed, or become unfit for human consumption
- goods that, while subject to the CEO's control, are no longer worth the amount of duty paid on them
- duty was paid on goods through manifest error of fact or patent misconception of the law
- duty was paid on goods that become goods that are not liable to excise duty under section 160A of the Excise Act (ship's and aircraft's stores)
- duty has been paid on goods for which a by-law is made under Part XV of the Excise Act which has the effect that excise duty is either not payable on those goods or is payable at a lower rate than when the goods were entered for home consumption
- duty was paid on goods that have not been used and are returned to premises covered by a licence granted under section 39A of the Excise Act.

For all other table items listed in clause 1 of Schedule 1 to the Excise Regulation, there is no time limit for lodging your application for a refund.

We may inspect or supervise the disposal of goods to ensure that excisable alcohol products that are the subject of a remission do not find their way into the Australian domestic market.

If underbond goods must be destroyed off site, you must apply for a movement permission to move them from the premises covered by a licence to the place of destruction.

Unless alcohol products have been accidentally destroyed, you should contact us before moving or destroying any that are subject to remission or refund. We will provide you with direction and advise if the goods are to be inspected or the destruction supervised.

For more information about movement permissions, refer to Chapter 5 Movement permissions.

You can elect to have a refund credited to your excise account or paid directly into your bank account. The easiest way to apply for a refund or remission is by using ATO Online services. Alternatively:

- To apply for a remission, send us a completed Excise remission. Help to complete this form is available at Help completing the PDF form.

[220] Section 10 of the Excise Regulation.

[221] Section 11 of the Excise Regulation.

- To apply for a refund, send us a completed Excise refund or drawback. Help to complete this form is available at Excise refund or drawback. Applications can also be made on company letterhead as long as all the relevant information is provided.

If you are not satisfied with our decision to refuse your refund or remission, you can request a review of our decision by lodging an objection within 60 days of our decision.

For more information about your review rights, refer to Chapter 8 Reviews and objections.

7.4.2 APPLYING FOR A DRAWBACK

The easiest way to claim your excise refund or drawback is by using ATO Online services. Alternatively, to apply for a drawback of duty, send us a completed Excise refund or drawback form. Help to complete the form is available at Excise refund or drawback. Applications can also be made on company letterhead as long as all the relevant information is provided.

Your drawback application must be received not later than 12 months after the day on which the goods were exported.[222]

If we refuse to pay your drawback and you are not satisfied with our decision, you can request a review of our decision by lodging an objection within 60 days.

For more information about your review rights, refer to Chapter 8 Reviews and objections.

7.4.3 MORE INFORMATION

If you need more information on remissions, refunds, drawbacks and exemptions, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

[222] Table item 3 of subsection 16(1) to the Excise Regulation.

7.5 PENALTIES THAT CAN APPLY IN RELATION TO REMISSIONS, REFUNDS, DRAWBACKS AND EXEMPTIONS

The following are the penalties that may apply after conviction for an offence.

Evade

If you evade payment of any duty which is payable, the maximum penalty is a fine not exceeding 5 times the amount of duty on the excisable alcohol products (but not less than 2 times that amount) or where a court cannot determine the amount of that duty the penalty is a fine not exceeding 500 'penalty units'.[223]

False or misleading statements

If you make a false or misleading statement, or an omission from a statement in respect of duty payable on particular goods, to us, a penalty not exceeding the sum of 50 penalty units and twice the amount of duty payable on those goods.[224]

7.6 TERMS USED

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are listed in the Schedule to the Excise Tariff Act, or an Excise Tariff alteration, and manufactured in Australia.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- high strength spirit for non-beverage use, including denatured spirit.

[223] Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.

[224] Paragraph 120(1)(vi) of the Excise Act.

Excise control

Goods are subject to excise control from the point of manufacture until they have been delivered into the Australian domestic market or for export.

Goods subject to excise control cannot be moved, altered or interfered with except as authorised by the Excise Act.

Excise return

An excise return[225] is the document that you use to advise us the volume of excisable alcohol products that you:

- have delivered into the Australian domestic market during the period designated on your PSP, or
- wish to deliver into the Australian domestic market following approval.

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

Underbond

This is an expression not found in excise legislation but it is widely used to describe goods that are subject to excise control. Excisable goods that are subject to the Commissioner's control are commonly referred to as 'underbond goods' or as being 'underbond'. This includes goods that have not yet been delivered into the Australian domestic market and goods moving between premises under a movement permission.

7.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 24 – excisable goods and goods liable to duties of Customs may be used in manufacturing excisable goods
  - section 58 – entry for home consumption etc.
  - section 61A – permission to remove goods that are subject to CEO's control
  - section 64 – delivery of samples free of duty

[225] The term used in section 58 of the Excise Act is 'entry for home consumption'.

  - section 78 – remissions, rebates and refunds
  - section 79 – drawbacks
  - section 80 – recovery of overpayments of refunds, rebates, and drawbacks
  - section 120 – offences
  - section 160A – ship's stores and aircraft's stores
- *Excise Regulation 2015*
  - section 10 – application for remission, rebate or refund of excise duty
  - section 11 – period for making an application for refund or rebate of excise duty
  - section 12 – amount of remission, rebate or refund of excise duty
  - section 14 – drawback of excise duty on goods
  - section 15 – when drawback of excise duty is not payable
  - section 16 – conditions relating to drawback of excise duty – general
  - Clause 1 of Schedule 1 – circumstances in which remission, rebate or refund may be made on application
  - Clause 2 of Schedule 1 – circumstances in which remission, rebate or refund may be made without application
- *Crimes Act 1914*
  - section 4AA – penalty units
- *Corporations Act 2001*
  - *section 46 – what is* a subsidiary

Amendment history

8 July 2026

Part	Comment
Throughout	This Chapter was updated to include changes as a result of the Excise Amendment (Remission Increase for Distillers and Brewers) Regulations 2025. These Regulations increase the maximum amount of remission an eligible alcohol manufacturer may be entitled to per financial year. The remission cap increased from $350,000 to $400,000 in relation to certain alcoholic beverages entered for home consumption on or after 1 July 2026.

27 June 2025

Part	Comment
Throughout	This Chapter was updated to take into account the law changes as a result of the Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024 and Excise and Customs Legislation Amendment (Streamlining Administration) Regulations 2024. This includes extending the 12-month time limit for certain excise refunds to a four-year time limit and applying this new time limit to certain refund circumstances currently with no time limit.
Throughout	Updated in line with current ATO style and accessibility requirements.

8 REVIEWS AND OBJECTIONS

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8 REVIEWS AND OBJECTIONS

8.1 PURPOSE

This Chapter deals with:

- the types of review you can ask for
- what decisions you can object to
- how to request an internal review
- how to lodge an objection, and
- how to request an external review.

8.2 INTRODUCTION

We will provide you with a clear explanation of any decision we make about your excise affairs. If you need more information about our decisions, contact us using the details we provide when we advise you of our decision.

If you're not satisfied with a decision we've made, you can ask for it to be reviewed by:

- internal review[226]
- objection[227], or
- external review.[228]

If there are several review options, we will explain how these differ. For example, some reviews look at questions of law and others involve checking that we followed the correct process in reaching our decision. Which review option is best will depend on your situation.

[226] For example, a decision not to issue a movement permission under section 61A of the Excise Act.

[227] Objections are governed by Part IVC of the *Taxation Administration Act 1953* (TAA).

[228] These are conducted in the Administrative Review Tribunal or the Federal Court.

8.3 POLICY AND PRACTICE

8.3.1 INTERNAL REVIEWS

Under the ATO Charter, you can request an internal review where you believe that we have made a mistake, not complied with the law, or interpreted or applied the law incorrectly.

Your dissatisfaction with our decision may be treated as an internal review, both prior to or after receiving notification of the decision in writing.

An internal review does not waive or defer your rights to object to the decision.

However, if you choose to pursue an internal review the time allowed to lodge an objection may have expired by the time an internal review is finalised. This would consequently affect your right for external review by the Administrative Review Tribunal or Federal Court.

This is particularly crucial if the original decision attracts only a 60-day objection period.

8.3.2 OBJECTING AGAINST DECISIONS

You can only lodge an objection against those decisions contained in sections 39Q and 162C of the Excise Act. These include decisions:

- made under the licensing provisions of the Excise Act[229] such as
- refusal to grant a licence
  - imposing and varying conditions on a licence, or
  - suspension, cancellation or refusal to renew a licence
- to demand an amount in relation to goods not satisfactorily accounted for[230]
- to refuse, impose conditions on, or to cancel a PSP[231]
- relating to a drawback, refund or remission of duty[232]
- to refuse to give an approval to use spirit for a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose (concessional spirit approval)[233], or
- to specify conditions in a concessional spirit approval.[234]

[229] Section 39Q of the Excise Act.

[230] Paragraph 162C(1)(c) of the Excise Act.

[231] Paragraphs 162C(1)(d) to (f) of the Excise Act.

[232] Paragraphs 162C(1)(d), (i) and (j) of the Excise Act.

[233] Paragraph 162C(1)(g) of the Excise Act.

[234] Paragraph 162C(1)(h) of the Excise Act.

From 1 July 2010, if you obtain an excise private ruling which is unfavourable, you also have the right to object to an excise private ruling. However, an objection cannot be lodged in the case where the Commissioner has made a decision about the excise duty or other amount payable in relation to those goods that the ruling relates to and the decision is reviewable.

You may still request an internal review of other decisions. If we have made a mistake, we aim to correct our mistake at the least cost to you and the ATO.

8.3.3 SEEKING AN EXTERNAL REVIEW

Where there is no right of objection, you may be able to apply to the Federal Court or Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977*.

Where you have lodged an objection and are dissatisfied with an objection decision, you can appeal against the decision to the Federal Court. If the objection decision is a reviewable objection decision, you may either appeal to the Federal Court or, alternatively, apply to have the decision reviewed by the Administrative Review Tribunal. In either case, you must lodge your application within 60 days of the objection decision being served on you. The Administrative Review Tribunal may extend this period for applications for review, upon your request.

8.4 PROCEDURES

8.4.1 REQUESTING AN INTERNAL REVIEW

To request an internal review, use the contact details we provide to contact the person or area of the ATO handling your case. The review will be conducted by a tax officer who was not involved in making the original decision.

We will advise you of the outcome of our review within 28 days of receiving all the information we need. If we cannot finalise the review within 28 days or we need more information from you, we will contact you within 14 days to obtain the information we need or negotiate an extended reply date.

8.4.2 FACILITATION PROCESS

Facilitation is a process where an impartial ATO facilitator meets with you (or your representative, or as well as) and the ATO case officer or officers to identify the issues in dispute, develop options, consider alternatives and attempt to reach a resolution. The ATO facilitator will be an officer that has not been involved in the dispute and who is independent and impartial.

A facilitator will not establish facts, take sides, give advice, make a decision or decide who is 'right or wrong'. The facilitator guides the parties through the process and ensures open lines of communication.

You can make a request for facilitation (including via your representative) by emailing **facilitation@ato.gov.au**. Alternatively, the ATO may offer you facilitation to help resolve a dispute.

8.4.3 LODGING AN OBJECTION

You can lodge an objection by completing an objection form or writing your own objection document. Your objection must:

- be in writing
- lodged within 60 days after you receive the notice of the decision, and
- set out a full and detailed account of the grounds for the objection.[235]

You can also lodge your objection via:

- ATO Online Services, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

If you do not lodge your objection within 60 days, we will not consider your objection, unless you provide the reasons for late lodgment. We will consider these reasons before continuing with the objection process.

If we refuse additional time to lodge an objection, you may have this decision reviewed by the Administrative Review Tribunal.

We will make a decision about your objection after receiving all the necessary information. If we need more information or we cannot make a decision, we will contact you within 14 days to obtain the information we need or to negotiate an extended reply date.

If you are dissatisfied with the objection decision, there are further review rights available to you. You can:

- apply to the Administrative Review Tribunal for a review of the decision, or
- appeal against the decision to the Federal Court.

To obtain a copy of our objection forms and for more information about how to lodge an objection, refer to Object to a decision.

For more information about what to do if you believe your legal rights or the standards outlined in the ATO Charter have not been met, refer to Steps to take if you are not satisfied with our service.

[235] Section 14ZU of the TAA.

8.4.4 REQUESTING AN EXTERNAL REVIEW

The Administrative Review Tribunal is an independent body that reviews decisions made by Australian Government agencies, departments, and ministers. To apply for a review, individuals can submit applications regarding decisions made under more than 400 Commonwealth Acts and laws, including decisions made under the Excise Act. If a party is dissatisfied with a decision made by the Tribunal, they may appeal to the Federal Court on a question of law. For more information, see Administrative Review Tribunal.

We suggest you obtain legal advice if you are considering using external review options provided by the Administrative Review Tribunal or Federal Court.

8.4.5 MORE INFORMATION

If you need more information on reviews and objections, contact us via:

- ATO Online Services, or
- phone **1300 137 290**
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

8.6 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 39Q – review of decisions
  - section 162C – review of decisions
- *Taxation Administration Act 1953*
  - section 14ZU – how taxation objections are to be made
  - Part IVC – taxation objections, reviews and appeals

Amendment history

27 June 2025

Part	Comment
Throughout	Updated in line with current ATO style and accessibility requirements.

9 OFFENCES

9.1 PURPOSE

9.2 INTRODUCTION

9.3 OFFENCES

9.4 PENALTIES

9.5 INFRINGEMENT NOTICES

9.6 APPLICATION OF THE CRIMINAL CODE

9.7 TERMS USED

9.8 LEGISLATION (quick reference guide)

9 OFFENCES

9.1 PURPOSE

This Chapter deals with:

- offences under the Excise Act
- penalties
- infringement notices, and
- application of the Criminal Code.

9.2 INTRODUCTION

This Chapter is a general discussion on offences. It is not meant as legal advice and you are encouraged to seek independent legal advice in relation to your own individual circumstances.

There are a number of acts or omissions under the Excise Act that are offences.

A conviction for an offence may result in a penalty as provided for within the Excise Act. The penalty provided may be in the form of 'penalty units', a term of imprisonment or an amount of money calculated by a set formula.

9.3 OFFENCES

Certain acts or omissions are offences under the Excise Act for which penalties are prescribed.

For penalties to apply to an offence (except where an infringement notice has been issued), you must first be convicted of the offence in a court of law following prosecution.

Certain offences under the excise legislation are strict liability offences as defined in section 6.1 of the Criminal Code (Schedule to the *Criminal Code Act 1995*). Essentially, strict liability means that the offence consists of the physical act or omission only. It is not necessary for the court to find that you knowingly committed or were reckless or negligent in relation to the act or omission.

Some sections of the Excise Act prescribe the following 2 levels of offence for similar conduct:

- a higher penalty applies to an act or omission intentionally or recklessly committed (that is, where there is a 'fault' element), and
- a lower penalty applies to the same act or omission on a strict liability basis (that is, where no 'fault' element needs to be proven).

For example, section 26 of the Excise Act prescribes that licensed manufacturers are to manufacture in accordance with the Act and their licence.

(1) A licensed manufacturer must not intentionally manufacture excisable goods knowing, or being reckless as to whether, the manufacture contravenes this Act or the manufacturer licence.

Penalty: 2 years imprisonment or 500 penalty units.

(2) A licensed manufacturer must not manufacture excisable goods in contravention of this Act or the manufacturer licence.

Penalty: 100 penalty units.

(3) Strict liability applies to subsection (2).

9.4 PENALTIES

The Excise Act contains many provisions that include a penalty at the foot of the section or subsection. This means that if you are convicted of an offence against the particular provision, you can receive a penalty not exceeding the penalty mentioned.[236] The penalty listed is the maximum penalty, but the courts can impose a lesser penalty.

Example 9A

A person manufactures excisable alcohol products without a manufacturer licence. This is a contravention of subsection 25(2) of the Excise Act which says that a person shall not manufacture excisable goods without a manufacturer licence. The penalty at the foot of subsection 25(2) of the Excise Act is 100 penalty units. We bring a court action against the person and the court convicts the person. The penalty cannot exceed 100 penalty units, but it can be less.

As indicated above, certain offences provide for alternative penalties, for example, subsection 25(1) of the Excise Act provides for a penalty of 2 years imprisonment or the greater of 500 penalty units and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption. In some cases the court may impose both penalties upon conviction.[237]

[236] Section 5 of the Excise Act and section 4D of the *Crimes Act 1914*.

[237] Section 127A of the Excise Act.

Where an offence leads to goods being forfeited[238], conviction by the courts results in the forfeited goods being condemned.[239] This means they are no longer your property and we can dispose of the goods as we see fit.

9.5 INFRINGEMENT NOTICES

We may issue an infringement notice[240] as an alternative to prosecution for unlawfully possessing, or unlawfully selling excisable goods.[241] An infringement notice imposes a penalty of 20 penalty units.

To issue an infringement notice, we must have a reasonable belief that you have committed the offence. Notices must be issued within 12 months of the commission of the offence.[242]

If you do not pay the penalty, we may withdraw the infringement notice and prosecute you.

You cannot be prosecuted for the same offence where an infringement notice has been issued unless the infringement notice is withdrawn.

If we withdraw an infringement notice after you have paid the penalty, we will refund that to you.[243]

9.6 APPLICATION OF THE CRIMINAL CODE

Chapter 2 of the Criminal Code applies to offences against the Excise Act. However, Parts 2.5 and 2.6, which are in Chapter 2, do not apply.[244] In some courts, excise prosecutions are able to be treated as criminal matters while in other courts they are treated as civil matters. This has an effect on issues such as the burden and standard of proof required.

[238] Section 116 of the Excise Act.

[239] Section 151 of the Excise Act.

[240] Part XA of the Excise Act.

[241] Subsections 117(2) and 117B(2) of the Excise Act.

[242] Section 129B of the Excise Act.

[243] Section 129F of the Excise Act.

[244] Section 6B of the Excise Act.

9.7 TERMS USED

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

9.8 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 5 – penalty at foot of sections
  - section 6B – application of the Criminal Code
  - section 25 – only licensed manufacturers to manufacture excisable goods
  - section 26 – licensed manufacturers to manufacture in accordance with Act and licence
  - section 116 – forfeiture
  - section 117 – unlawful possession of excisable goods
  - section 117B – unlawfully selling excisable goods
  - section 127A – alternative penalties
  - section 129A – purpose and effect of this Part (Part XA – penalty instead of prosecution)
  - section 129B – when an infringement notice may be issued
  - section 129C – matters to be included in an infringement notice
  - section 129D – due date for penalty
  - section 129E – effect of payment of penalty
  - section 129F – withdrawal of infringement notice
  - section 151 – conviction to operate as a condemnation
- *Crimes Act 1914*
  - section 4AA – penalty units
  - section 4D – penalties
- *Criminal Code Act 1995*
  - section 6.1 – strict liability
  - Chapter 2 – general principles of criminal responsibility

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10 BEER

10.1 PURPOSE

10.2 INTRODUCTION

10.2.1 DEFINITION OF BEER

10.2.2 CATEGORIES OF BEER

10.3 POLICY AND PRACTICE

10.3.1 EXCISE LIABILITY FOR BEER

10.3.2 RESPONSIBILITIES AS A BREWER

10.3.3 RECORD KEEPING

10.3.4 BREW ON PREMISES SHOPS

10.3.5 WHAT ELSE WE CAN DO

10.4 PROCEDURES

10.4.1 MORE INFORMATION

10.5 PENALTIES THAT CAN APPLY IN RELATION TO BEER

10.6 TERMS USED

10.7 LEGISLATION (quick reference guide)

10 BEER

10.1 PURPOSE

This Chapter deals with how excise law applies to beer and discusses:

- what beer is
- what categories of beer there are, including beer brewed at home and beer repackaging
- calibration of vessels and instruments
- sampling and strength testing
- contents for excise duty purposes
- excise liability for beer
- brewers' responsibilities, including record keeping and production losses
- refunds and remissions, including the excise refund scheme for alcohol manufacturers and duty-paid beer returned to the brewery, and
- brew on premises shops.

10.2 INTRODUCTION

10.2.1 DEFINITION OF BEER

Beer is defined in the Schedule to the Excise Tariff Act (Schedule). In summary, a beverage is 'beer' if it is brewed and:

- is the product of the yeast fermentation of an aqueous extract of predominantly malted or unmalted cereals, but may also contain other sources of carbohydrates
- contains hops, or extracts of hops, so that the beverage has no less than 4 International Bitterness Units (IBUs) or other bitters. If it contains other bitters, the beverage must have a bitterness comparable to that of a beverage with no less than 4 IBUs
- may have spirit distilled from beer added to it if that spirit adds no more than 0.5% to the final total volume of alcohol
- may have other substances, including flavours, containing alcohol (other than beer spirit) added to it but only if that alcohol adds no more than 0.5% to the final total volume of alcohol
- contains no more than 4% by weight of monosaccharide and disaccharide (sugars)
- does not contain any artificial sweeteners, and
- has an alcohol content of more than 1.15% by volume.

IBUs are a recognised measure of bitterness of beer containing hops or extracts of hops.

More information about IBUs is publicly available on the internet.

You should be able to establish whether your product meets the definition of 'beer' for excise purposes from your manufacturing specifications and processes and from standard industry information.

Products that clearly meet the definition will not require testing. However, if you are unsure whether your product meets the definition, you should have one brew tested and as long as you continue to brew that formula, you will not need to undertake any further testing unless directed by us. You will need to do this for each type of beer you make where you are unsure if it will meet the definition.

Record keeping

You should keep beer recipe sheets and evidence you have brewed to those recipes. We use these records to establish:

- the quantities of raw materials you used to manufacture each type of beer
- whether or not your beverage meets the definition of beer for excise purposes.

Your beer recipe sheets should include details of the beer type, and the type and quantity of all the following:

- malt
- mash ingredients
- hops
- other kettle additions
- any other additions.

Note – if your beverage contains more that 1.15% alcohol by volume but does not fit within the definition of beer, it will be an ‘other excisable beverage’.

For more information about the definition of beer or how excise duty applies to it, you can phone us on **1300 137 290**.

10.2.2 CATEGORIES OF BEER

There are 3 categories of beer. These are:

- home brew that is brewed for non-commercial purposes using non-commercial facilities and equipment
- beer that is brewed for non-commercial purposes using commercial facilities or equipment such as brew on premises shops (BOPS)
- any other beer that meets the definition, for example, beer brewed for commercial purposes, including repackaging.

Home brewing

Beer produced for non-commercial purposes using non-commercial equipment (home brew) is not classified to an item in the Schedule and is therefore not excisable.[245]

You must not sell or offer for sale home brewed beer which has been produced under the home brew exemption (for non-commercial purposes).[246]

Beer brewed in a brew on premises shop

BOPS provide commercial facilities or equipment to customers to make beer for their own consumption.

Beer produced in a BOPS must be brewed by the customer for personal use by the customer, and not for sale.

Beer produced in a BOPS is excisable.

For more information about BOPS refer to Section 10.3.4 Brew on premises shops.

Beer brewed for commercial purposes

Beer is for commercial purposes if it is not home brew or beer brewed in a BOPS.

Beer produced for commercial purposes is excisable.

10.3 POLICY AND PRACTICE

10.3.1 EXCISE LIABILITY FOR BEER

Classifying beer

The classification of beer depends on 3 things:

- the volume of the 'container' and the design of the container in which the beer is packaged
- the alcoholic strength of the beer, and
- whether it is for commercial or non-commercial purposes.

[245] Preamble to the Schedule of the Excise Tariff Act.

[246] Paragraph 120(1)(iiia) of the Excise Act.

Commercial beer subject to a non-concessional rate of duty

Beer packaged in a container less than 8 litres, or between 8 litres and 48 litres and not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations, attracts a higher rate of excise duty.

Figure 7 is an extract of the Schedule to the Excise Tariff Act for the 3 subitems that apply to beer packaged in this way.

Figure 7: Extract of Schedule for subitems that apply to commercial beer subject to a non-concessional rate of duty

Item	Subitem	Description of goods	Rate of Duty
1		Beer	
	1.1	Beer not exceeding 3% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$52.87* per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.5	Beer exceeding 3% but not exceeding 3.5% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$61.57* per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.10	Beer exceeding 3.5% by volume of alcohol packaged in: (a) an individual container of less than 8 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$61.57* per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

*Rate of duty as at 3 February 2025. You can find the current excise rates of duty, along with those applicable pre 3 February 2025 at our tariff working page Excise duty rates for alcohol.

Commercial beer subject to a concessional rate of duty

Beer packaged in a container that exceeds 48 litres capacity, or at least 8 litres but not exceeding 48 litres and subject to specific criteria in relation to the design of the container, attracts a lower rate of excise duty. This applies to:

- containers exceeding 48 litres
- containers of at least 8 litres but not exceeding 48 litres that are designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations, and
- beer that is delivered for sale over the bar directly from a storage tank.

Figure 8 is an extract of the Schedule to the Excise Tariff Act for the 3 subitems that apply to beer packaged in this way.

Figure 8: Extract of Schedule for subitems that apply to commercial beer subject to a concessional rate of duty

Item	Subitem	Description of goods	Rate of Duty
1		**Beer**	
	1.2	Beer not exceeding 3% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$10.57* per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.6	Beer exceeding 3% but not exceeding 3.5% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$33.11* per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.11	Beer exceeding 3.5% by volume of alcohol packaged in: (a) an individual container exceeding 48 litres; or (b) an individual container: (i) of at least 8 litres but not exceeding 48 litres; and (ii) designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations	$43.39* per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

*Rate of duty as at 3 February 2025. You can find the current excise rates of duty, along with those applicable pre 3 February 2025 at our tariff working page Excise duty rates for alcohol.

Repackaged beer

When excise duty is paid on beer at the rate specified in subitems 1.2, 1.6 or 1.11 of the Schedule, and the beer is then subsequently repackaged into sealed individual containers of less than 8 litres, or 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 prescribed system, the repackaging is taken to be the manufacture of beer.[247] However an exemption to this applies to the first 10,000 litres of beer that is repackaged at particular premises in a financial year where:

- the beer is repackaged into exempt beer containers for the purposes of retail sale, and
- the retail sale occurs immediately after the repackaging of the beer.

See Section 2.3.1 Different licence types for further information.

The repackaged beer is dutiable at the rate that applies to beer packaged in a container less than 8 litres, or between 8 litres and 48 litres and not designed to connect to a pressurised gas delivery system, pump delivery system or other system prescribed by the regulations. This is in addition to any excise duty already paid at the rate applicable to subitem 1.2, 1.6 or 1.11 of the Schedule.

Non-commercial beer (beer produced at a brew on premises shop)

Separate classifications apply to beer produced at a BOPS, according to strength.

Figure 9 is an extract of the Schedule to the Excise Tariff Act relevant to beer produced at a BOPS.

Figure 9: Extract of Schedule for subitems that apply to non-commercial beer

Item	Subitem	Description of goods	Rate of Duty
1		Beer	
	1.15	Beer not exceeding 3% by volume of alcohol produced for non-commercial purposes using commercial facilities or equipment	$3.71* per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15
	1.16	Beer exceeding 3% by volume of alcohol produced for non-commercial purposes using commercial facilities or equipment	$4.28* per litre of alcohol calculated on that alcohol content by which the percentage by volume of alcohol of the goods exceeds 1.15

*Rate of duty as at 3 February 2025. You can find the current excise rates of duty, along with those applicable pre 3 February 2025 at our tariff working page Excise duty rates for alcohol.

[247] Section 77FC of the Excise Act.

Strength of the beer

As can be seen from the extracts of the Schedule in this section, the subitem applicable to the beer is dependent on the strength of the beer.

The requirements for measuring the alcoholic strength of 'excisable alcoholic beverages' are detailed in Excise (Alcoholic strength of excisable goods) Determination 2019. Refer to Section 6.3.6 Rules for measuring volume and alcoholic strength for further information in relation to strength measurement requirements.

Measuring volume

The requirements for measuring the volume of containers of excisable alcoholic beverages are detailed in Excise (Volume - Alcoholic excisable goods) Determination 2019. Refer to Section 6.3.6 Rules for measuring volume and alcoholic strength for further information in relation to volume measurement requirements.

For beer manufactured and packaged in kegs, you are required to nominate the volume you intend to fill each keg size. This information is to be provided:

- in the initial application for a licence, or
- at any time after a licence is issued, if it is intended to change the fill volumes or introduce other 'bulk container' sizes.

Beer delivered direct to consumers from a storage tank

In some instances, beer is manufactured at a brew pub and the beer is pumped from a storage tank (greater than 48 litres) in the 'underbond' area to the bar where it is sold as draught beer. In these instances, the classification for this beer is for beer in containers exceeding 48 litres.

Beer used in the manufacture of a non-excisable product

An entity that is licenced to manufacture beer will be required to pay excise duty on the beer if it is used by them as an ingredient in the manufacture of a non-excisable product (for example, a non-beverage food product). The Excise Act only allows for excisable goods to be used in the manufacture of other excisable goods, and not in the manufacture of non-excisable products.

Where beer used in manufacture is unfit for human consumption (that is, spoilt beer), the beer can be entered for home consumption with no payment of duty required. However, where the beer is fit for human consumption, this does not apply.

Calculating duty payable

All 8 subitems of the Schedule relating to beer specify that duty is calculated on that alcohol content by which the percentage by volume of alcohol of the beer exceeds 1.15. This means to calculate the dutiable quantity the strength is reduced by 1.15 and then multiplied by the quantity.

Example 10A

The dutiable quantity of alcohol in 100 litres of beer at 5% alcohol by volume is:

100 (5% – 1.15%) = 3.85 LALs

For the purpose of calculating duty payable, LALs is truncated to one decimal place.

The LALs are then multiplied by the relevant duty rate to determine the duty payable:

3.8 × $43.39[248] *= $164.88*

10.3.2 RESPONSIBILITIES AS A BREWER

If you are licensed to manufacture beer, you are responsible for the safe custody of all alcohol under your control.[249]

You may be responsible for paying an amount equal to the excise duty that would have been payable on any stolen, missing or unaccounted for excisable beer.[250]

Where, after we take stock of excisable beer manufactured and the materials you use in the manufacturing process, it appears to us that not all the duty that should have been paid has been paid, we can call upon you to account for the shortfall. If you cannot account for this shortfall, we can demand that you pay the amount that should have been paid.[251]

If you hold a manufacturer licence, you do not need a separate storage licence to store excisable beer that you manufactured at those premises. You may also store beer that has been manufactured elsewhere by another entity and moved underbond into premises covered by your licence.

You are also responsible for ensuring that you comply with all conditions of your licence.[252]

For information about storage licences and conditions of licences, refer to Chapter 2 Licensing: Applications.

You must also:

[248] Assuming beer delivered in bulk containers greater than 48 litres at rates applicable from 3 February 2025.

[249] Section 53 of the Excise Act.

[250] Section 60 of the Excise Act.

[251] Section 62 of the Excise Act.

[252] Section 39D of the Excise Act.

- ensure beer is only 'delivered into the Australian domestic market' with appropriate authority, such as in accordance with a periodic settlement permission or Delivery authority[253]
- pay the correct amount of excise duty[254]
- get permission to move underbond excisable beer[255]
- ensure that your manufacture complies with the Excise Act and any conditions specified in your licence[256]
- not manufacture beer at premises that are not covered by your licence[257]
- give us access to your factory when requested[258]
- keep your excisable beer safe and accounted for to our satisfaction[259]
- provide all reasonable facilities to enable us to exercise our powers under the Excise Act[260]
- provide sufficient lighting, correct weights and scales, and all labour necessary for
  - weighing material received into your factory
  - weighing all excisable beer manufactured in your factory, and
  - taking stock of all material and excisable beer contained in your factory.[261]

For more information about duty liability and methods of payment, refer to Chapter 6 Payment of duty.

For more information about obtaining permission to move underbond alcohol products, refer to Chapter 5 Movement permissions.

Production losses

Production losses include:

- any losses that occur after fermentation has taken place (that is, when alcohol has been produced and beer becomes accountable), or
- when a brew is to be destroyed by tipping to waste.

[253] Sections 58 and 61C of the Excise Act.

[254] Section 54 of the Excise Act.

[255] Section 61 of the Excise Act.

[256] Section 26 of the Excise Act.

[257] Section 27 of the Excise Act.

[258] Section 86 of the Excise Act.

[259] Section 53 of the Excise Act.

[260] Section 49 of the Excise Act.

[261] Section 52 of the Excise Act.

You must be able to account for any losses.[262]

Accurate records of any loss of product must be kept for the period directed.[263] The records should be sufficient to enable comparison between current and historical losses for the same procedures.

We accept that some losses occur during production at various stages including:

- transfer of product from the fermenter (due to spent yeast being drawn off)
- filtration
- transfer between storage tanks
- reprocessing, and
- packaging.

Calculating packaging losses

The packaging loss is calculated by subtracting from the header tank opening dip:

- header tank closing dip
- volume of packaged product
- volume of filter losses
- volume of breakages and leakages
- volume of samples drawn, and
- volume of drainings and flushings.

Excise duty on minor losses that occur as a normal part of the production or packaging process do not need to be acquitted by means of a remission. However, these losses must be recorded and accounted for in your records.

You must apply for a remission for other losses, such as a bad batch or accidental loss within the storage area.

Spoilt beer

Where beer is unfit for human consumption and is sold for manufacturing purposes, for example, for use in vinegar manufacture, it may, with our approval, be removed from your brewery[264]:

- in containers marked 'spoilt beer'
- without entry for home consumption, and
- without the payment of excise duty.

[262] Section 60 of the Excise Act.

[263] Section 50 of the Excise Act.

[264] Section 77D of the Excise Act.

Spoilt beer must be unfit for human consumption and not just out of specification. For example, beer that is merely under-filled or under-strength is not unfit for human consumption.

Automatic remission of up to 125 litres of alcohol per quarter

Where beer is damaged or unfit for human consumption, you may destroy it without the need to apply for our permission provided:

- the amount you destroy is less than (or equal to) 125 litres of alcohol per quarter
- the goods are under our control, and
- you have not paid excise duty on the beer.

10.3.3 RECORD KEEPING

It is good business practice to keep suitable and adequate records for your operations. Many of the records you will need to be able to account for your beer production are the same as the records that you would normally keep for your own business purposes.

You must keep records, as directed by us and retain those records for the period directed. Your records must be available for us to inspect when requested.[265]

The information you may be requested to record includes:

- the amount of excisable beer produced showing all inputs, outputs and waste
- details of all excisable beer held in premises covered by your licence
- all deliveries from premises covered by your licence
- details of all duty payments and 'excise returns', and
- any refunds and remissions.

Examples of records you may be directed to keep are listed below.

Raw materials register

A raw materials register is a record of all of the raw materials received into the brewery. It includes the movement of raw materials out of storage and into production.

These records should include:

- an invoice number
- the date, type and quantity of the raw material received
- the opening stock quantity
- the date, type, quantity and batch number for the raw material sent to production, and

[265] Section 50 of the Excise Act.

- the closing stock quantity.

Recipes used

You should maintain beer recipe sheets. We use these as a reference to establish the quantities of raw materials used to manufacture each particular beer. Recipes are also used to verify whether or not a product is 'beer' as defined in the Schedule or whether it would be classified as an 'other excisable beverage'.

The minimum details you should include on the recipe sheet are:

- beer type
- malt details (type and quantity)
- mash ingredients (type and quantity)
- hops details or other bitters details (type and quantity), and
- other kettle additions (type and quantity).

Brew house records

The minimum details you should keep for brew house records include:

- the type of beer being manufactured
- details of lauter tun, mash tun, kettle, and whirlpool
- batch number and the date on which batch manufacture started
- quantities of materials used (such as malt and hops)
- volume of water added to the kettle
- volume of liquid (wort) transferred to fermentation tanks
- details of fermentation tanks used, and
- details of losses incurred during transfer of product.

Fermentation and storage

The minimum details you should keep on fermentation and storage include:

- date on which liquid (wort) was transferred to fermentation tanks
- volume of liquid (wort) transferred to fermentation tanks
- quantity of yeast added to the liquid (wort)
- details of specific gravity measurements during fermentation
- dates of specific gravity measurements during fermentation
- temperature at which specific gravity measurements were made, and
- fermentation tank details.

Bright beer register

Once fermentation is complete quantities of product transferred into 'bright beer' tanks must be recorded.

Bright beer is an industry term for beer which has been matured, carbonated and filtered and is ready for packaging and drinking.

The minimum details you should keep in the bright beer register include:

- the date product was transferred into storage tanks
- the quantity of product transferred into storage tanks
- whether the product was filtered during transfer
- the date product was moved out of storage tanks for packaging
- the quantity and temperature of product moved out of storage tanks for packaging
- the type of product in the tanks, and
- details of identifying marks or numbers of tanks used.

Packaged product register

Details of all packaged product should be recorded including the:

- product type
- package details (for example, type and size of container)
- opening stock details and date
- quantities of packaged product as a running total
- strength of packaged product
- date on which product moved into store
- quantities moved into the packaged product store
- date on which product moved out of store, and
- quantities moved out of the packaged product store.

Any movement of packaged product should be able to be matched with:

- invoices
- external delivery documents, and
- records of any quantities used on brewery premises.

Other records

You should also maintain records on:

- details of operational gains and losses
- details of packaging losses

- sales invoices and delivery documents
- details of stocktakes undertaken
- copies of excise returns
- underbond movement documents
- refund and remission approvals, and
- destruction of goods.

10.3.4 BREW ON PREMISES SHOPS

Subitems 1.15 and 1.16 of the Schedule relate to beer produced for non-commercial purposes using commercial facilities or equipment. This means the beer is made by the consumer and is not for sale.

Businesses offering commercial facilities or equipment to make beer for non-commercial purposes are commonly referred to as brew on premises shops or BOPS.

Typically, BOPS have a number of brewing kettles, chilling facilities and bottling equipment as permanent fixtures. They also provide beer-making ingredients such as yeast, malt and hops, usually in kit form. BOPS staff are on hand to advise customers in all aspects of beer making.

The customer pays up front for:

- the ingredients
- use of the equipment
- bottles (if needed), and
- the expertise of the BOPS staff.

The customer is responsible for their own brew. Once the beer is bottled by the customer, about a fortnight after the initial process, the customer takes the beer home for consumption.

Calculating excise duty on beer from a brew on premises shop

Excise duty on beer brewed at a BOPS is calculated on each batch (customer's fermenter).

When the strength of each recipe has been established, that strength should be recorded and then used as a standard for that recipe for duty payment purposes.

The ATO generally accepts strength testing for sample or test brews on the following basis.

Excise liability for BOPS is calculated per batch (customer's fermenter). A batch is usually 48 to 50 litres in volume and the strength of the batch is taken to be a ‘standard’ strength which applies to a particular recipe or beer type, having been verified by previous test brews.

These initial test brews must show consistency in strength test results for each recipe or beer type. For example, when testing beer with target strength of 4.9%, to show consistency, 2 test brews could be sampled that produce identical results (4.9%). Alternatively, 3 test brews could be sampled that produce

consistent results within 0.2% tolerance (for example, 4.7%, 5.0% and 5.1%). Upon examination of the strength testing results, field officers are to make a judgment on whether they consider that consistency in results has been demonstrated.

Once consistency can be shown, this standard strength can be applied to all batches of that particular recipe or beer type. The strength of recipes should only be re-established where there is a change to the recipe.

You pay the excise duty to us on either a weekly, monthly or quarterly basis (once you have a periodic settlement permission) by completing an Excise return.

To calculate the alcoholic strength of the beer (or other fermented beverages), you may use a hydrometer and formula, unless you produce more than 100,000 litres in a financial year.

If you are a BOPS operator, you are required to maintain sequential batch cards that contain the recipe and strength details for each brew, including test brews.

Excise is payable on the full contents of each fermenter. Bottling is carried out by your individual customers and no allowance is permitted for bottling or packaging losses.

Beer produced in your BOPS that is greater than 3% by volume is classified to subitem 1.16 of the Schedule. Beer that is less than or equal to 3% by volume is classified to subitem 1.15 of the Schedule.

You can find the current excise rates of duty, along with those applicable pre 3 February 2025 at our tariff working page Excise duty rates for alcohol.

For more information about how to calculate duty payable refer to Section 10.3.1 Excise liability for beer.

Excise duty on sample and test brews

If you are a BOPS operator, you may produce sample brews for tasting by customers, whether consumed on the premises or not.

You may also undertake test brews designed to confirm the integrity of your equipment and the results from your recipes.

Sample brews and test brews are not classified under subitems 1.15 and 1.16 of the Schedule; they are classified under subitems 1.1 to 1.11 of the Schedule depending on their strength and the size of the fermenter.

If the test brew has not been delivered into the Australian domestic market and duty has not been paid the licence holder may apply for a remission of excise duty and approval to dispose of the test brew.

For more information about refunds, refer to Chapter 7 Remissions, refunds, drawbacks and exemptions.

Record keeping

You must keep records as directed by us and retain those records for the period directed. Your records must be available for us to inspect when requested.[266]

The information you may be directed to record includes:

- batch card sequencing (including the recipe, volume and strength details for each brew made)
- records of all stock received (pre-packaged recipes, yeast, hops, malt)
- details of test brews (remission approval or excise return if test brew not destroyed)
- details of sample brews
- copies of excise returns.

The specific form of records you maintain is dependent upon the type and scale of your operations. The requirements listed below are indicative of the type of records or data that would ensure that you could account for all of the excisable alcohol products for which you are responsible. They are provided as a guide only.

- raw materials register
  - malt (malted cereals)
  - hops, hop extracts, and other bitters
  - adjuncts (unmalted grains used in brewing beer which supplement the main mash ingredient)
- customer brew register
  - customer identification details, for example, name, address
  - date of brew
  - beer type, that is, recipe name
  - beer strength – derived from recipe and BOPS tests brews
  - beer quantity (litres) – usually a standard 48 or 50 litre quantity
- sample and test brew register
  - brew identification details, for example, brew number, type, date
  - raw materials used, to assist with tariff classification (quantity and description, for example, 5 kg crystal malt) – these may be located on a recipe sheet
  - beer quantity (litres) – usually a standard 48 or 50 litre quantity
  - beer strength – derived from recipe for sample brews and derived from another strength testing methodology for tests brews.

[266] Section 50 of the Excise Act.

10.3.5 WHAT ELSE WE CAN DO

Access

We have the right to enter premises covered by your licence at any time and can examine and take account of all the goods at the premises.[267] Note: we will usually only seek to enter your premises during normal business hours.

Stop vehicles

We can stop any vehicle leaving premises covered by your licence and check that there is proper documentation for excisable alcohol products leaving the premises. We can question the driver about any goods in the vehicle. We can direct that the vehicle is unloaded and goods taken to particular parts of the premises for further examination. We must not detain a vehicle for longer than is necessary to do the checking.[268]

Search vehicles

We can stop and search any vehicle (not just vehicles leaving a premises covered by your licence) without a warrant if we have reasonable grounds for believing that the vehicle contains excisable alcohol products and that the vehicle has been used, is being used or will be used in the commission of an offence against the Excise Act (and certain offences in the *Crimes Act 1914*[269] and Criminal Code[270] relating to accessory after the fact, attempt to commit an offence, aid and abet someone to commit an offence and conspiracy to commit an offence).[271]

Examine goods

We can open packages and examine, weigh, mark and seal any excisable goods that are subject to 'excise control' and if you are a manufacturer, lock up, seal, mark or fasten any plant in or on your factory.[272]

We can also:

- supervise the manufacture of excisable alcohol products[273]
- take utilise and dispose of samples of materials, partly manufactured excisable alcohol products and excisable alcohol products subject to excise control, and alcohol products

[267] Subsection 86(2) of the Excise Act.

[268] Section 87 of the Excise Act.

[269] Section 6 of the *Crimes Act 1914*.

[270] Sections 11.1, 11.2 and 11.5 of the Schedule to the *Criminal Code Act 1995*.

[271] Section 87AA of the Excise Act.

[272] Section 91 of the Excise Act.

[273] Section 46 of the Excise Act.

that we have reasonable grounds for suspecting are excisable alcohol products on which duty has not been paid.[274]

10.4 PROCEDURES

10.4.1 MORE INFORMATION

If you need more information on beer, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

10.5 PENALTIES THAT CAN APPLY IN RELATION TO BEER

The following are the penalties that may apply after conviction for an offence.

Manufacture

If you manufacture excisable alcohol products without a manufacturer licence, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[275]

If you manufacture excisable alcohol products contrary to the Excise Act or any conditions specified in your licence the penalty is a maximum of 2 years in prison or 500 penalty units.[276]

[274] Section 106 of the Excise Act.

[275] Section 25 of the Excise Act.

[276] Section 26 of the Excise Act.

If you manufacture excisable alcohol products at premises that are not covered by your licence, the penalty is 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[277]

Move, alter or interfere

If you move underbond excisable alcohol products without approval, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[278]

Note: this includes moving underbond excisable alcohol products from your premises to any other location or for export.

If your movement of underbond excisable alcohol products does not comply with the permission to move the underbond excisable alcohol products, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[279]

If you move, alter or interfere with excisable alcohol products that are subject to excise control, without permission, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[280]

If your brewery licence has been cancelled, and you remove from the premises any beer on which duty has not been paid, the penalty is a maximum of 50 penalty units.[281]

Deliver

If you deliver excisable alcohol products into the Australian domestic market contrary to your permission, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[282]

Sell

If you sell excisable alcohol products on which duty has not been paid (unless it is an underbond sale), the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[283]

[277] Section 27 of the Excise Act.

[278] Section 117A of the Excise Act.

[279] Section 61A of the Excise Act.

[280] Section 61 of the Excise Act.

[281] Section 77E of the Excise Act.

[282] Section 61C of the Excise Act.

[283] Section 117B of the Excise Act.

Records

If you do not keep, retain and produce records in accordance with a 'direction under section 50' of the Excise Act, the penalty is a maximum of 30 penalty units.

Directions

If you do not comply with a direction in regard to what parts of the factory can be used for various matters, the penalty is a maximum of 10 penalty units.[284]

False or misleading statements

If you make a false or misleading statement, or an omission from a statement in respect of duty payable on particular goods, to us, a penalty not exceeding the sum of 50 penalty units and twice the amount of duty payable on those goods.[285]

Evade

If you evade the payment of any duty that is payable, the maximum penalty is 5 times the amount of duty evaded or where a court cannot determine the amount of that duty the penalty is a maximum of 500 units.[286]

Facilities etc.

If you do not provide all reasonable facilities for enabling us to exercise our powers under the Excise Act, the penalty is a maximum of 10 penalty units.[287]

If you do not provide sufficient lighting, correct weights and scales, and all labour necessary for weighing material received into and all excisable alcohol products manufactured in your factory, and for taking stock of all material and excisable alcohol products contained in your factory, the maximum penalty is 10 penalty units.[288]

If we mark or seal excisable alcohol products or fasten, lock or seal any plant in your factory and you alter, break or erase the mark, seal, fastening or lock, the maximum penalty is 50 penalty units.[289]

[284] Section 51 of the Excise Act.

[285] Paragraph 120(1)(vi) of the Excise Act.

[286] Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.

[287] Section 49 of the Excise Act.

[288] Section 52 of the Excise Act.

[289] Section 92 of the Excise Act.

10.6 TERMS USED

Bulk container

A container that has the capacity to have packaged in it more than 2 litres of liquid.[290]

Container

Any article capable of holding liquids.[291]

Deliver into the Australian domestic market

'Deliver into the Australian domestic market'[292] is the term we use in this Guide for when excisable alcohol products are released into domestic consumption. The term used in the legislation is 'deliver for home consumption'.

Normally, this will be by delivering the goods away from premises covered by a licence but includes using those goods yourself (for example, sales to staff).

The term 'home consumption' is not defined in the Excise Act and there is no definitive case law that looks at the issue in question. However, there are several cases where issues closely related to it are considered.[293]

The conclusion drawn from those cases is that 'home consumption' refers to the destination of goods as being within Australia as opposed to exporting them.

Excisable alcoholic beverages

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are manufactured or produced in Australia and listed in the Schedule or an Excise Tariff alteration.

As this Guide deals with alcohol products, we have used the term excisable alcohol products or excisable alcoholic beverages.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages

[290] Subsection 4(1) of the Excise Act.

[291] Subsection 4(1) of the Excise Act.

[292] Note the legislation uses the term 'delivered for home consumption' (see, for example, sections 61 and 61C of the Excise Act).

[293] See *R v Lyon* [1906] HCA 17; *Collector of Customs (NSW) v. Southern Shipping Co Ltd* [1962] HCA 20; *Carmody v F C Lovelock Pty Ltd* [1970] HCA 35; *Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* [2008] FCA 1951 and *Moama Refinery Pty Ltd v Chief Executive Officer of Customs* [2001] FCA 1287.

- brewed beverages that are not beer, and
- spirit for non-beverage use, including denatured spirit.

Excise control

Goods are subject to excise control from the point of manufacture until they have been delivered into the Australian domestic market or for export.

Goods subject to excise control cannot be moved, altered or interfered with except as authorised by the Excise Act.

Excise return

An excise return[294] is the document that you use to advise us the volume of excisable alcohol products that you:

- have delivered into the Australian domestic market during the period designated on your PSP, or
- wish to deliver into the Australian domestic market following approval.

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

Section 50 direction

This is a written instruction issued under section 50 of the Excise Act to a licensed manufacturer, or proprietor of premises covered by a storage licence, to keep specified records, furnish specified returns, retain records for a specified period and produce those records on demand by us. The written instruction is incorporated into the conditions on the licence.

Underbond

This is an expression not found in excise legislation but it is widely used to describe goods that are subject to excise control. Excisable goods that are subject to the Commissioner's control are commonly referred to as 'underbond goods' or as being 'underbond'. This includes goods that have not yet been delivered into the Australian domestic market and goods moving between premises under a movement permission.

[294] The term used in section 58 of the Excise Act is 'entry for home consumption'.

10.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 4 – definitions
  - section 24 – excisable goods and goods liable to duties of Customs may be used in manufacturing excisable goods
  - section 25 – only licensed manufacturers to manufacture excisable goods
  - section 26 – licensed manufacturers to manufacture in accordance with Act and licence
  - section 27 – licensed manufacturers to manufacture only at licensed premises
  - section 39D – conditions of licence
  - section 46 – supervision by officers
  - section 49 – facilities to officers
  - section 50 – record keeping
  - section 51 – collector may give directions
  - section 52 – weights and scales
  - section 53 – responsibility of manufacturers
  - section 54 – liability to pay duty
  - section 58 – entry for home consumption etc.
  - section 60 – persons to keep excisable goods safely etc.
  - section 61 – control of excisable goods
  - section 61A – permission to remove goods that are subject to CEO's control
  - section 61C – permission to deliver certain goods for home consumption without entry
  - section 62 – deficiency in duty
  - section 77D – spoilt beer
  - section 77E – removal of beer when licence ceases to be in force or is varied to no longer cover a particular brewery
  - section 77FC – repackaged beer
  - section 86 – officers to have access to factories and approved places
  - section 87 – power to stop conveyances about to leave an excise place
  - section 87AA – searches of conveyances without warrant
  - section 91 – examine all goods
  - section 92 – seals etc. not to be broken
  - section 106 – samples

  - section 117A – unlawfully moving excisable goods
  - section 117B – unlawfully selling excisable goods
  - section 120 – offences
- *Excise Tariff Act 1921*
  - The Schedule
- *Crimes Act 1914*
  - section 4AA – penalty units
  - section 6 – accessory after the fact
- *Criminal Code Act 1995*
  - section 11.1 – attempt
  - section 11.2 – complicity and common purpose
  - section 11.5 – conspiracy

Amendment history

27 June 2025

Part	Comment
Throughout	This chapter was updated to take into account the law changes as a result of the Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023 and Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024. This includes repackaging of keg beer into containers of no more than 2 litres, that is not pressurised, up to the first 10,000 litres.
Throughout	Updated to reflect the current duty rates.
Throughout	Updated in line with current ATO style and accessibility requirements.

11 DISTILLATION

11.1 PURPOSE

11.2 INTRODUCTION

11.2.1 DISTILLATION

11.2.2 PRODUCING SPIRIT

11.3 POLICY AND PRACTICE

11.3.1 ABOUT STILLS

11.3.2 MOBILE STILLS

11.3.3 ENHANCED DISTILLATION

11.3.4 REVERSE OSMOSIS FILTRATION AND EVAPORATIVE PERSTRACTION

11.3.5 RECORD KEEPING

11.3.6 PRODUCTION LOSSES

11.3.7 RESPONSIBILITIES OF A MANUFACTURER

11.3.8 WHAT ELSE WE CAN DO

11.4 PROCEDURES

11.4.1 MORE INFORMATION

11.5 PENALTIES THAT CAN APPLY IN RELATION TO DISTILLATION

11.6 TERMS USED

11.7 LEGISLATION (quick reference guide)

11 DISTILLATION

11.1 PURPOSE

This Chapter deals with how excise law applies to distillation and discusses:

- what is distillation
- how spirit is produced, and
- responsibilities of licence holders, including record keeping, and
- production losses.

11.2 INTRODUCTION

11.2.1 DISTILLATION

In the alcohol industry, distillation is the separation or purification of mixtures of alcohol and water (for example, in wine or fermented grain mash) by using the different evaporation rates, or boiling points, of the water and the alcohol. As alcohol evaporates at a lower temperature, it vaporises first and, therefore, its separation will start before the water evaporates.

Distillation does not produce alcohol; it is merely a separating or refining process. Alcohol is created through fermentation. Therefore, prior to distillation you must have a base product which already contains alcohol. The distillation of an alcoholic base product produces spirit.

Spirit may contain a number of other components such as essential oils, esters, sulphur dioxide and other alcohols such as methyl, propyl, butyl and amyl. Some of these components are undesirable or undrinkable and must be substantially removed from the mixture. This process involves dividing spirit into a number of parts depending on when that part is produced during the distillation process. These parts may be separated during the initial distillation process or during a redistillation of low wines (spirits from the first distillation run).

The first components that are produced during distillation are known as heads. Heads are the highly volatile components with a lower boiling point than ethanol. The heads vaporise first and therefore condense first.

Heads consist mainly of low molecular weight material or highly volatile compounds. Heads may contain a number of poisonous components, including high levels of methanol, which can be hazardous to health.

Usually, the heads are not desired in the finished product and are run to a different receiver from the rest of the spirit. Once the heads have been produced, they are followed by the heart.

The heart consists mainly of ethyl alcohol, some water, small amounts of heads, volatile components, acetate esters of fusel oils, and ethyl esters of fatty acids. This part of the spirit run is the most desirable part and is generally directed to a spirit receiver.

The final part of the spirit to come from the condenser is known as the tails. The tails comprise the least volatile compounds of higher molecular weight with a higher boiling point than ethanol. These compounds are undesirable in the finished spirit and are generally directed to a different receiver from the heart. The tails consist of what are called fusel oils.

Fusel oils are heavier molecular weight compounds, a proportion of which are required to give spirit much of its flavour, but are undesirable in excessive amounts. They generally comprise a mixture of isoamyl, butyl, propyl and heptyl alcohols that are produced as a by-product of fermentation.

The combination of the more undesirable parts of the heads and tails is referred to as feints. Feints are collected in a feints receiver and may be redistilled as they contain some ethyl alcohol.

11.2.2 PRODUCING SPIRIT

Spirit can be produced:

- in a still
- in a mobile still, or
- by enhanced distillation.

11.3 POLICY AND PRACTICE

11.3.1 ABOUT STILLS

What is a still?

A still is an apparatus that uses vaporisation and condensation to separate component substances from liquid mixtures, usually by applying heat.

Controls applying to stills

All stills come under our control if they have a capacity of:

- over 5 litres[295], or
- less than 5 litres and are used to distil alcohol.[296]

[295] Section 77FK of the Excise Act.

[296] Section 25 of the Excise Act.

The capacity refers to the volume of liquid that the still is capable of holding.

If you are not a licensed excise manufacturer, you must have our permission in regard to stills with a capacity of greater than 5 litres, regardless of what the equipment will be used for, to:

- make a still
- move or set up a still
- sell or buy a still
- import a still, or
- have possession, custody or control of a still.

We keep a register of stills over 5 litres used for distilling spirit and for non-spirit distillation, such as in water or essential oils[297] distillation.

You will have committed an offence and penalties may apply if you do not have the appropriate permission.

Whether or not you are a licensed excise manufacturer you can buy, import, manufacture, dispose of, possess, own or sell a still without permission if:

- the still has a capacity of 5 litres or less, and
- it will not be used to distil alcohol.

You must have an excise manufacturer licence to distil spirits regardless of whether the still is less than or greater than 5 litres capacity.[298]

Feints

Feints are low-quality spirits obtained during the distillation process. Feints are the low-quality head and tail spirits components obtained during the distillation process.

If feints are not redistilled but are run to waste, they are normally collected over a period of time until you need to dispose of them. If you do not adequately account for them, they may be subject to excise duty.

You must include all records relating to feints in distillation records.

Prior to disposal, you need to apply to us for:

- permission to destroy the feints, and
- remission of the duty payable on the feints.

[297] A volatile oil obtained from a natural vegetable product by steam distillation. Often mixed with high strength spirit and other substances to manufacture flavourings, essences, scents or toilet preparations.

[298] Section 25 of the Excise Act.

Continuing approval to dispose of feints can be sought where disposal is ongoing.

To apply for approval, contact us:

- on **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

11.3.2 MOBILE STILLS

A type of mobile still is a transportable spinning cone column mounted on a truck for processing wine on site. It is designed primarily to:

- collect wine flavours, and
- reduce the alcohol content of wine.

Controls applying to mobile stills

Mobile stills are subject to the stills controls described earlier in this Chapter.[299]

Excise manufacture may only be carried on at premises covered by a manufacturer licence.[300] A licence to manufacture excisable goods issued under the Excise Act can cover multiple premises.[301]

If you are the owner or lessee of the premises where a mobile still is operating, and you retain spirit, you must have:

- an excise storage licence to store the product, or
- a relevant approval to use it for a concessional purpose such as fortification, and
- records relating to the spirit.

If you are the mobile still operator, and you retain spirit under the terms of the contract, you must hold a movement permission to move the spirit from the premises at which the distillation occurred.

For more information, refer to Chapter 5 Movement permissions.

Measurement of inputs and outputs

A mobile still should have 2 flow meters as permanent attachments:

- one meter to accurately measure input of wine into the mobile still, and

[299] Section 77FK of the Excise Act.

[300] Section 27 of the Excise Act.

[301] See ATO Interpretative Decision ATO ID 2011/48 *Excise and the number of premises specified in a licence to manufacture*.

- one meter to accurately register output of flavours or spirit from the wine charge.

You must keep accurate records of all inputs and outputs.

For more information on record-keeping requirements, refer to Section 11.3.5 Record keeping

11.3.3 ENHANCED DISTILLATION

Concentrated flavours and spirit are obtained from the treatment of alcoholic beverages by an enhanced distillation process.

Enhanced distillation is carried out using apparatus such as a spinning cone column or a cyclonic evaporator with separator and condenser. These are used to separate flavours from the original feedstock (flavours are carried in a spirit base). Enhanced distillation may also be used to extract further spirit and allows evaporation to occur at a relatively low temperature.

The apparatus used in enhanced distillation are stills for the purposes of the excise law. They are therefore subject to the controls over stills.

Concentrated flavours

If spirit-based concentrated flavours from the enhanced distillation process are used in the manufacture of other wine or other products for human consumption, you must have approval to use the product free of duty for such purposes.[302] If no approval has been obtained, or if the product is used for a purpose that cannot be approved, concentrated wine flavours are 'delivered into the Australian domestic market' and are classifiable to subitem 3.10 of the Schedule of the Excise Tariff Act (Schedule) and duty is payable.

You must enter spirit-based concentrated flavours on your 'excise return' if they are used for an approved purpose (duty-free) or otherwise delivered into the Australian domestic market.

Spirit

Spirit drawn off in an enhanced distillation process may be of various strengths. A spinning cone column typically produces a spirit stream of about 50% strength.

With our approval, you may use the spirit free of duty for fortifying wine or for another approved purpose. If you have not obtained our approval, or if the product is to be used for a non-beverage purpose that cannot be approved, the spirit is delivered into the Australian domestic market and is classifiable to subitem 3.10 of the Schedule and duty is payable.

[302] Section 77FF of the Excise Act: specific approval to use spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. For more information see Chapter 13 Concessional spirit.

If delivered for use as a beverage, the spirit is subject to duty as an 'other excisable beverage' (OEB) exceeding 10% strength under subitem 3.2 of the Schedule. If the spirit is used in the manufacture of an OEB not exceeding 10% strength then item 2 of the Schedule is applicable.

Spirit delivered for use for an approved purpose or otherwise delivered into the Australian domestic market must be entered on your excise return.

Other products

Other products from an enhanced distillation process may include de-aromatised wine and de-alcoholised residue.

De-aromatised wine is typically about 1% below the strength of the original wine. As it is wine within the definitions of the wine equalisation tax (WET) legislation, it is not excisable.

De-alcoholised residue contains less than 1.15% alcohol by volume and is neither excisable nor subject to the WET.

11.3.4 REVERSE OSMOSIS FILTRATION AND EVAPORATIVE PERSTRACTION

Reverse osmosis

Reverse osmosis filtration adjusts the alcohol or acidity levels of wine using semi-permeable membranes. For example, a wine with 15% alcohol content may be subjected to reverse osmosis to adjust its alcohol content to 11%.

The process of reverse osmosis is not distillation as it does not involve separation by vaporisation and condensation. However, it is important to recognise that it is a process other than fermentation.

The products of reverse osmosis are called the permeate and the retentate. The permeate is the stream that passes through the membrane and the retentate is the part remaining. The retentate retains wine characteristics, whereas the permeate usually does not.

Where the permeate does not have wine characteristics, it may no longer be able to be described as a product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes. Rather, it may be a product of the reverse osmosis process used to create it. Where this is the case, or where, for example, it is over 22% alcohol by volume, the permeate will not meet the definition of wine under the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act).

Where permeate is either blended back with the retentate to make an adjusted wine, or is destroyed, we will not require you to have an excise manufacturer licence or a concessional spirit permit. Otherwise, permeate that is over 1.15% alcohol by volume and that fails to meet the definition of wine is an 'other excisable beverage' under the Excise Tariff Act and is subject to 'excise control'. You will therefore need an excise licence to produce the permeate or do anything further with it.

Evaporative perstraction

Instead of distillation, there may also be a second stage in the process of reducing the alcohol content of wine following reverse osmosis, whereby the wine permeate moves on to a membrane comprising small pores and 2 surfaces. Water runs along the outside surface of the membrane. Alcohol from the wine permeated evaporates at the pores of the surface of the membrane and passes through the membrane. On exit from the pores of the membrane, the alcohol condenses and dissolves or mixes into the water running along the outside surface of the membrane.

The result is that the water is alcoholised, generally (although not always) at less than 10% by volume.

The entire process (reverse osmosis followed by evaporative perstraction) can be performed by mobile or fixed apparatus of varying capacities and can be carried out on a winemaker's premises.

It is the Commissioner's view that the alcoholised water produced as a result of evaporative perstraction (commonly referred to as stripwater) is an excisable good.[303] Consequently, any production of stripwater must be licensed under the Excise Act.

11.3.5 RECORD KEEPING

It is good business practice to keep suitable and adequate records for your operations. Many of the records you will need to be able to account for your excisable goods are the same as the records that you would normally keep for your own business purposes.

You must keep records, as directed by us, and retain those records for the period directed. Your records must be available for us to inspect when requested.[304]

The information we would expect to see includes:

- all receipts into premises covered by your licence
- the amount of 'excisable alcohol products' produced showing all inputs, outputs and waste
- details of all excisable alcohol products held in premises covered by your licence
- all deliveries from premises covered by your licence
- details of all duty payments and excise returns, and
- any refunds and remissions.

The specific form of records you maintain is dependent upon the type and scale of your operations. To assist you, we provide the following general overview of record keeping for distillery operations.

[303] See paragraphs 31 to 35 of Excise Ruling ER 2012/1 *Excise: the meaning of the expression 'manufactured or produced' for the purposes of the Excise Acts*.

[304] Section 50 of the Excise Act.

Receipts into premises covered by your licence

If you receive 'underbond' excisable goods, for example, strip water into premises covered by your licence, you need to take up the goods in your stock records and retain the movement documentation. Movement permissions are covered in Chapter 5 Movement permissions.

Distillery operations – Raw materials

An audit trail commencing with raw material allows us to check stated production against known material usage.

Only principal raw materials need to be recorded, for example:

- wine – for brandy and grape spirit production
- fermentable starch and sugar products – for fermentation processes associated with whisky and grain spirit production or rum and molasses spirit production
- for each principal raw material, we recommend keeping records of
  - date
  - opening stock
  - quantity received
  - supplier name
  - quantity used
  - running balance.

Distillery operations – Manufacture

The feedstock for the distillation process is an alcoholic product.

- Wash – the alcoholic feedstock for whisky and grain spirit production, or for rum and molasses spirit production, is an excisable product and so you need to check fermentation records of any wash you produce.
- Wine – the alcoholic feedstock for brandy and grape spirit production, is **not** an excisable product if it is subject to WET. You do not have to keep specific excise records on the production of wine subject to WET.

You may record many details as you monitor the fermentation process. For excise purposes, we recommend recording:

- batch identification details, for example, batch number, type
- the quantity of fermentable product to be fermented (litres)
- the original gravity of the fermentable product, prior to fermentation
- the quantity of fermented product (litres) transferred from the fermenter
- the final strength of the fermented product.

Similarly, you may record many details as you monitor the distillation process. For excise purposes, we recommend recording the following inputs:

- date of distillation
- still (if more than one still on premises covered by your licence)
- identifying number of the charge (consecutively numbered)
- type of alcohol feedstock, for example, grape wine, sugar, grain
- vessel identification number prior to input to still
- quantity of alcohol to the still (litres)
- strength of alcohol to the still
- litres of alcohol to the still (litres × strength = LALs).

For excise purposes, we recommend recording the following outputs:

- vessel identification numbers that the spirit components are piped to
- quantity of alcohol (litres) delivered to each of these vessels
- strength of alcohol delivered to each of these vessels
- litres of alcohol (litres × strength = LALs) delivered to each of these vessels.

The calculation of distillation efficiency is as much about your good governance as it is about an excise obligation. The appropriate frequency of the distillation efficiency check will depend upon the nature of your distillation operations. It could be done on a batch-by-batch basis, weekly, monthly, or seasonally. Ideally everything charged to the still has had an opportunity to be run to a receiving vessel, that is, so that both inputs and outputs can be accurately measured. The distillation efficiency calculation is:

% Efficiency = (Total output (LAL) × 100) ÷ Total input (LAL)

Example 11A

A total of 120,000 litres of wash at a strength of 8.5%, totalling 10,200 LALs is transferred to the still. The still produces 10,000 LALs.

% Efficiency = (Total output (LAL) × 100) ÷ Total input (LAL)

% Efficiency = (10,000 LALs × 100) ÷ 10,200 LALS

% Efficiency = 98.04%

If production efficiency falls below historical performance, you should investigate the following:

- leaks in the still or pipes
- inaccurate readings

- recording errors
- bad security and pilfering, and
- alcohol in the waste material.

Distillery operations – bulk storage

An audit trail that traces underbond excisable product as it moves in and out of bulk vessels allows you to account for the excisable goods to our satisfaction. Bulk vessels include vats, tanks, casks, intermediate bulk containers and drums.

The transactions under this heading include:

- movements from the still to a vessel
- movements between vessels
- movements to the still
- movements out to packaging
- movements returned from packaging, for example, decants, drainings
- underbond movements in or out
- feints destroyed
- manufacture, for example, mixing with other ingredients such as other spirit, caramel, water, colourings, flavourings, or denaturants.

For each vessel, we recommend:

- product identification details, for example, type
- date, quantity in (litres) and temperature, strength, litres of alcohol (litres × strength)
- date, quantity out (litres) and temperature, strength, litres of alcohol (litres × strength)
- date in wood if maturing in wooden vessels, for example, brandy, rum, whisky
- excise clearance type, for example, excise return, remission, underbond removal, or to packaging
- running balance
- losses and gains.

Periodic stocktakes are as much about your good governance as they are about an excise obligation. We recommend regular bulk vessel stocktakes to:

- establish the accuracy of stock records
- detect omissions or errors in stock records, and
- identify security issues such as theft, plant and equipment problems.

We recommend that you perform a full survey (volume and strength) of any bulk vessels, other than casks, if there has been no activity within the last 3 months.

Cask storage does not efficiently allow for accurate periodic stocktakes. Cask losses are normally only ascertained once the contents have been revatted.

As part of the stock reconciliation process, stock records are adjusted to reflect the stocktake results. While bulk losses are not normally subject to call up of duty, you must keep adequate records to account for these losses.

The calculation of maturation efficiency (that is, cask losses) is as much about your good governance as it is about an excise obligation. The maturation efficiency calculation, expressed as a percentage is:

% efficiency = (LAL removed from the cask × 100) ÷ LAL originally in the case

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Example 11B

A cask was filled on 1 July 2020 with 237.6 litres at a strength of 62.5%, totalling 148.5 LALs. The contents of the cask were revatted on 1 October 2024, measuring 216.5 litres at a strength of 63.1% and totalling as 136.6 LALs.

% efficiency = (LAL removed from the cask × 100) ÷ LAL originally in the case

% efficiency = (136.6 LALs × 100) ÷ 148.5 LALs

% efficiency = 92.0%

If maturation efficiency falls below historical performance you should investigate the following:

- porous timber
- slack hoops
- defective staves
- loose bungs, or
- theft.

Distillery operations – packaging

An audit trail that traces underbond excisable product from the bulk vessels through the packaging process and into packaged stock allows you to account for the excisable goods to our satisfaction.

For each packaging run, we recommend keeping records of:

- date of packaging
- product identification details, for example, rum, label strength 37.5%
- packaging unit size, for example, 375ml bottle
- total quantity available for packaging (LALs)

- actual alcoholic strength
- total number of units packaged
- average fill per package
- product captured and returned to bulk storage, for example, drainings, flushings (LALs)
- samples taken from the packaging line (LALs).

The calculation of packaging efficiency is as much about your good governance as it is about an excise obligation. The packaging efficiency calculation is:

% efficiency = (LALs packaged × 100) ÷ Net LALs available for packaging

Net LALs available for packaging is calculated as:

- total quantity available for packaging (LALs)
  - less product captured and returned to bulk storage (LALs)
  - less samples taken from the packaging line (LALs)

LALs packaged is calculated as:

- total number of units packaged × packaging unit size × label strength.

Example 11C

A packaging run of whisky on 1 October 2024 recorded the following.

- *700ml bottles, 40.0% label strength*
- *actual alcoholic strength 40.0%*
- *total quantity available for packaging 4,000 LALs*
- *total number of units packaged 13,920 bottles*
- *average fill per package 701.5ml*
- *product captured and returned to bulk storage 50 litres at 28.0%a.v. = 14 LALs*
- *samples taken from the packaging line (LALs) 20 bottles = 5.6 LALs*

LALs packaged = 13,920 bottles × 700ml × 40%a.v. = 3,897.6 LALs

Net LALs available for packaging = 4,000 – 14 – 5.6 = 3,980.4 LALs

% efficiency = (LALs packaged × 100) ÷ Net LALs available for packaging

% efficiency = (3,897.6 LALs × 100) ÷ 3,980.4 LALs

% efficiency = 97.9%

If packaging efficiency falls below historical performance you should investigate.

Distillery operations – packaged storage

An audit trail that traces underbond excisable product as it moves in and out of your packaged storage area allows you to account for the excisable goods to our satisfaction.

For each product line, we recommend:

- product identification details, for example, type
- packaging unit size, for example, 700ml bottle
- label strength
- date, unit quantity in
- date, unit quantity out
- excise clearance type, for example excise return, remission, underbond removal
- running balance
- losses and gains.

Periodic stocktakes are as much about your good governance as they are about an excise obligation. We recommend regular stocktakes to:

- establish the accuracy of stock records
- detect omissions or errors in stock records, and
- identify security issues such as theft, plant and equipment problems.

As part of the stock reconciliation process, stock records are adjusted to reflect the stocktake results. In some circumstances stocktake gains may be offset against unaccounted shortages when calculating duty payable on packaged stock losses.

For more offsetting stock shortages against stock surpluses, refer to Section 6.3.8 Accounting for excisable alcohol products.

Record keeping for mobile stills and other mobile technologies

We recommend the following records:

- the type, litres, alcoholic strength, and LALs of the feedstock
- details of the bulk vessels from which the feedstock is delivered
- opening and closing flow meter readings for each operation
- litres, alcoholic strength, and LALs of the outputs
- details of bulk vessels to which the outputs are delivered
- litres, alcoholic strength, and LALs of spirit retained at the premises.

11.3.6 PRODUCTION LOSSES

You must be able to account for excisable goods, including any losses, while the goods are subject to excise control.[305]

Accurate records of any loss of product must be kept for the period directed.[306] They must be sufficient to enable comparison between current and historical losses for the same procedures.

Production losses include:

- discrepancies in quantities of raw materials
- any losses that occur after manufacture has taken place (that is, when alcohol has been produced and spirit becomes accountable), or
- when an excisable product is to be destroyed by tipping to waste.

We accept that some losses occur during production at various stages including:

- maturation
- filtration
- transfer between storage tanks, and
- packaging.

Calculating packaging losses

The packaging loss is calculated by subtracting from the header tank opening dip:

- header tank closing dip
- volume of packaged product
- volume of filter losses
- volume of breakages and leakages
- volume of samples drawn, and
- volume of drainings and flushings.

Excise duty on minor losses that occur as a normal part of the production or packaging process do not need to be acquitted by means of a remission. However, these losses must be recorded and accounted for in your records.

You must apply for a remission for other losses, such as a bad batch or accidental loss within the storage area.

[305] Section 60 of the Excise Act.

[306] Section 50 of the Excise Act.

11.3.7 RESPONSIBILITIES OF A MANUFACTURER

If you are licensed to manufacture excisable alcohol products you are responsible for the safe custody of all those products that are under your control.[307]

You may be responsible for paying an amount equal to the excise duty that would have been payable on any stolen, missing or unaccounted for excisable alcohol products.[308]

Where, after we take stock of excisable alcohol products manufactured and the materials you use in the manufacturing process, it appears to us that not all the duty that should have been paid has been paid, we can demand that you pay the amount that should have been paid.[309]

If you hold a manufacturer licence, you do not need a separate storage licence to store excisable alcohol products that you manufactured at those premises. You may also store excisable alcohol products that have been manufactured elsewhere by another entity and moved underbond into premises covered by your licence.

You are also responsible for ensuring that you comply with all conditions of your licence.[310]

For information about storage licences and conditions of licences refer to Chapter 2 Licensing: Applications.

You must also:

- ensure excisable alcohol products are only delivered into the Australian domestic market with appropriate authority, such as in accordance with a periodic settlement permission or Delivery authority[311]
- pay the correct amount of excise duty[312]
- get permission to move underbond excisable alcohol products[313]
- ensure that your manufacture complies with the Excise Act and any conditions specified in your licence[314]
- not manufacture excisable alcohol products at premises that are not covered by your licence[315]

[307] Section 53 of the Excise Act.

[308] Section 60 of the Excise Act.

[309] Section 62 of the Excise Act.

[310] Section 39D of the Excise Act.

[311] Sections 58 and 61C of the Excise Act.

[312] Section 54 of the Excise Act.

[313] Section 61 of the Excise Act.

[314] Section 26 of the Excise Act.

[315] Section 27 of the Excise Act.

- give us access to your factory when requested[316]
- keep your excisable alcohol products safe and accounted for to our satisfaction[317]
- provide all reasonable facilities to enable us to exercise our powers under the Excise Act[318]
- provide sufficient lighting, correct weights and scales, and all labour necessary for
  - weighing material received into your factory
  - weighing all excisable alcohol products manufactured in your factory, and
  - taking stock of all material and excisable alcohol products contained in your factory.[319]

For more information about duty liability and methods of payment, refer to Chapter 6 Payment of duty.

For more information about obtaining permission to move underbond alcohol products, refer to Chapter 5 Movement permissions.

11.3.8 WHAT ELSE WE CAN DO

Access

We have the right to enter premises covered by your licence at any time and can examine and take account of all the goods at the premises.[320] Note: we will usually only seek to enter your premises during normal business hours.

Stop vehicles

We can stop any vehicle leaving premises covered by your licence and check that there is proper documentation for excisable alcohol products leaving the premises. We can question the driver about any goods in the vehicle. We can direct that the vehicle is unloaded and goods taken to particular parts of the premises for further examination. We must not detain a vehicle for longer than is necessary to do the checking.[321]

Search vehicles

We can stop and search any vehicle (not just vehicles leaving a premises covered by a licence) without a warrant if we have reasonable grounds for believing that the vehicle contains excisable alcohol products

[316] Section 86 of the Excise Act.

[317] Section 53 of the Excise Act.

[318] Section 49 of the Excise Act.

[319] Section 52 of the Excise Act.

[320] Subsection 86(2) of the Excise Act.

[321] Section 87 of the Excise Act.

and that the vehicle has been used, is being used or will be used in the commission of an offence against the Excise Act (and certain offences in the *Crimes Act 1914*[322] and Criminal Code[323] relating to accessory after the fact, attempt to commit an offence, aid and abet someone to commit an offence and conspiracy to commit an offence).[324]

Examine goods

We can open packages and examine, weigh, mark and seal any excisable goods that are subject to excise control and lock up, seal, mark or fasten any plant in or on your factory.[325]

We can also:

- supervise the manufacture of excisable alcohol products[326]
- take samples of materials, partly manufactured excisable alcohol products and excisable alcohol products subject to excise control, and alcohol products that we have reasonable grounds for suspecting are excisable alcohol products on which duty has not been paid.[327]

11.4 PROCEDURES

11.4.1 MORE INFORMATION

If you need more information on spirits and other excisable beverages contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28

[322] Section 6 of the *Crimes Act 1914*.

[323] Sections 11.1, 11.2 and 11.5 of the Schedule to the *Criminal Code Act 1995.*

[324] Section 87AA of the Excise Act.

[325] Section 91 of the Excise Act.

[326] Section 46 of the Excise Act.

[327] Section 106 of the Excise Act.

days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

11.5 PENALTIES THAT CAN APPLY IN RELATION TO DISTILLATION

The following are the penalties that may apply after conviction for an offence.

Manufacture

If you manufacture excisable alcohol products without a manufacturer licence, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[328]

If you manufacture excisable alcohol products contrary to the Excise Act or any conditions specified in your licence the penalty is a maximum of 2 years in prison or 500 penalty units.[329]

If you manufacture excisable alcohol products at premises that are not covered by your licence, the penalty is 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[330]

Move, alter or interfere

If you move underbond excisable alcohol products without approval, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[331]

Note: this includes moving underbond excisable alcohol products from your premises to any other location or for export.

If your movement of underbond excisable alcohol products does not comply with the permission to move the underbond excisable alcohol products, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[332]

If you move, alter or interfere with excisable alcohol products that are subject to excise control, without permission, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[333]

[328] Section 25 of the Excise Act.

[329] Section 26 of the Excise Act.

[330] Section 27 of the Excise Act.

[331] Section 117A of the Excise Act.

[332] Section 61A of the Excise Act.

[333] Section 61 of the Excise Act.

Sell

If you sell excisable alcohol products on which duty has not been paid (unless it is an underbond sale), the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[334]

Records

If you do not keep, retain and produce records in accordance with a 'direction under section 50' of the Excise Act, the penalty is a maximum of 30 penalty units.

Directions

If you do not comply with a direction in regard to what parts of the factory can be used for various matters, the penalty is a maximum of 10 penalty units.[335]

Stills

If you are not a licensed manufacturer you must have our permission, in regard to stills with a capacity of greater than 5 litres, to:

- make a still
- move or set up a still
- sell or buy a still
- import a still, or
- have possession, custody or control of a still.

If you do not have our permission, the penalty is a maximum of 50 penalty units.[336]

Facilities etc.

If you do not provide all reasonable facilities for enabling us to exercise our powers under the Excise Act, the penalty is a maximum of 10 penalty units.[337]

If you do not provide sufficient lights, correct weights and scales, and all labour necessary for weighing material received into, and all excisable alcohol products manufactured in, your factory and for taking stock of all material and excisable alcohol products contained in your factory, the maximum penalty is 10 penalty units.[338]

[334] Section 117B of the Excise Act.

[335] Section 51 of the Excise Act.

[336] Section 77FK of the Excise Act.

[337] Section 49 of the Excise Act.

[338] Section 52 of the Excise Act.

Marks and seals

If we mark or seal excisable alcohol products or fasten, lock or seal any plant in your factory and you alter, break or erase the mark, seal, fastening or lock, the maximum penalty is 50 penalty units.[339]

11.6 TERMS USED

Deliver into the Australian domestic market

'Deliver into the Australian domestic market'[340] is the term we use in this manual for when excisable alcohol products are released into domestic consumption. The term used in the legislation is 'deliver for home consumption'.

Normally, this will be by delivering the goods away from premises covered by a licence but includes using those goods yourself (for example, sales to staff).

The term 'home consumption' is not defined in the Excise Act and there is no definitive case law that looks at the issue in question. However, there are several cases where issues closely related to it are considered.[341]

The conclusion drawn from those cases is that 'home consumption' refers to the destination of goods as being within *Australia* as opposed to exporting them.

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are manufactured or produced in Australia and listed in the Schedule or an excise tariff alteration.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- high strength spirit for non-beverage use, including denatured spirit.

[339] Section 92 of the Excise Act.

[340] Note the legislation uses the term 'delivered for home consumption' (see, for example, sections 61 and 61C of the Excise Act.

[341] See *R v Lyon* [1906] HCA 17; *Collector of Customs (NSW) v Southern Shipping Co Ltd* [1962] HCA 20; *Carmody v FC Lovelock Pty Ltd* [1970] HCA 35; *Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* [2008] FCA 1951 and *Moama Refinery Pty Ltd v Chief Executive Officer of Customs* [2001] FCA 1287.

Excise control

Goods are subject to excise control from the point of manufacture until they have been delivered into the Australian domestic market or for export.

Goods subject to excise control cannot be moved, altered or interfered with except as authorised by the Excise Act.

Excise return

An excise return[342] is the document that you use to advise us the volume of excisable alcohol products that you:

- have delivered into the Australian domestic market during the period designated on your PSP, or
- wish to deliver into the Australian domestic market following approval.

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

Section 50 direction

This is a written instruction issued under section 50 of the Excise Act to a licensed manufacturer, or proprietor of premises covered by a storage licence, to keep specified records, furnish specified returns, retain records for a specified period and produce those records on demand by us. The written instruction is incorporated into the conditions on the licence.

Underbond

This is an expression not found in excise legislation but it is widely used to describe goods that are subject to excise control. Excisable goods that are subject to the Commissioner's control are commonly referred to as 'underbond goods' or as being 'underbond'. This includes goods that have not yet been delivered into the Australian domestic market and goods moving between premises under a movement permission.

11.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*

[342] The term used in section 58 of the Excise Act is 'entry for home consumption'.

  - section 25 – only licensed manufacturers to manufacture excisable goods
  - section 26 – licensed manufacturers to manufacture in accordance with Act and licence
  - section 27 – licensed manufacturers to manufacture only at licensed premises
  - section 39D – conditions of licence
  - section 46 – supervision by officers
  - section 49 – facilities to officers
  - section 50 – record keeping
  - section 51 – collector may give directions
  - section 52 – weights and scales
  - section 53 – responsibility of manufacturers
  - section 54 – liability to pay duty
  - section 58 – entry for home consumption etc.
  - section 60 – persons to keep excisable goods safely etc.
  - section 61 – control of excisable goods
  - section 61A – permission to remove goods that are subject to CEO's control
  - section 61C – permission to deliver certain goods for home consumption without entry
  - section 62 – deficiency in duty
  - section 77FF – spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose – specific approvals
  - section 77FK – offence in relation to stills
  - section 86 – officers to have access to factories and approved places
  - section 87 – power to stop conveyances about to leave an excise place
  - section 87AA – searches of conveyances without warrant
  - section 91 – examine all goods
  - section 92 – seals etc. not to be broken
  - section 106 – samples
  - section 117A – unlawfully moving excisable goods
  - section 117B – unlawfully selling excisable goods
- *Crimes Act 1914*
  - section 4AA – penalty units
  - section 6 – accessory after the fact
- *Criminal Code Act 1995*
  - section 11.1 – attempt
  - section 11.2 – complicity and common purpose

– section 11.5 – conspiracy

Amendment history

27 June 2025

Part	Comment
Throughout	This chapter was updated to take into account the law changes as a result of the Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024.
Throughout	Updated in line with current ATO style and accessibility requirements.

12 SPIRITS AND OTHER EXCISABLE BEVERAGES

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12 SPIRITS AND OTHER EXCISABLE BEVERAGES

12.1 PURPOSE

This Chapter deals with how excise law applies to spirits and other excisable beverages and discusses:

- how spirits and other excisable beverages are classified
- contents for duty purposes
- special provisions for beverage spirits, and
- responsibilities of licence holders.

12.2 INTRODUCTION

If your alcoholic products are not wine or beer, they will be classified to either item 2 or 3 of the Schedule to the Excise Tariff Act (Schedule), as either a spirit or an other excisable beverage (OEB). The main distinction between items 2 and 3 of the Schedule is whether the alcohol content is above or below 10% alcohol by volume. If it is below 10%, then the product is classified to item 2 of the Schedule. If it is above 10%, then the product is classified to item 3 of the Schedule.

This Chapter explains in more detail about how to classify 'excisable alcohol products' to these items, particularly item 3 of the Schedule which has different rates of duty depending on the nature and intended use of the product.

12.3 POLICY AND PRACTICE

12.3.1 CLASSIFYING SPIRITS AND OTHER EXCISABLE BEVERAGES

The following is an extract from the Schedule which is relevant to spirits and other excisable beverages:

Figure 10: Extract of the Schedule relevant to spirits and other excisable beverages

Item	Subitem	Description of goods	Rate of Duty
2		Other excisable beverages not exceeding 10% by volume of alcohol	$104.31* per litre of alcohol
3		Spirits; Other excisable beverages exceeding 10% by volume of alcohol	See rates in Item 3

*Rate of duty as at 3 February 2025. For the current rates of duty, refer to our tariff working page Excise duty rates for alcohol.

OEBs are beverages containing more than 1.15% alcohol by volume but exclude:

- beer[343]
- brandy, or
- wine.[344]

OEBs are classified to items 2 or 3 of the Schedule depending on their strength.

Spirits are classified to item 3 of the Schedule.[345]

Item 2 – other excisable beverages not exceeding 10% by volume of alcohol

Item 2 of the Schedule generally includes:

- pre-mixed spirit based drinks, and
- fermented products that are not beer or wine.

For an alcoholic beverage to be classified to item 2 of the Schedule, the answer to all of the following questions must be 'no':

- Is the beverage under 1.15% alcohol by volume?
- Is the beverage over 10% alcohol by volume?
- Is the beverage wine?
- Is the beverage brandy?
- Is the beverage beer?

For more information about wine, refer to Chapter 14 Wine.

What happens to a beverage after it is 'delivered into the Australian domestic market' is not relevant in determining if the product is classified to item 2 of the Schedule. The beverage must be classified according to the state it is in at the time it is delivered into the Australian domestic market.

Example 12A

Beverage2Go manufactures a beverage that is 30% alcohol by volume. The beverage is delivered into the Australian domestic market in bottles that have instructions for mixing the beverage with other

[343] See Chapter 10 Beer for information on how beer is defined for tariff purposes.

[344] Wine as defined in Subdivision 31-A of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

[345] Section 4 of the Excise Act.

ingredients to make a particular style cocktail. The cocktail will have an alcoholic strength of 8% by volume. The beverage is not classified to item 2 of the Schedule.

Item 3 – Spirits; other excisable beverages exceeding 10% by volume of alcohol

Item 3 of the Schedule contains a number of different subitems (that is, categories) of excisable alcohol products that attract different rates of duty depending on the nature of the product and its intended use.

Figure 11: Extract of the Schedule for items relating to spirits and other excisable beverages exceeding % by volume of alcohol

Item	Subitem	Description of goods	Rate of Duty
3		**Spirits; Other excisable beverages exceeding 10% by volume of alcohol**	
	3.1	Brandy	$97.41* per litre of alcohol
	3.2	Other excisable beverages exceeding 10% by volume of alcohol	$104.31* per litre of alcohol
	3.5	Spirit that: (a) a person has an approval, under section 77FD of the *Excise Act 1901*, to use for fortifying Australian wine or Australian grape must; and (b) is otherwise covered by the approval	Free
	3.6	Spirit that: (a) is for use by a person who is included in a class of persons determined under section 77FE of the *Excise Act 1901*; and (b) if a quantity is specified in a determination under that section in relation to the person—does not exceed that quantity; and (c) is for an industrial, manufacturing, scientific, medical, veterinary or educational purpose	Free
	3.7	Spirit that: (a) a person has an approval, under section 77FF of the *Excise Act 1901*, to use for an industrial, manufacturing, scientific, medical, veterinary or educational purpose; and (b) is otherwise covered by the approval	Free

*Rate of duty as at 3 February 2025. For the current rates of duty, refer to our tariff working page Excise duty rates for alcohol.

Other excisable beverages and spirits

These subitems fall into 2 distinct groups of alcohol products.

1) Other excisable beverages exceeding 10% by volume of alcohol (item 3.2)

Other excisable beverages under item 3.2 of the Schedule covers:

- all beverage spirits except brandy (for example, whisky, rum, vodka, gin, ouzo, tequila, schnapps, etc.), and
- other alcoholic beverages that are not beer or wine and exceed 10% strength (for example, wine fortified above 22% strength is not wine as defined in the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) and is therefore an OEB exceeding 10% strength).

2) Spirits

The term 'spirits' refers to:

- brandy, being a spirit distilled from grape wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy[346] – subitem 3.1 of the Schedule
- concessional spirit[347] (spirit with a free rate of duty when delivered into the Australian domestic market, if the conditions for the particular concessional subitem are met) – subitems 3.5 to 3.8 of the Schedule, and
- spirits not elsewhere included in the Schedule to the Excise Tariff Act – subitem 3.10 of the Schedule.

For more information about concessional spirit, refer to Chapter 13 Concessional spirit.

Spirits not elsewhere included may include:

- denatured spirit that does not meet the requirements for subitem 3.8 of the Schedule, and
- concentrated wine flavours delivered for a use other than a concessional use.

[346] The Schedule to the Excise Tariff Act.

[347] Some products such as rum, whisky, gin and ouzo are spirits and also meet the definition of OEB. This means they are covered by both parts of item 3 of the Schedule to the Excise Tariff Act. At the sub-heading level they are covered by subitem 3.2 of the Schedule to the Excise Tariff Act, or if they meet the conditions for concessional spirits then they may be covered by subitems 3.5, 3.6, 3.7 or 3.8 of the Schedule to the Excise Tariff Act. Brandy can also be classified to these subitems if the conditions are met.

The Excise Act prohibits the delivery of spirit or OEBs (other than concessional spirits) into the Australian domestic market in a container of greater than 2 litres capacity without our written permission.[348]

12.3.2 CONTENTS FOR DUTY PURPOSES

Excise duty is levied on LALs at the rate specified in the relevant item of the Schedule.

Determination of volume

The requirements for measuring the volume of containers of excisable alcoholic beverages are detailed in Excise (Volume - Alcoholic excisable goods) Determination 2019.

Refer to Section 6.3.6 Rules for measuring volume and alcoholic strength for further information in relation to volume measurement requirements.

Determination of strength

The requirements for measuring the alcoholic strength of excisable alcoholic beverages are detailed in Excise (Alcoholic strength of excisable goods) Determination 2019.

Refer to Section 6.3.6 Rules for measuring volume and alcoholic strength for further information in relation to strength measurement requirements.

Strength and tariff classification for other excisable beverages

As noted at the beginning of this Chapter, there are separate tariff classifications for OEBs, depending on whether the content exceeds 10% by volume of alcohol.

A product labelled at 10% strength is classified to item 2 *'Other excisable beverages not exceeding 10% by volume of alcohol'* of the Schedule. However, if the actual strength of the contents exceeds the permitted variation of 0.2%, the product must be classified to subitem 3.2 '*Other excisable beverages exceeding 10% by volume of alcohol*' of the Schedule and the higher rate of duty applies.

Example 12B

Zed and cola in cans has a labelled strength of 10% but an actual strength of 10.2% alcohol by volume.

As the product does not exceed the permitted variation of 0.2%, the strength of the product for excise purposes is the labelled strength.

[348] Subsections 58(4) and (5) of the Excise Act.

As the strength does not exceed 10%, the product is classified to item 2 of the Schedule.

Example 12C

Why and dry in cans has a labelled strength of 10% but an actual strength of 10.3% alcohol by volume.

As the product exceeds the permitted variation of 0.2%, the strength of the product for excise purposes is the actual strength.

As the strength exceeds 10%, the product is classified to subitem 3.2 of the Schedule.

Example 12D

Oops, lime and soda in cans has a labelled strength of 10.1% but an actual strength of 9.9% alcohol by volume.

As the product does not exceed the labelled strength, the strength of the product for excise purposes is the labelled strength.

As the strength exceeds 10%, the product is classified to subitem 3.2 of the Schedule.

12.3.3 SPECIAL PROVISIONS FOR BEVERAGE SPIRITS – BRANDY, WHISKY AND RUM

Brandy, whisky or rum

These spirits are defined in section 77FI of the Excise Act:

- 'Brandy' means a spirit distilled from grape wine in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to brandy.
- 'Whisky' means a spirit obtained by the distillation of a fermented liquor of a mash of cereal grain in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to whisky.
- 'Rum' means a spirit obtained by the distillation of a fermented liquor derived from the products of sugar cane, being distillation carried out in such a manner that the spirit possesses the taste, aroma and other characteristics generally attributed to rum.

What products can be classified as brandy, whisky and rum will be determined taking into account the definitions in section 77FI of the Excise Act and the following considerations:

- the particular prerequisite raw materials from which the spirits are distilled
- the manner in which the spirits are distilled, so that they possess certain characteristics generally attributed to the particular spirit (recognising that taste, aroma and characteristics can vary, even within a particular spirit type, for example, light rum and dark rum)

- the addition of other ingredients to the spirit post distillation and whether the end product still has the taste, aroma and characteristics generally attributed to the particular spirit, and
- whether the spirits have been matured in wood by storage in wood for at least 2 years.

When spirit comes off the still, it will generally be colourless, characterless and of relatively high strength. Whether spirit possesses the taste, aroma and other characteristics generally attributed to brandy, whisky, or rum is a matter of fact taking into account these considerations.

One of the characteristics attributable to specific spirits is the strength of the spirit as distilled. In line with industry practice, we would not question the strength as a characteristic for brandy and whisky distilled up to a maximum of 95% alcohol by volume and for rum distilled up to a maximum of 96.5% alcohol by volume.

These characteristics are those that the spirit possesses when it comes off the still.

The following special provisions apply to brandy, whisky and rum.

Maturation requirement

You cannot deliver brandy, whisky or rum from our control unless they have been matured by storage in wood for at least 2 years.[349]

'Storage in wood' means that the part of the storage vessel – vats, casks or barrels – that is in contact with the spirit is made entirely of wood.

You must record the date on which the spirit is put into wood. If the spirit is temporarily held in non-wooden vessels, you cannot include that period for the purposes of maturation in wood. If you do not maintain accurate records, you may not be able to calculate the date when the spirit reaches the required maturation age.

When blended, the maturation age of the spirits is taken to be that of the youngest constituent of the blend.

For information on the maturation requirements for imported spirits, contact the Department of Home Affairs.

You can deliver spirit that has not been stored in wood for at least 2 years, but it cannot be delivered as a product described as brandy, whisky or rum.

[349] Subsection 77FI(1) of the Excise Act.

Describing spirits as 'old' or 'very old'

Unless spirits have been aged in wood for 5 or 10 years, respectively, you cannot describe the spirits as 'old' or 'very old' or in a way that could reasonably lead another person to believe that the spirits have been matured for that period.[350]

12.3.4 YOUR RESPONSIBILITIES AS A MANUFACTURER

If you are licensed to manufacture excisable alcohol products, you are responsible for the safe custody of all alcohol under your control.[351]

You may be responsible for paying an amount equal to the excise duty that would have been payable on any stolen, missing or unaccounted for excisable alcohol products.[352]

Where, after we take stock of excisable alcohol products manufactured, and the materials you use in the manufacturing process, it appears to us that not all the duty that should have been paid has been paid we can demand that you pay the amount that should have been paid.[353]

If you hold a manufacturer licence, you do not need a separate storage licence to store excisable alcohol products that you manufactured at those premises. You may also store excisable alcohol products that have been manufactured elsewhere by another entity and moved 'underbond' into premises covered by your licence.

You are also responsible for ensuring that you comply with all conditions of your licence.[354]

For information about storage licences and conditions of licences, refer to Chapter 2 Licensing: Applications.

You must also:

- ensure excisable alcohol products are only delivered into the Australian domestic market with appropriate authority, such as in accordance with a periodic settlement permission or Delivery authority[355]
- pay the correct amount of excise duty[356]
- get permission to move 'underbond' excisable alcohol products[357]

[350] Section 77FL of the Excise Act.

[351] Section 53 of the Excise Act.

[352] Section 60 of the Excise Act.

[353] Section 62 of the Excise Act.

[354] Section 39D of the Excise Act.

[355] Sections 58 and 61C of the Excise Act.

[356] Section 54 of the Excise Act.

[357] Section 61 of the Excise Act.

- ensure that your manufacture complies with the Excise Act and any conditions specified in your licence[358] not manufacture excisable alcohol products at premises that are not covered by your licence[359]
- give us access to your factory when requested[360]
- keep your excisable alcohol products safe and accounted for to our satisfaction[361]
- provide all reasonable facilities to enable us to exercise our powers under the Excise Act[362]
- provide sufficient lighting, correct weights and scales, and all labour necessary for
  - weighing material received into your factory
  - weighing all excisable alcohol products manufactured in your factory, and
  - taking stock of all material and excisable alcohol products contained in your factory.[363]

For more information about duty liability and methods of payment, refer to Chapter 6 Payment of duty.

For more information about obtaining permission to move underbond alcohol products, refer to Chapter 5 Movement permissions.

12.3.5 RECORD KEEPING

You must keep records, as directed by us and retain those records for the period directed. Your records must be available for us to inspect when requested.[364]

The information you may be requested to record includes:

- the amount of excisable alcohol products produced showing all inputs, outputs and waste
- details of all excisable alcohol products held in premises covered by your licence
- all deliveries from premises covered by your licence
- details of all duty payments and excise returns, and
- any refunds and remissions.

It is good business practice to keep suitable and adequate records and these records are those that you would normally keep for your particular operations.

[358] Section 26 of the Excise Act.

[359] Section 27 of the Excise Act.

[360] Section 86 of the Excise Act.

[361] Section 53 of the Excise Act.

[362] Section 49 of the Excise Act.

[363] Section 52 of the Excise Act.

[364] Section 50 of the Excise Act.

For more information on record keeping, refer to Chapter 11 Distillation.

12.3.6 WHAT ELSE WE CAN DO

Access

We have the right to enter premises covered by your licence at any time and can examine and take account of all the goods at the premises.[365] Note: we will usually only seek to enter your premises during normal business hours.

Stop vehicles

We can stop any vehicle leaving premises covered by your licence and check that there is proper documentation for excisable alcohol products leaving the premises. We can question the driver about any goods in the vehicle. We can direct that the vehicle is unloaded and goods taken to particular parts of the premises for further examination. We must not detain a vehicle for longer than is necessary to do the checking.[366]

Search vehicles

We can stop and search any vehicle (not just vehicles leaving premises covered by a licence) without a warrant if we have reasonable grounds for believing that the vehicle contains excisable alcohol products and that the vehicle has been used, is being used or will be used in the commission of an offence against the Excise Act (and certain offences in the *Crimes Act 1914*[367] and Criminal Code[368] relating to accessory after the fact, attempt to commit an offence, aid and abet someone to commit an offence and conspiracy to commit an offence).[369]

Examine goods

We can open packages and examine, weigh, mark and seal any excisable goods that are subject to 'excise control' and lock up, seal, mark or fasten any plant in or on your factory.[370]

We can also:

- supervise the manufacture of excisable alcohol products[371]

[365] Subsection 86(2) of the Excise Act.

[366] Section 87 of the Excise Act.

[367] Section 6 of the *Crimes Act 1914*.

[368] Sections 11.1, 11.2 and 11.5 of the *Criminal Code Act 1995*.

[369] Section 87AA of the Excise Act.

[370] Section 91 of the Excise Act.

[371] Section 46 of the Excise Act.

- take samples of materials, partly manufactured excisable alcohol products and excisable alcohol products subject to excise control, and alcohol products that we have reasonable grounds for suspecting are excisable alcohol products on which duty has not been paid.[372]

12.4 PROCEDURES

12.4.1 MORE INFORMATION

If you need more information on spirits and other excisable beverages, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

12.5 PENALTIES THAT CAN APPLY IN RELATION TO SPIRITS AND OTHER EXCISABLE BEVERAGES

The following are the penalties that may apply after conviction for an offence.

Manufacture

If you manufacture excisable alcohol products without a manufacturer licence, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[373]

[372] Section 106 of the Excise Act.

[373] Section 25 of the Excise Act.

If you manufacture excisable alcohol products contrary to the Excise Act or any conditions specified in your licence the penalty is a maximum of 2 years in prison or 500 penalty units.[374]

If you manufacture excisable alcohol products at premises that are not covered by your licence, the penalty is 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[375]

Move, alter or interfere

If you move underbond excisable alcohol products without approval, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[376]

Note: this includes moving underbond excisable alcohol products from your premises to any other location or for export.

If your movement of underbond excisable alcohol products does not comply with the permission to move the underbond excisable alcohol products, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[377]

If you move, alter or interfere with excisable alcohol products that are subject to excise control, without permission, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[378]

Deliver

If you deliver excisable alcohol products into the Australian domestic market contrary to your permission, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[379]

Sell

If you sell excisable alcohol products on which duty has not been paid (unless it is an underbond sale), the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[380]

[374] Section 26 of the Excise Act.

[375] Section 27 of the Excise Act.

[376] Section 117A of the Excise Act.

[377] Section 61A of the Excise Act.

[378] Section 61 of the Excise Act.

[379] Section 61C of the Excise Act.

[380] Section 117B of the Excise Act.

Records

If you do not keep, retain and produce records in accordance with a direction under section 50 of the Excise Act, the penalty is a maximum of 30 penalty units.

Directions

If you do not comply with a direction in regard to what parts of the factory can be used for various matters, the penalty is a maximum of 10 penalty units.[381]

False or misleading statements

If you make a false or misleading statement to us, the penalty is a maximum of 50 penalty units.

If you make a false or misleading statement, or an omission from a statement in respect of duty payable on particular goods, to us, a penalty not exceeding the sum of 50 penalty units and twice the amount of duty payable on those goods.[382]

If you describe spirits as 'old' or 'very old' or in a way that could reasonably lead another person to believe that the spirits have been matured in wood for 5 or 10 years, respectively, and they have not, the maximum penalty is 10 penalty units.[383]

Evade

If you evade the payment of any duty that is payable, the maximum penalty is 5 times the amount of duty evaded or where a court cannot determine the amount of that duty the penalty is a maximum of 500 units.[384]

Facilities etc.

If you do not provide all reasonable facilities for enabling us to exercise our powers under the Excise Act, the penalty is a maximum of 10 penalty units.[385]

If you do not provide sufficient lighting, correct weights and scales, and all labour necessary for weighing material received into, and all excisable alcohol products manufactured in, your factory and for taking stock of all material and excisable alcohol products contained in your factory, the maximum penalty is 10 penalty units.[386]

[381] Section 51 of the Excise Act.

[382] Subsection 120(1) of the Excise Act.

[383] Section 77FL of the Excise Act.

[384] Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.

[385] Section 49 of the Excise Act.

[386] Section 52 of the Excise Act.

If we mark or seal excisable alcohol products or fasten, lock or seal any plant in your factory and you alter, break or erase the mark, seal, fastening or lock, the maximum penalty is 50 penalty units.[387]

12.6 TERMS USED

Deliver into the Australian domestic market

'Deliver into the Australian domestic market'[388] is the term we use in this Guide for when excisable alcohol products are released into domestic consumption. The term used in the legislation is 'deliver for home consumption'.

Normally, this will be by delivering the goods away from premises covered by a licence but includes using those goods yourself (for example, sales to staff).

The term 'home consumption' is not defined in the Excise Act and there is no definitive case law that looks at the issue in question. However, there are several cases where issues closely related to it are considered.[389]

The conclusion drawn from those cases is that 'home consumption' refers to the destination of goods as being within Australia as opposed to exporting them.

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are listed in the Schedule, or an Excise Tariff alteration, and manufactured in Australia.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- spirit for non-beverage use, including denatured spirit.

[387] Section 92 of the Excise Act.

[388] Note the legislation uses the term 'delivered for home consumption' (see, for example, sections 61 and 61C of the Excise Act).

[389] See *R v Lyon* [1906] HCA 17; *Collector of Customs (NSW) v Southern Shipping Co Ltd* [1962] HCA 20; *Carmody v F C Lovelock Pty Ltd* [1970] HCA 35; *Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* [2008] FCA 1951 and *Moama Refinery Pty Ltd v Chief Executive Officer of Customs* [2001] FCA 1287.

Excise control

Goods are subject to excise control from the point of manufacture until they have been delivered into the Australian domestic market or for export.

Goods subject to excise control cannot be moved, altered or interfered with except as authorised by the Excise Act.

Excise return

An 'excise return'[390] is the document that you use to advise us the volume of excisable alcohol products that you:

- have delivered into the Australian domestic market during the period designated on your PSP, or
- wish to deliver into the Australian domestic market following approval.

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

Section 50 direction

This is a written instruction issued under section 50 of the Excise Act to a licensed manufacturer, or proprietor of premises covered by a storage licence, to keep specified records, furnish specified returns, retain records for a specified period and produce those records on demand by us. The written instructions are incorporated into the licence conditions.

Underbond

This is an expression not found in excise legislation but it is widely used to describe goods that are subject to excise control. Excisable goods that are subject to the Commissioner's control are commonly referred to as 'underbond goods' or as being 'underbond'. This includes goods that have not yet been delivered into the Australian domestic market and goods moving between premises under a movement permission.

12.7 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*

[390] The term used in section 58 of the Excise Act is 'entry for home consumption'.

  - section 4 – definitions
  - section 25 – only licensed manufacturers to manufacture excisable goods
  - section 26 – licensed manufacturers to manufacture in accordance with Act and licence
  - section 27 – licensed manufacturers to manufacture only at licensed premises
  - section 39D – conditions of licence
  - section 46 – supervision by officers
  - section 49 – facilities to officers
  - section 50 – record keeping
  - section 51 – collector may give directions
  - section 52 – weights and scales
  - section 53 – responsibility of manufacturers
  - section 54 – liability to pay duty
  - section 58 – entry for home consumption etc.
  - section 60 – persons to keep excisable goods safely etc.
  - section 61 – control of excisable goods
  - section 61A – permission to remove goods that are subject to CEO's control
  - section 61C – permission to deliver certain goods for home consumption without entry
  - section 62 – deficiency in duty
  - section 77FF – spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose – specific approvals
  - section 77FI – delivery from CEO's control of brandy, whisky or rum
  - section 77FL – offence in relation to describing spirits as "old" or "very old"
  - section 86 – officers to have access to factories and approved places
  - section 87 – power to stop conveyances about to leave an excise place
  - section 87AA – searches of conveyances without warrant
  - section 91 – examine all goods
  - section 92 – seals etc. not to be broken
  - section 106 – samples
  - section 117A – unlawfully moving excisable goods
  - section 117B – unlawfully selling excisable goods
  - section 120 – offences
- *Excise Tariff Act 1921*
  - The Schedule
- *A New Tax System (Wine Equalisation Tax) Act 1999*

  - Subdivision 31-A – Wine
- *Crimes Act 1914*
  - section 4AA – penalty units
  - section 6 – accessory after the fact
- *Criminal Code Act 1995*
  - section 11.1 – attempt
  - section 11.2 – complicity and common purpose
  - section 11.5 – conspiracy

Amendment history

27 June 2025

Part	Comment
Throughout	This chapter was updated to take into account the law changes as a result of the Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024.
Throughout	Updated in line with current ATO style and accessibility requirements.

13 CONCESSIONAL SPIRIT

13.1 PURPOSE

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13.4.3 SPIRIT DENATURED TO A FORMULA DETERMINED BY THE COMMISSIONER

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13.5 PROCEDURES

13.5.1 APPLYING FOR A PERMIT

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13.5.4 MORE INFORMATION

13.6 PENALTIES THAT CAN APPLY IN RELATION TO CONCESSIONAL SPIRIT

13.7 TERMS USED

13.8 LEGISLATION (quick reference guide)

APPENDIX A

13 CONCESSIONAL SPIRIT

13.1 PURPOSE

This Chapter deals with how excise law applies to concessional spirit and discusses:

- what is concessional spirit
- what is undenatured spirit
- what is denatured spirit
- the concessional spirit distribution network
- requirements for concessional spirit manufacturers
- requirements for concessional spirit suppliers
- requirements for concessional spirit end users
- how concessional spirit is classified
- spirit used in fortifying Australian wine or grape must
- spirit used for industrial, manufacturing, scientific, medical, veterinary or educational purposes
- spirit denatured to a formula approved by the Commissioner
- recycling or redistillation of concessional spirit
- tolerances on quantities delivered or received
- how to apply for a permit
- how to amend or renew a permit, and
- how to apply for a denaturing formula to be approved.

13.2 INTRODUCTION

13.2.1 CONCESSIONAL SPIRIT

Concessional spirit is spirit that may be '[delivered into the Australian domestic market]' at a free rate of duty when:

- used for specific purposes, that is, spirit used
  - in fortifying Australian wine or Australian grape must
  - for an industrial, manufacturing, scientific, medical, veterinary or educational purpose, or
- denatured in accordance with a formula determined by the Commissioner.

Use in the manufacture of excisable beverages or fuel is not a use that qualifies for a free rate of duty.

Concessional spirit is generally very high strength spirit. It is usually supplied at a strength of approximately 96% alcohol by volume. It may be distilled from various feedstock. Spirit distilled from different raw materials will retain some of its own specific characteristics but will generally be of a neutral nature due to the high strength at which it is distilled.

Undenatured spirit

Undenatured spirit is drinkable and may be supplied for approved purposes, for example, for the manufacture of foodstuffs, internal medicines, vaccines etc.

For more information about using undenatured spirit, refer to Section 13.4.3 Spirit denatured to a formula determined by the Commissioner.

Denatured spirit

Denatured spirit is spirit processed by adding approved substances (denaturant) to make it unfit for human consumption.

For more information about using denatured spirit, refer to Section 13.4.3 Spirit denatured to a formula determined by the Commissioner.

13.3 POLICY AND PRACTICE

13.3.1 CLASSIFYING CONCESSIONAL SPIRIT

The following table lists the subitems of the Schedule to the Excise Tariff Act (Schedule) under which concessional spirit is classified. If you are a manufacturer or concessional spirit supplier, you will need to know this in order to complete your excise return.

Table 6: Subitems of the Schedule under which concessional spirit is classified

Subitem	Description of goods
3.5	spirit for fortifying Australian wine or Australian grape must
3.6	spirit for use by a class of persons determined by the Commissioner for industrial, manufacturing, scientific, medical, veterinary or educational purposes
3.7	spirit that a person has specific approval from the Commissioner to use for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.
3.8	spirit denatured in accordance with a formula approved by the Commissioner

You can find the current excise rates of duty, along with those applicable pre 3 February 2025 at our tariff working page Excise duty rates for alcohol.

Essentially this means:

- subitem 3.5 – allows for the fortification of Australian wine or grape must provided the purchaser or user holds a concessional spirit permit
- subitem 3.6 – members of the class of persons specified (health care practitioners, veterinary practitioners, medical institutions, government-related entities, educational institutions) may take delivery of a volume of spirit necessary to meet their industrial, manufacturing, scientific, medical, veterinary or educational needs without holding a concessional spirit permit
- subitem 3.7 – allows for the sale of spirit for other specified purposes but requires the purchaser to hold a concessional spirit permit
- subitem 3.8 – allows for the sale of denatured spirit to be sold without the need for the purchaser to hold a concessional spirit permit provided it is denatured to an approved formula.

13.3.2 CONCESSIONAL SPIRIT DISTRIBUTION NETWORK

This network is made up of:

- spirit manufacturers
- licensed suppliers, and
- end-users holding an appropriate excise permit.

Licences required

The following examples indicate the type of excise licences that may be required:

Table 7: Types of excise licences that may be required for concessional spirit activities.

Activity	**Licence**
Manufacture spirit	manufacturer
Reduce the strength of spirit	manufacturer
Add colourings or other chemicals, including denaturants	manufacturer
Distribute spirit to end users	manufacturer or storage
Repackage spirit	storage
Export spirit	storage
User of spirits	none, unless spirit is used in the manufacture of another excisable product

Requirements of a concessional spirit manufacturer

An excise manufacturer licence allows you to:

- manufacture concessional spirit
- store concessional spirit, and
- sell concessional spirit.

You can use imported spirit in the manufacture of concessional spirit[391], subject to the following conditions:

- you must hold a customs warehouse licence issued under the Customs Act and an excise manufacturer licence issued under the Excise Act
- the imported spirit must undergo a process of manufacture in Australia[392], and
- the spirit manufactured must be for use for a purpose listed in Section 13.3.1 Classifying concessional spirit.

You must keep records, as directed, for the period directed and make them available to us on request.

You must:

- lodge an 'excise return' to enter concessional spirit delivered into the Australian domestic market, or
- hold an 'underbond' movement permission to deliver the spirit to another premises covered by a licence or specified place.

In the case of imported spirit, you must hold a customs warehouse licence to store the imported goods underbond in premises covered by a licence under section 79 of the Customs Act, until such time as the imported spirit undergoes a process of manufacture in Australia at which time the resulting excisable product is subject to excise control.

For more information about:

- underbond movements, see Chapter 5 Movement permissions.
- excise returns, see Chapter 6 Payment of duty.

Requirements of a concessional spirit supplier

Concessional spirit suppliers distribute concessional spirit to end-users, particularly by repackaging bulk spirit into smaller retail packs to suit client needs.

[391] Section 24 of the Excise Act and Part VAA of the *Customs Act 1901*.

[392] Section 77FM of the Excise Act provides that spirit blending is manufacture so the result of blending imported spirit other spirits in Australia is excisable spirit.

You need to be licensed as the resale of concessional spirit is ***not*** an approved purpose under the concessional spirit scheme. You may be licensed as a manufacturer or storage premises depending on the activities you undertake.

Before supplying spirit, you must establish the bona fides of each end user of concessional spirit where the spirit is classified to subitems 3.5, 3.6 or 3.7 of the Schedule.

The following documentation is considered sufficient:

- a current concessional spirits permit – for a concessional spirits permit holder (subitems 3.5 and 3.7 of the Schedule) copy of fax allowed
- registration certificate or registration number as a practitioner, or *Therapeutic Goods Act 1989* (TGA) exemption certificate, for a purchaser in the following exempt classes*
  - medical practitioners (pharmacists, doctors, chiropractors, dentists, osteopaths, physiotherapists, registered nurses) or other health care practitioners registered under state or territory law
  - acupuncturists, herbalists, homeopaths and naturopaths that are registered under the *National Health Act 1953* or hold a TGA exemption certificate, and
  - veterinary practitioners registered under state or territory law
- official letterhead or purchase order for the following exempt classes*
  - medical institutions
  - educational institutions, and
  - government agencies.

Medical institution, education institution and government-related entities are defined in the relevant legislative determinations.[393]

*For subitem 3.6 of the Schedule

You must keep records, as directed, for the period directed and make them available to us on request.[394]

The records for concessional spirit suppliers would be details of:

- quantity and alcoholic strength of all spirits received or produced
- your individual sales or distribution records showing, where applicable, the
  - name and address of your customer
  - evidence that your customer is in an approved class of professional people or institution or is a permit holder

[393] See Excise (Concessional Spirits – Class of Persons) Determination 2024.

[394] Section 50 of the Excise Act.

  - cumulative sales you have made to customers subject to annual limits
  - quantity and alcoholic strength of spirits you have sold or distributed, and
  - levels and alcoholic strength of your stock on hand
- details of all spirit from the time of receipt, through break bulk to final repackaging (for suppliers who repack spirit received in bulk containers), and
- details of all losses or gains relating to repacking operations plus the final number and size of the repackaged product.

We recommend you conduct monthly stocktakes and maintain a running balance of spirits on hand.

You must:

- lodge an excise return to enter concessional spirit delivered into the Australian domestic market, or
- hold an underbond movement permission to deliver the spirit to another premises covered by a licence or specified place.

For more information about:

- underbond movements see Chapter 5 Movement permissions
- excise returns see Chapter 6 Payment of duty.

Resellers who act as agents or brokers will not need a manufacturer or storage licence as long as they do not physically take possession of spirit. However, they require a periodic settlement permission that allows the delivery of the concessional spirit from premises covered by a licence to an approved end-user.

Requirements of a concessional spirit end-user

To be eligible to receive concessional spirit (other than denatured spirit) as an end-user, you must:

- hold a current permit[395], or
- be included in an eligible class of persons determined by the Commissioner.

You must keep your records of receipts and usage and make them available to us on request.

Permits are valid for a period of one year from the date of initial issue. On renewal, permits may be valid for up to 5 years from the date on which they are renewed. The permit shows the maximum quantity of spirit that may be delivered each year.

There is no charge for a concessional spirits permit.

[395] Sections 77FD (fortifying spirit) or 77FF (use for industrial, etc. purpose) of the Excise Act.

We have the right to require a security[396] or request a fresh security when we consider it to be necessary to protect the revenue or ensure compliance with your excise obligations.[397] Securities cannot be requested for denatured spirit that you have received that has been classified to subitem 3.8 of the Schedule.

If we require a security, we calculate the amount on the estimated average monthly excise that would apply to the goods if excise duty was payable. We use the rate at subitem 3.10 of the Schedule.

If you are a permit holder, you should carry out regular stocktakes and keep a record of stock on hand. You are not required to maintain any prescribed recording system, however, you should keep records sufficient to satisfactorily account for your use of the spirit in accordance with an approved purpose.[398]

You are also responsible for the control and safe keeping of concessional spirit once the spirit has been received into your stock. We don't normally insist on any particular security arrangements other than normal good commercial practice. However, concessional spirits should be stored securely.

Requirements of a concessional spirit supplier and a concessional spirit end user

You must comply with the requirements mentioned above for a concessional spirit supplier and a concessional spirit end-user. You must include all quantities of spirit, delivered from your underbond stock for your concessional spirit approved purposes, on your excise returns.

13.4 CONCESSIONAL SPIRIT USE

13.4.1 SPIRIT USED IN FORTIFYING AUSTRALIAN WINE OR GRAPE MUST

Wine fortification

Wine fortification means increasing the level of alcohol by adding spirit to:

- wine during or after fermentation, or
- grape must during or after fermentation.

Fortification is also taken to include circumstances where brandy is mixed with sugar and used to sweeten sparkling wine (commonly known as expedition liqueur).

If you use spirit to fortify Australian wine or Australian grape must, you must have a concessional spirit permit.

[396] Section 16 of the Excise Act.

[397] Section 20 of the Excise Act.

[398] Section 77FH of the Excise Act.

ATO approval required to fortify

You must obtain our permission to use spirit that you have produced (to produce spirit you require an excise manufacturer licence) or intend to purchase free of duty for use in fortifying Australian wine or Australian grape must. If we grant approval, we will issue to you a concessional spirit permit.

Keeping records

You should keep and make available to us when requested, all documents[399]:

- recording any receipt of fortifying spirit
- relating to storage and use of fortifying spirit
- supplier delivery documents (consignment note, delivery docket and so on), and
- working documents, such as operations and cellar notes.

An audit trail that traces the fortifying spirit as it moves in and out of bulk vessels allows you to account for the excisable goods to our satisfaction. Bulk vessels include vats, intermediate bulk containers and drums.

The transactions under this heading include:

- receipt of fortifying spirit
- movements between vessels
- movements out to fortification.

For each vessel, we recommend:

- product identification details, for example, type
- date, quantity in (litres) and temperature, strength, litres of alcohol (litres × strength)
- date, quantity out (litres) and temperature, strength, litres of alcohol (litres × strength)
- fortification number
- running balance
- losses and gains.

Your records need to include the following details for each fortification:

- date and fortification identification number
- details of the wine or grape must, including
  - litres of wine or kilograms of grape must
  - Baumé (sugar content) of unfermented juice
  - Baumé of fermented wine, and

[399] This will be a condition of your permission to receive fortifying spirit.

  - alcoholic strength of wine
- details of spirits used including
  - litres used
  - alcoholic strength
  - litres of alcohol (LALs) used
- details of fortified wine, including
  - litres of fortified wine produced
  - alcoholic strength of fortified wine, and
  - Baumé content of fortified wine.

You do not need to create additional records, as the necessary details should be part of your normal commercial documentation.

Accounting for your use

You may be asked to account to us for the use of fortifying spirit accessed free of duty under subitem 3.5 of the Schedule.[400] You should be able to do so if you have accurately retained the records described above.

If you cannot account satisfactorily for the use of spirit, we can demand payment of an amount equal to the excise you would have been liable to pay if the spirits had not been given concessional (excise-free) treatment. This applies, regardless of whether you have a concessional spirits permit or an excise licence.

You should phone us on **1300 137 290** to advise of any:

- significant spillage
- theft of spirits from your premises or in transit from your supplier
- excessive losses.

For information on taxes that may apply to fortified wine, refer to Chapter 14 Wine.

13.4.2 SPIRIT USED FOR INDUSTRIAL, MANUFACTURING, SCIENTIFIC, MEDICAL, VETERINARY OR EDUCATIONAL PURPOSES

Approval can be granted for a wide variety of industrial, manufacturing, scientific, medical, veterinary or educational purposes. These include the following:

- fortification of imported wines
- manufacture of
  - medicines

[400] Section 77FH of the Excise Act.

  - vaccines
  - printing inks
  - foodstuffs
- sterilisation of equipment, and
- preservation of specimens.

The resale of spirits and the manufacture of excisable beverages or fuel, using spirits, are not approved purposes.

Refer to Appendix A at the end of this Chapter for a list of activities that have previously been approved.

Classifying this spirit

Spirit used for these purposes is classified to one of the following sub-items of the Schedule.

Table 8: Subitems of the Schedule under which concessional spirit used for industrial, manufacturing, scientific, medical, veterinary or educational purposes is classified

Subitem	Description of goods
3.6	spirit for use by a 'class of persons' determined by the Commissioner within quantity limits for industrial, manufacturing, scientific, medical, veterinary or educational purposes
3.7	spirit that a person has specific approval from the Commissioner to use for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.

Receiving spirit without a permit

The Excise (Concessional Spirits – Class of Persons) Determination 2024 provides for following 'class of persons':

- health care practitioners
- veterinary practitioners
- medical institutions
- government-related entities
- education institutions.

Members of the class of persons specified may take delivery of a volume of spirit necessary to meet their industrial, manufacturing, scientific, medical, veterinary or educational needs without applying for a permit up to the following limits per calendar year:

- health care practitioners – 200 litres
- veterinary practitioners – 200 litres
- medical institutions – 1000 litres
- government-related entities – 1000 litres
- education institutions – 1000 litres.

Note: in the case of institutions, it refers to the institution as a whole.

If members of a class of persons requires access to a quantity of spirit in excess of the yearly limit, they will be required to apply for a concessional spirit permit.

Health care practitioner is given a very broad definition under the determination[401] and means a person who:

- is a health practitioner as defined in section 3 of the *Therapeutic Goods Act 1989*, or
- belongs to a class of persons specified in column 2 of item 4 in Schedule 8 to the *Therapeutic Goods Regulations 1990.*

If you receive spirit under this arrangement, you may only use the spirit for industrial, manufacturing, scientific, medical, veterinary or educational purposes.

The spirit supplied may be undenatured or denatured using a formula that is not on our approved list.[402] To receive this type of concessional spirit, you must self-assess:

- whether you are entitled to receive spirit under any of the determinations, and
- that you can comply with the terms of the determination.

You must also provide identification to the supplier to show you are eligible under a determination.

Your supplier:

- needs to be satisfied you fit into a class of persons identified in the determinations, and
- will retain appropriate evidence of this, such as Therapeutic Goods Administration (TGA) approvals or Australian Medical Association registration.

For more information about concessional spirits, see Excise on concessional spirits.

Permit requirements

You will need to apply for a permit to access concessional spirit if you are not covered by the determination, or you are covered by the determination but require spirit in excess of the yearly limit.

Spirit received with a permit generally does not have any denaturant added to it unless you specifically request it or we impose it as a condition of the permit.

We have published guidelines that must be taken into account when deciding whether to give an approval.[403]

[401] See Excise (Concessional Spirits – Class of Persons) Determination 2024.

[402] If the spirit was denatured to an approved formula, you would purchase spirit that was classified to subitem 3.8 of the Schedule and there would be no limits on the volume you could purchase.

[403] Subsection 77FF(5) of the Excise Act; Excise Concessional spirit approvals guidelines 2016 (No. 2).

We may give approval, subject to conditions[404] including limits on quantity, for use of concessional spirit for the manufacture of non-beverage products, such as:

- foodstuffs
- vinegar
- essences and flavours
- internal medicines, or
- mouthwashes.

We do not give approval for concessional spirit to be used:

- in the manufacture of excisable beverages, or
- as fuel in internal combustion engines.

For more information about the excise treatment of:

- spirit used in the manufacture of excisable beverages, refer to Chapter 12 Spirits and other excisable beverages.
- fuel used in internal combustion engines, refer to Excise guidelines for the fuel industry.

Additional requirements for essences

If you are using spirit to manufacture an essence, you must be able to show that the essence:

- is a concentrated flavour, and
- is for culinary purposes, for example, in baking or as an additive to chocolate, or will be used in small proportions to flavour non-alcoholic or non-excisable alcoholic beverages, for example, soft drinks, cordials etc, and
- will not be used as a direct substitute for the original spirit.

Essences may also be used in the manufacture of products subject to the wine equalisation tax (WET), provided the requirements of the *A New Tax System (Wine Equalisation Tax) Act 1999* are met.

In considering an application for spirit for use in manufacturing an essence, we will look at whether the product is:

- marketed in packaging that resembles packaging for an alcoholic beverage
- packaged in 6 packs or similar multiple packaging types
- required by state legislation to be sold through licensed liquor outlets or is subject to state liquor licensing laws
- marketed with instructions about how it can be used as an alcoholic beverage
- packaged for retail sale in sizes greater than 50ml (or 100 ml for vanilla essence), irrespective of who in the marketing chain does the packaging, or

[404] Subsection 77FF(3) of the Excise Act.

- sold in package sizes greater than 50ml, with no demonstrated culinary use.

Keeping records

If you receive concessional spirit classifiable to subitem 3.6 or subitem 3.7 of the Schedule to the Excise Tariff Act, you must keep sufficient records to account satisfactorily for your use.[405] You do not need to create additional records, as the necessary details should be part of your normal commercial documentation. If the spirit is used:

- as an input into manufacture, your manufacturing records should be sufficient to track and quantify spirit usage
- as a consumable, your dispensing records should be sufficient to track and quantify spirit usage.

This would include:

- all documents
  - recording any receipt of concessional spirit
  - relating to storage and use of concessional spirit
- supplier delivery documents (consignment note, delivery docket and so on), and
- working documents, such as operations notes.

An audit trail that traces the concessional spirit as it moves in and out of bulk vessels, awaiting use for an approved purpose, allows you to account for the excisable goods to our satisfaction. Bulk vessels include vats, intermediate bulk containers and drums.

The transactions under this heading include:

- receipt of fortifying spirit
- movements between vessels
- movements out to fortification.

For each vessel, we recommend:

- product identification details, for example, type
- date, quantity in (litres) and temperature, strength, litres of alcohol (litres × strength)
- date, quantity out (litres) and temperature, strength, litres of alcohol (litres × strength)
- approved purpose and any reference number, for example, stores requisition number
- running balance
- losses and gains.

[405] Section 77FH of the Excise Act.

If you cannot satisfactorily account for use of the spirit, we may issue a demand for payment. The demand would be for an amount equal to the duty that would have been payable on the spirit if:

- there had been no approval or determination (as the case requires), and
- the spirit had been entered for home consumption on the day on which we made the demand.

Special record-keeping requirements for pharmacists supplying ships

If you are a pharmacist who supplies spirit to a ship as first aid supplies, we accept that you have satisfactorily accounted for your use of spirit, if:

- you supply no more than 3 litres of undenatured ethanol to a particular ship per year
- the ship's agent or ship's provedore supplies you with an order signed by the ship's captain and quoting Marine Orders, Part 10 (Order No. 13 of 2001)
- the order documentation contains the
  - name of the ship and Lloyds number
  - voyage number and date, and
  - captain's name
- you record the details of the order in your register and provide the agent with a delivery advice
- the agent signs for receipt of the spirit
- the agent delivers the spirit to the captain on board the ship
- the captain signs the delivery advice for receipt of the spirit
- the agent returns the signed delivery advice to you, and
- you retain the signed delivery advice.

13.4.3 SPIRIT DENATURED TO A FORMULA DETERMINED BY THE COMMISSIONER

Spirit is denatured so that it may be used for a specified purpose while reducing the risk that it will be used to manufacture excisable beverages or fuel.

An entity denaturing spirit needs to have a manufacturer licence.

Classifying spirit denatured to an approved formula

Spirit denatured to an approved formula is classified to subitem 3.8 of the Schedule to the Excise Tariff Act. This spirit is no longer subject to 'excise control' from the time it is delivered into the Australian domestic market, at a free rate of duty, by the supplier. No permit is required.

Denatured spirit must not be used in the manufacture of fuel without an appropriate excise manufacturer licence. Ethanol denatured for use as fuel for internal combustion engines is subject to excise duty and is classified to subitem 10.20 of the Schedule.

For more information about fuel ethanol, see Excise guidelines for the fuel industry.

Our considerations when approving denaturing formulas

We take into account the following factors when deciding if spirit is sufficiently denatured.

Table 9: Factors considered when approving denaturing formulas

Factors	Details
Degree of difficulty in removing the denaturant from spirit	Based on: • differentials in boiling points – less than 40°C is an acceptable level of difficulty, or • other means, for example, agitation
Effectiveness of the denaturant (at a minimum strength of 5%) as a deterrent from use as a beverage, when diluted with other beverages, such as water or soft drink	Due to: • unpleasant odour or taste • oily or viscous quality, signalling the presence of the denaturant, or • toxicity (this may not be a sufficient deterrent if the presence of the toxic substance is not indicated by other factors)
Factors such as price and marketing	The degree of risk is partially dependent on the price differential between spirit and fuel. The high cost of fuel is a driver for fuel substitution, increasing the risk of concessional spirit being diverted to fuel.
Whether a denaturant is itself a fuel, such as petrol, or an additive typically used in producing fuel ethanol, such as an emulsifier	Due to the risk of denatured spirit being diverted for use as fuel ethanol

Formulas used to denature spirit

The formulas determined by the Commissioner are contained in Excise (Denatured spirits) Determination 2016 (No. 3). An Explanatory Statement[406] contains details of the background, purpose and operation of the determination.

The formulas are based on a minimum percentage of an approved denaturing chemical added to spirit at an alcoholic strength of 100%. If the spirit is less than 100% ethanol, the minimum concentration is to be adjusted relative to the alcohol content.

[406] Explanatory Statement to *Excise (Denatured spirits) Determination 2016 (No. 3).*

Example 13A

According to the formula, alcohol may be denatured by the addition of 1% by volume n-propanol.

Spirit consisting of 80% ethanol may be denatured according to the formula by the addition of 0.8% by volume n-propanol.

For more information about what constitutes excise manufacture, see Chapter 2 Licensing: Applications.

Keeping records

You should keep the following records and make them available to us when requested:

- all documents
  - recording any receipt or manufacture of spirit
  - relating to storage, use or denaturing of spirit
- supplier delivery documents (consignment note, delivery docket and so on), and
- working documents, such as operations notes.

Spirit denaturing operations – raw materials

An audit trail commencing with raw material allows us to check stated production against known material usage.

For each denaturing substance, we recommend recording:

- date
- opening stock
- quantity received
- supplier name
- quantity used
- running balance.

Denaturing record

Generally, the denaturing substance is added to the spirit within your bulk storage vessels. As such, you may simply include in your bulk storage register a record of:

- date
- the quantity of spirit to be denatured (litres, strength, LALs)

- description of the denaturing substance
- the quantity of denaturing substance added
- the resultant quantity of denatured spirit (litres, strength, LALs)
- description of the denatured spirit, for example, type
- losses and gains.

Denaturer operations – bulk storage

An audit trail that traces underbond excisable product as it moves in and out of bulk vessels allows you to account for the excisable goods to our satisfaction. Bulk vessels include vats, tanks, casks, intermediate bulk containers and drums. The transactions under this heading include:

- movements between vessels
- movements out to packaging
- movements returned from packaging, for example, decants, drainings
- underbond movements in or out
- manufacture, for example, mixing with denaturants.

For each vessel, we recommend:

- product identification details, for example, type
- date, quantity in (litres) and temperature, strength, litres of alcohol (litres × strength)
- date, quantity out (litres) and temperature, strength, litres of alcohol (litres × strength)
- excise clearance type, for example, excise return, remission, underbond removal, or to packaging
- running balance
- losses and gains.

Periodic stocktakes are as much about your good governance as they are about an excise obligation. We recommend regular bulk vessel stocktakes to:

- establish the accuracy of stock records
- detect omissions or errors in stock records, and
- identify security issues such as theft, plant and equipment problems.

We recommend that you perform a full survey (volume and strength) of any bulk vessels if there has been no activity within the last 3 months.

As part of the stock reconciliation process, stock records are adjusted to reflect the stocktake results. While bulk losses are not normally subject to call up of duty, you must keep adequate records to account for these losses.

Denaturer operations – packaging

An audit trail that traces underbond excisable product from the bulk vessels through the packaging process and into packaged stock allows you to account for the excisable goods to our satisfaction.

For each packaging run, we recommend:

- date of packaging
- product identification details, for example, ethanol with 5% methanol
- packaging unit size, for example, 500ml bottle
- total quantity available for packaging (LALs)
- actual alcoholic strength
- total number of units packaged
- average fill per package
- product captured and returned to bulk storage, for example, drainings, flushings (LALs)
- samples taken from the packaging line (LALs).

The calculation of packaging efficiency is as much about your good governance as it is about an excise obligation. The packaging efficiency calculation is:

% efficiency = (LALs packaged × 100) ÷ Net LALs available for packaging

Where

Net LALs available for packaging is calculated as:

- Total quantity available for packaging (LALs)
  - less product captured and returned to bulk storage (LALs)
  - less samples taken from the packaging line (LALs)

LALs packaged is calculated as:

- Total number of units packaged × Packaging unit size × Label strength

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Example 13B

A packaging run of ethanol with 5% methanol on 1 October 2024 recorded:

- *500ml bottles, 95.0% label strength*
- *actual alcoholic strength 95.0% (a.v.)*
- *total quantity available for packaging 2,000 LALs*
- *total number of units packaged 4,080 bottles*
- *average fill per package 501.0ml*
- *product captured and returned to bulk storage 13.7 litres at 95%a.v. = 13.0 LALs*

- *samples taken from the packaging line (LALs) 6 bottles = 2.8 LALs*
- *LALs packaged = 4080 × 500ml × 95%a.v. = 1,938 LALs*
- *Net LALs available for packaging = 2,000 less 13 less 2.8 = 1,984.2 LALs*

% efficiency = (LALs packaged × 100) ÷ Net LALs available for packaging

% efficiency = (1938.0 LALs × 100) ÷ 1,984.2 LALs

% efficiency = 97.7%

If packaging efficiency falls below historical performance, you should investigate.

Denaturer operations – packaged storage

An audit trail that traces underbond excisable product as it moves in and out of your packaged storage area allows you to account for the excisable goods to our satisfaction.

For each product line, we recommend:

- product identification details, for example, type
- packaging unit size, for example, 500ml bottle
- label strength
- date, unit quantity in
- date, unit quantity out
- excise clearance type, for example, excise return, remission, underbond removal
- running balance
- losses and gains.

Periodic stocktakes are as much about your good governance as they are about an excise obligation. We recommend regular stocktakes to:

- establish the accuracy of stock records
- detect omissions or errors in stock records, and
- identify security issues such as theft, plant and equipment problems.

As part of the stock reconciliation process, stock records are adjusted to reflect the stocktake results. In some circumstances stocktake gains may be offset against unaccounted shortages when calculating duty payable on packaged stock losses.

For more offsetting stock shortages against stock surpluses, refer to Section 6.3.8 Accounting for excisable alcohol products.

You do not need to create additional records, as the necessary details should be part of your normal commercial documentation.

13.4.5 RECYCLING OR REDISTILLATION OF CONCESSIONAL SPIRIT

You must not remove all or part of a denaturing substance from spirit classified to subitem 3.8 of the Schedule to the Excise Tariff Act without our permission.[407]

We may give permission, for example, where denatured spirit is used and re-used as a solvent in an industrial or manufacturing process.

13.4.6 TOLERANCES ON QUANTITIES DELIVERED OR RECEIVED

It may be inconvenient to apply for minor adjustments to the approved quantities shown on permits. To simplify your administration and reduce your compliance costs, we allow a tolerance on maximum quantities delivered.

All clients may receive a maximum of 105% of the quantity of spirit approved on their current permit without requiring an adjustment. For example, a permit for 200 litres will allow the delivery of up to 210 litres without further approval.

The concessional spirit manufacturer or supplier must enter the full amount delivered on the delivery documents and maintain a cumulative total of the quantities delivered to the client. The manufacturer or supplier must ensure that the extended limit is not exceeded.

13.5 PROCEDURES

13.5.1 APPLYING FOR A PERMIT

To obtain a permit to receive concessional spirits, you must complete an Application for approval to use spirits.

We will consider your application and advise you of our decision within 28 days of receiving all necessary information. We may decline to issue you with a permit, for example, if you are not using the spirit for an approved purpose as part of a business or you have a history of poor compliance with other laws we administer. We may also place a condition on your permit if we consider it necessary to do so.

To contact us, phone **1300 137 290**.

Our staff will:

- discuss your particular circumstances with you

[407] Section 77FJ of the Excise Act.

- give you advice about the appropriate permit
- explain how to apply
- explain your ongoing obligations as a permit holder, and
- provide you with a permit application form.

There is no charge for a permit to receive concessional spirit.

Lodging an application

You need to complete the relevant form to apply for a permit to receive concessional spirit.

You can lodge your completed application form and supporting documents via:

- ATO Online Services, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

You must not possess or have custody or control of concessional spirit before your permit has been granted.[408]

We will process your application within 28 days of the date we receive all required information.

13.5.2 APPLYING TO AMEND OR RENEW A PERMIT

You will need to apply to amend your permit if you:

- want to increase the amount of spirit that you are allowed to receive
- want to add to, or change details of, your nominated supplier (or suppliers)
- change your end use, or
- move premises.

You will be notified when your permit is about to expire and invited to renew it. Renewal of a permit is not automatic and you must apply to renew your permit before it expires.

You should apply to amend or renew current permits in writing by email or by telephoning us on **1300 137 290**.

13.5.3 APPLYING FOR A DENATURING FORMULA TO BE APPROVED

Applications for approval of formulas (for the purposes of subitem 3.8 of the Schedule) must be made in writing to us and contain the following information:

[408] Section 117 of the Excise Act.

- details of the formula
- specifications for the denaturants used, and
- technical specifications for the effects of the denaturant in terms of smell, taste and toxicity in a quantity of alcohol at a strength of 5% by volume.

We will advise you of the outcome of your application in writing.

Approved formulas specify the minimum quantity of denaturant that must be used and are set out in Excise (Denatured spirits) Determination 2016 (No. 3).

13.5.4 MORE INFORMATION

If you need more information on concessional spirit, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

13.6 PENALTIES THAT CAN APPLY IN RELATION TO CONCESSIONAL SPIRIT

The following are the penalties that may apply after conviction for an offence.

Manufacture

If you manufacture excisable alcohol products without a manufacturer licence, the penalty is 2 years in prison or the greater of 500 'penalty units' and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[409]

If you manufacture excisable alcohol products contrary to the Excise Act or any conditions specified in your licence the penalty is a maximum of 2 years in prison or 500 penalty units.[410]

[409] Section 25 of the Excise Act.

[410] Section 26 of the Excise Act.

If you manufacture excisable alcohol products at premises that are not covered by your licence, the penalty is 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty that would have been payable if the goods had been entered for home consumption on the penalty day.[411]

If you abstract a denaturing substance from spirit that has been delivered into the Australian domestic market, without permission, the penalty is a maximum of 50 penalty units.[412]

Move, alter or interfere

If you move underbond excisable alcohol products without approval, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[413]

Note: this includes moving underbond excisable alcohol products from your premises to any other location or for export.

If your movement of underbond excisable alcohol products does not comply with the permission to move the underbond excisable alcohol products, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[414]

If you move, alter or interfere with excisable alcohol products that are subject to excise control, without permission, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[415]

Deliver

If you deliver excisable alcohol products into the Australian domestic market contrary to your permission, the penalty is a maximum of 2 years in prison or the greater of 500 penalty units and 5 times the amount of duty on the excisable alcohol products.[416]

Records

If you do not keep, retain and produce records in accordance with '[section 50]' of the Excise Act, the penalty is a maximum of 30 penalty units.

[411] Section 27 of the Excise Act.

[412] Section 77FJ of the Excise Act.

[413] Section 117A of the Excise Act.

[414] Section 61A of the Excise Act.

[415] Section 61 of the Excise Act.

[416] Section 61C of the Excise Act.

Directions

If you do not comply with a direction in regard to what parts of the factory can be used for various matters, the penalty is a maximum of 10 penalty units.[417]

False or misleading statements

If you make a false or misleading statement to us, the penalty is a maximum of 50 penalty units.

If you make a false or misleading statement, or an omission from a statement in respect of duty payable on particular goods, to us, a penalty not exceeding the sum of 50 penalty units and twice the amount of duty payable on those goods.[418]

Evade

If you evade the payment of any duty that is payable, the maximum penalty is 5 times the amount of duty evaded or where a court cannot determine the amount of that duty the penalty is a maximum of 500 units.[419]

Facilities etc.

If you do not provide all reasonable facilities for enabling us to exercise our powers under the Excise Act, the penalty is a maximum of 10 penalty units.[420]

If you do not provide sufficient lighting, correct weights and scales, and all labour necessary for weighing material received into and all excisable alcohol products manufactured in your factory, and for taking stock of all material and excisable alcohol products contained in your factory, the maximum penalty is 10 penalty units.[421]

If we mark or seal excisable alcohol products or fasten, lock or seal any plant in your factory and you alter, break or erase the mark, seal, fastening or lock, the maximum penalty is 50 penalty units.[422]

[417] Section 51 of the Excise Act.

[418] Paragraph 120(1)(vi) of the Excise Act.

[419] Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.

[420] Section 49 of the Excise Act.

[421] Section 52 of the Excise Act.

[422] Section 92 of the Excise Act.

13.7 TERMS USED

Deliver into the Australian domestic market

'Deliver into the Australian domestic market'[423] is the term we use in this manual for when excisable alcohol products are released into domestic consumption. The term used in the legislation is 'deliver for home consumption'.

Normally, this will be by delivering the goods away from premises covered by a licence but includes using those goods yourself (for example, sales to staff).

The term 'home consumption' is not defined in the Excise Act and there is no definitive case law that looks at the issue in question. However there are several cases where issues closely related to it are considered.[424]

The conclusion drawn from those cases is that 'home consumption' refers to the destination of goods as being within *Australia* as opposed to exporting them.

Excisable alcohol products

Excisable goods are goods on which excise duty is imposed. Excise duty is imposed on goods that are listed in the Schedule to the Excise Tariff Act, or an Excise Tariff alteration, and manufactured in Australia.

As this Guide deals with alcohol products, we have used the term excisable alcohol products.

Excisable alcohol products include:

- beer
- spirits
- premixed drinks known as ready-to-drink (RTD) beverages
- brewed beverages that are not beer, and
- spirit for non-beverage use, including denatured spirit.

Excise control

Goods are subject to excise control from the point of manufacture until they have been delivered into the Australian domestic market or for export.

[423] Note the legislation uses the term 'delivered for home consumption' (see for example sections 61 and 61C).

[424] See *R v Lyon* [1906] HCA 17; *Collector of Customs (NSW) v Southern Shipping Co Ltd* [1962] HCA 20; *Carmody v F C Lovelock Pty Ltd* [1970] HCA 35; *Caltex Australia Petroleum Pty Ltd v Commissioner of Taxation* [2008] FCA 1951 and *Moama Refinery Pty Ltd v Chief Executive Officer of Customs* [2001] FCA 1287.

Goods subject to excise control cannot be moved, altered or interfered with except as authorised by the Excise Act.

Excise return

An excise return[425] is the document that you use to advise us the volume of excisable alcohol products that you:

- have delivered into the Australian domestic market during the period designated on your PSP, or
- wish to deliver into the Australian domestic market following approval.

Penalty units

The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914*, and is indexed regularly. The dollar amount of a penalty unit is available at Penalties.

Section 50 direction

This is a written instruction issued under section 50 of the Excise Act to a licensed manufacturer, or proprietor of premises covered by a storage licence, to keep specified records, furnish specified returns, retain records for a specified period and produce those records on demand by us. The written instruction is incorporated into the licence conditions.

Underbond

This is an expression not found in excise legislation but it is widely used to describe goods that are subject to excise control. Excisable goods that are subject to the Commissioner's control are commonly referred to as 'underbond goods' or as being 'underbond'. This includes goods that have not yet been delivered into the Australian domestic market and goods moving between premises under a movement permission.

13.8 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *Excise Act 1901*
  - section 16 – right to require security
  - section 20 – new sureties

[425] The term used in section 58 of the Excise Act is 'entry for home consumption'.

  - section 24 – excisable goods and goods liable to duties of Customs may be used in manufacturing excisable goods
  - section 25 – only licensed manufacturers to manufacture excisable goods
  - section 26 – licensed manufacturers to manufacture in accordance with Act and licence
  - section 27 – licensed manufacturers to manufacture only at licensed premises
  - section 49 – facilities to officers
  - section 50 – record keeping
  - section 51 – collector may give directions
  - section 52 – weights and scales
  - section 58 – entry for home consumption etc.
  - section 61 – control of excisable goods
  - section 61A – permission to remove goods that are subject to CEO's control
  - section 61C – permission to deliver certain goods for home consumption without entry
  - section 77FD – spirit for fortifying Australian wine or Australian grape must
  - section 77FE – spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose – class determinations
  - section 77FF – spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose – specific approvals
  - section 77FH – when an amount is payable on spirit covered by section 77FD, 77FE or 77FF
  - section 77FJ – person must not abstract denaturing substances in spirit classified to subitem 3.8
  - section 92 – seals etc. not to be broken
  - section 117 – unlawful possession of excisable goods
  - section 117A – unlawfully moving excisable goods
  - section 120 – offences
- *Excise Tariff Act 1921*
  - The Schedule
- *Crimes Act 1914*
  - 4AA – penalty units

Amendment history

27 June 2025

Part	Comment
Throughout	This chapter was updated to take into account the law changes as a result of the Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024.
Throughout	Updated in line with current ATO style and accessibility requirements.

APPENDIX A

Non-exhaustive list of activities that have previously been approved for concessional spirit permits:

- cake manufacture
- cosmetics
- essences
- extraction of flavour
- foodstuff manufacture
- fortification of Australian wine or Australian grape must
- mouth washes
- perfumes
- preservation of specimens
- printing inks
- refrigeration
- sterilisation of factory equipment
- tinctures
- titration or lab work
- vaccines.

14 WINE

14.1 PURPOSE

14.2 INTRODUCTION

14.2.1 TAXES THAT APPLY TO WINE, INCLUDING FORTIFIED WINE

14.2.2 WINE EQUALISATION TAX

14.3 POLICY AND PRACTICE

14.3.1 DEFINITION OF WINE

14.3.2 ALCOHOLIC STRENGTHS FOR FORTIFIED WINE

14.4 PROCEDURES

14.4.1 MORE INFORMATION

14.5 LEGISLATION (quick reference guide)

14 WINE

14.1 PURPOSE

This Chapter deals with wine and the wine equalisation tax (WET).

14.2 INTRODUCTION

14.2.1 TAXES THAT APPLY TO WINE, INCLUDING FORTIFIED WINE

Two taxes may apply to wine, including fortified wines, provided they contain more than 1.15% by volume of ethyl alcohol:

- the wine equalisation tax (WET), or
- excise duty.

Table 10 sets out whether you need to pay excise duty or WET for fortified wine or grape must. Note: wine subject to WET can only be fortified with the types of spirit listed in the table.

Table 10: Applicability of excise duty or WET by product

Product	WET	Excise duty
Grape wine fortified with grape spirit, brandy or both with an alcoholic strength of 22% or less	Yes	No
Grape wine fortified with grape spirit, brandy or both with an alcoholic strength of more than 22%	No	Yes
Grape wine products fortified with grape spirit and containing at least 70% grape wine with an alcoholic strength of less than 8%	No	Yes
Grape wine products fortified with grape spirit and containing at least 70% grape wine with an alcoholic strength of 8% to 22% inclusive	Yes	No
Grape wine products fortified with grape spirit and containing at least 70% grape wine with an alcoholic strength of more than 22%	No	Yes
Fruit or vegetable wine fortified with grape spirit or neutral spirit with an alcoholic strength of less than 15%	No	Yes
Fruit or vegetable wine fortified with grape spirit or neutral spirit with an alcoholic strength of 15% to 22% inclusive	Yes	No
Fruit or vegetable wine fortified with grape spirit or neutral spirit with an alcoholic strength of more than 22%	No	Yes
Cider and perry	Cannot be fortified	*
Mead fortified with grape spirit or neutral spirit with an alcoholic strength of less than 15%	No	Yes
Mead fortified with grape spirit or neutral spirit with an alcoholic strength of 15% – 22% inclusive	Yes	No
Mead fortified with grape spirit or neutral spirit with an alcoholic strength of more than 22%	No	Yes
Sake	Cannot be fortified	*

*Where these products are fortified, they will be subject to excise duty.

If you need to pay excise duty, refer to Chapter 12 Spirits and other excisable beverages.

For information on record-keeping requirements for fortified wines, refer to Chapter 13 Concessional spirit.

14.2.2 WINE EQUALISATION TAX

The wine equalisation tax (WET) is a value-based tax applied to dealings with wine. Dealings with wine include selling wine, using wine, or making a local entry of imported wine at the customs barrier.

There are some exemptions, including:

- dealings that are GST-free supplies or non-taxable importations
- exemptions based on quoting[426]
- if the goods are covered by Schedule 4 of the *Customs Tariff Act 1995*
- if the wine has been taxed while in bond, that is, under the control of Customs, and
- goods returned to Australia in an unaltered condition.[427]

The WET rate is 29% of the wholesale sale value.

Generally, WET is included in the price for which retailers (including bottle shops, hotels, restaurants and cafes) purchase the wine.

The ATO administers and collects WET on assessable dealings with wine in Australia. Payment is included at Label 1C of your Business Activity Statement (BAS). The Department of Home Affairs administers and collects WET on imports.

There is also a rebate scheme which provides a rebate of wine tax for eligible producers of wine. Producer rebates and other wine tax credits are claimed at Label 1D of your BAS.

If you are liable to wine tax on a dealing or are entitled to a wine tax credit, you are required to keep records of all transactions that relate to the dealing or credit claim for a period of 5 years after completion of the transactions or acts to which they relate. The records must be in English or readily accessible and convertible into English. Your wine tax liability must also be able to be readily determined from your records.[428]

Wine Equalisation Tax Ruling WETR 2009/1 *Wine equalisation tax: the operation of the wine equalisation tax system* explains how the wine tax operates, which alcoholic products are covered by the WET and your record-keeping responsibilities.

Wine Equalisation Tax Ruling WETR 2009/2 *Wine equalisation tax: operation of the producer rebate for other than New Zealand participants* explains the operation of the wine producer rebate for producers of wine that are registered for GST in Australia.

[426] Quoting is a mechanism to relieve or defer wine tax on wine to a later dealing or to give effect to exemption from wine tax for a particular supply of wine. The only form of quotation is the quotation by an entity, registered for GST, of their ABN.

[427] Division 7 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

[428] Section 382-5 of Schedule 1 to the *Taxation Administration Act 1953*.

Wine Equalisation Tax Ruling WETR 2006/1 *Wine equalisation tax: the operation of the producer rebate for producers of wine in New Zealand* explains the operation of the producer rebate for producers of wine in New Zealand that have their wine exported to Australia.

For more information about WET, see Wine equalisation tax.

14.3 POLICY AND PRACTICE

14.3.1 DEFINITION OF WINE

WET applies only to products that fall within the definition of 'wine'.[429]

Wine is defined as one of the following beverages, containing more than 1.15% alcohol by volume:

- grape wine
- grape wine products
- fruit or vegetable wine
- cider or perry
- mead, and
- sake.

Each of these products is defined in the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act). Some of them are further defined in the *A New Tax System (Wine Equalisation Tax) Regulations 2019* (WET Regulations).

Table 11 gives the definition of the products subject to WET:

Table 11: Definitions of products subject to WET

Definitions	**Examples**
'Grape wine'[430] is a beverage that: • is the product of the complete or partial fermentation of fresh grapes or products derived solely from fresh grapes, and • does not contain more than 22% alcohol by volume.	Includes: • table wines (red, white and rosé) • sparkling wines • fortified wines, and • dessert wines.

[429] Section 31-1 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.

[430] Section 31-2 of the WET Act and section 31-2.01 of the WET Regulations.

Grape wine continues to be grape wine even though grape spirit or brandy is added to it (within the strength limit of 22%).	
'Grape wine products'[431] A grape wine product is a beverage that: • contains at least 70% grape wine • has not had added to it any ethyl alcohol from any other source, except • grape spirit, or • alcohol used in preparing vegetable extracts (including spices, herbs and grasses) where the alcohol – is only used to extract flavours from vegetable matter – is essential to the extraction process, and – adds no more than one percentage point to the overall alcoholic strength by volume of the beverage • has not had added to it the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial, and • contains between 8% and 22% (inclusive) of ethyl alcohol by volume.	Grape wine products are generally traditional products that have been produced by the wine industry for many years. Grape wine products (can only be considered so if it satisfies the requirements in the column on the left) include: • vermouth • marsala • green ginger wine • wine-based cocktails and creams that do not contain the flavour of any alcoholic beverage (other than wine) whether the flavour is natural or artificial, and • imitation liqueurs (wine based) that do not contain the flavour of any alcoholic beverage (other than wine) whether the flavour is natural or artificial. Grape wine products do not include: • wine coolers (unless they satisfy the requirements in the column on the left) • ready-to-drink (RTD) or designer drinks that contain a wine base (unless they satisfy the requirements in the column on the left) • RTDs or designer drinks that contain spirits (other than grape spirit – RTDs or designer drinks containing grape spirit must also satisfy the requirements in the column on the left), and • spirit-based (other than grape spirit) cocktails, creams and liqueurs.
A 'fruit or vegetable wine'[432] is a beverage that: • is the product of the complete or partial fermentation of the juice or must of fruit or vegetables, or products derived solely from fruit or vegetables • has no added alcohol from sources other than grape spirit or neutral spirit	Includes: • table wine • sparkling wine • fortified wine derived from fruit or vegetables.

[431] Section 31-3 of the WET Act and section 31-3.01 of the WET Regulations.

[432] Section 31-4 of the WET Act and section 31-4.01 of the WET Regulations.

• has no added colour or flavour (apart from any coming from grape spirit or neutral spirit), and contains – between 8% and 22% (inclusive) alcohol by volume, or – between 15% and 22% (inclusive) alcohol by volume if grape spirit or neutral spirit has been added. Note 1: grape spirit or neutral spirit can only be added if the beverage meets the definition of fruit or vegetable wine before the spirit is added. Note 2: the addition of sugar to fruit wine post fermentation does not constitute the addition of a flavour.[433] Notwithstanding this, sugar cannot be added to wine products in amounts relative to other fermentable material such that the sugar cannot be properly described as an 'additive'.	Does ***not*** include (unless the product satisfies the requirements in the first column): • ready-to-drink (RTD) or designer drinks that contain alcohol fermented from fruits, such as lemons and oranges.
'Cider and Perry'[434] are beverages that: • are the product of the complete or partial fermentation of the juice or must of apples or pears • have no added any ethyl alcohol from any other source, and • have no added liquor or substance (other than water or the juice or must of apples or pears) that gives colour or flavour. Note: adding cane sugar to apple or pear juice prior to the fermentation of that apple or pear juice will not prevent the resulting beverage product from being 'cider' as defined in section 31-5 of the WET Act provided that the amount of sugar added does not change the character of the beverage such that it can no longer be described as the product of apples or pears.[435]	Includes: • traditional cider and perry • draught cider and perry • dry cider and perry • sweet cider and perry. Does ***not*** include: • cider or perry that has had lemon, blackcurrant or other fruit flavourings added • cider or perry that has had cola or other flavourings added.

[433] ATO Interpretative Decision ATO ID 2003/951 *Excise: Addition of sugar to fruit wine.*

[434] Section 31-5 of the WET Act.

[435] ATO Interpretative Decision ATO ID 2009/15 *Excise: Wine Equalisation Tax: cider manufacture - adding sugar to apple juice prior to fermentation*.

Mead for WET purposes is a beverage that: • is the product of the complete or partial fermentation of honey • has not had added any ethyl alcohol from any other source, except grape spirit or neutral spirit – if grape spirit or neutral spirit has been added the resulting beverage contains between 15% and 22% (inclusive) of ethyl alcohol by volume – however, grape spirit or neutral spirit can only be added if the beverage meets the definition of mead before the grape spirit or neutral spirit is added • has not had added to it any liquor or substance that gives colour or flavour other than – grape spirit or neutral spirit – honey, herbs and spices, all of which can be added at any time – caramel, provided it is added after the fermentation process is complete, or – fruit or product derived entirely from fruit, provided o the fruit or product has not been fermented o the fruit or product is added to the mead before fermentation of the mead o after the addition of the fruit or product and before fermentation the mead contains not less than 14% by volume of honey and not more than 30% by volume of the fruit or product o if fruit or product is added the mead contains between 8% and 22% (inclusive) of ethyl alcohol by volume. Note: if fruit or product derived from fruit is added and it contains concentrated fruit juice or fruit pulp, the proportion of fruit or product in the mead is worked out by assuming that it has been reconstituted according to the recommendations of the manufacturer of the concentrated fruit juice or pulp.	Mead includes: • honey mead • fortified mead • liqueur mead • spiced mead.

'Sake'[436] is a beverage that: • is the product of the complete or partial fermentation of rice • has no added alcohol, and • has no added colour or flavour.	Includes: • sake (produced by fermentation), and • rice wine. Does ***not*** include: • distilled sake.

14.3.2 ALCOHOLIC STRENGTHS FOR FORTIFIED WINE

The Excise Act does not specify strength requirements for fortified wines. However, there are minimum strength requirements for grape wine products and fruit or vegetable wine under the WET Act. Also, the Australia New Zealand Food Standards Code states that fortified wine must contain at least 15% by volume of ethanol at 20°C.

The WET legislation[437] and the Australia New Zealand Food Standards[438] both require that fortified wine must contain not more than 22% by volume of ethyl alcohol at 20°C.

14.4 PROCEDURES

14.4.1 MORE INFORMATION

If you need more information on wine or the wine equalisation tax, contact us via:

- ATO Online Services
- phone **1300 137 290**, or
- write to us at

  Australian Taxation Office
  PO Box 3514
  ALBURY NSW 2640

We will ordinarily respond to electronic requests within 28 business days. We will ordinarily finalise private rulings within 28 days of receiving all necessary information. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

[436] Section 31-7 of the WET Act.

[437] Sections 31-2.01, 31-4.01 and 31-6.01 of the WET Regulations.

[438] Standard 4.5.1 of the Australia New Zealand Food Standards Code.

14.5 LEGISLATION (quick reference guide)

In this Chapter, we have referred to the following legislation:

- *A New Tax System (Wine Equalisation Tax) Act 1999*
  - Division 7 – exemptions
  - section 31-1 – meaning of wine
  - section 31-2 – meaning of grape wine
  - section 31-3 – meaning of grape wine product
  - section 31-4 – meaning of fruit or vegetable wine
  - section 31-5 – meaning of cider or perry
  - section 31-6 – meaning of mead
  - section 31-7 – meaning of sake
- *A New Tax System (Wine Equalisation Tax) Regulations 2019*
  - section31-2.01 – grape wine
  - section 31-3.01 – grape wine products
  - section 31-4.01 – fruit or vegetable wine
  - section 31-6.01 – mead
- *Taxation Administration Act 1953*
  - section 382-5 of Schedule 1 – keeping records of indirect tax transactions

Amendment history

27 June 2025

Part	Comment
Throughout	Updated in line with current ATO style and accessibility requirements.

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