

## ***Excise guidelines for duty free shops***



# Excise guidelines for duty free shops

## **Relying on these Guidelines**

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

*If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.*

*Some of the information in these Guidelines applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.*

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## **What these Guidelines are about**

This guide is intended to be a reference tool for duty free shops to assist operators to meet their Excise obligations. It contains information about the excise system and how it applies to duty free shops.

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  symbol) that will help you with key information you should note.

You will also find 'more information' boxes (look for the  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  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, please seek help from us or a professional adviser.

You can contact us as follows:

- the [Online Services for Business](#)
- phone **1300 137 290**
- email at [alcohol@ato.gov.au](mailto:alcohol@ato.gov.au), or
- write to us at

**Australian Taxation Office  
PO Box 3514  
ALBURY NSW 2640**

We will ordinarily respond to electronic requests within 15 business days and finalise private rulings within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

A table of any major changes and updates we have made can be found within each chapter.

## Terms we use in these Guidelines

The technical terms used in these Guidelines are shown in **bold** when first used and are explained in [Terms we use in these Guidelines](#). Some of these definitions are from the excise legislation, others are not.

When we say **you** in these Guidelines, we mean you as a proprietor of a duty free shop, who is either registered or wishes to register for excise.

When we say **us** or **we** in these Guidelines, we mean the terms CEO, Collector or Commissioner as used in the excise legislation to refer to various officers.

The information in this publication is current at January 2022.

## CHAPTER 1 – Introduction

### Purpose

This chapter deals with:

- what is excise
- an overview of excise legislation relevant to duty free shops
- who administers excise
- when you are involved in the excise system, and
- what you need to know before you set up a duty free shop.

It provides a general introduction to excise as it relates to duty free shops. Further detail on the matters discussed is contained in later chapters.

### 1.1 What is excise?

The *Commonwealth of Australia Constitution Act* (the Constitution) provides that only the Commonwealth can impose duties of excise.<sup>1</sup>

The Constitution also provides that laws imposing taxation (and excise is a tax) shall only deal with the imposition of tax. The *Excise Tariff Act 1921* imposes excise on relevant goods manufactured or produced in Australia and the *Excise Act 1901* deals with administrative arrangements applying to the excise system.

In *Ha & Anor v. State Of New South Wales & Ors; Walter Hammond & Associates Pty Limited v. State Of New South Wales & Ors*<sup>2</sup> (*Ha*), the High Court explained a duty of excise as follows:

... 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.<sup>3</sup>

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

### 1.2 Overview of excise legislation

The principal legislative framework for the excise system is contained in the:

- *Excise Tariff Act 1921* (Excise Tariff Act)
- *Excise Act 1901* (Excise Act), and
- *Excise Regulation 2015* (Excise Regulation).

To change the Excise Tariff Act requires an amending act to be passed through Parliament. There are parliamentary procedures which allow for the modification of the Excise Tariff Act so that the changes can be implemented immediately. These procedures are known as Tariff Proposals.

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<sup>1</sup> Section 90 of the Constitution

<sup>2</sup> *Ha & Anor v. State Of New South Wales & Ors; Walter Hammond & Associates Pty Limited v. State Of New South Wales & Ors* 97 ATC 4674.

<sup>3</sup> *Ha & Anor v. State Of New South Wales & Ors; Walter Hammond & Associates Pty Limited v. State Of New South Wales & Ors* 97 ATC 4674 at page 4684 per Brennan CJ, McHugh, Gummow and Kirby JJ.

➤ For more information on Tariff Proposals see section 1.2.1 – Excise Tariff Act.

### 1.2.1 Excise Tariff Act

There are three 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 listed in the Schedule to the Act 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 schedule of excisable goods and the duty rates***

The Schedule to the Excise Tariff Act is a table that lists the goods that are subject to excise duty (if those goods are manufactured or produced in Australia). The goods that are currently subject to excise fall within three broad groups:

- spirits and alcoholic beverages (other than wine)
- cigarettes and other tobacco goods, and
- fuel and oils.

Within those three broad groups the schedule provides eight 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.

The following is an extract from the alcohol products section of the table:

| Tariff Item | Subitem | Description of Goods  | Rate                          |
|-------------|---------|---|-------------------------------|
| 2           |         | Other excisable beverages not exceeding 10% by volume of alcohol      | \$88.91* per litre of alcohol |
| 3           |         | Spirits; Other excisable beverages exceeding 10% by volume of alcohol |                               |
|             | 3.1     | Brandy  | \$83.04* per litre of alcohol |
|             | 3.2     | Other excisable beverages exceeding 10% by volume of alcohol          | \$88.91* per litre of alcohol |
|             | 3.10    | Spirits not elsewhere included  | \$88.91* per litre of alcohol |

\*Rate of duty as at 2 August 2021, for the current rates of duty, refer to the tables on our website at: [Excise duty rates for alcohol | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/Excise-duty-rates-for-alcohol)

### ***Indexation of the duty rate***

The rates of excise are set in the Schedule to the Excise Tariff Act. However, section 6A of the Excise Tariff Act provides that the rates of duty for spirits, alcoholic beverages and fuel may increase every six months (generally on 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.

Similarly section 6AA of the Excise Tariff Act provides that the rates of duty for cigarettes and other tobacco goods may increase every six months (generally 1 March and 1 September) by reference to the estimate of the full-time adult Average Weekly Ordinary Time Earnings for persons in Australia (AWOTE amount). The AWOTE amount is published biannually 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 up to date duty rates on our webpages taking account of the indexation increases.

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

#### **Tariff proposals**

Tariff proposals are a means of changing the Excise Tariff (rates can be adjusted up or down; products can be added or removed) so that it is effective from the time it is proposed rather than after the enactment of an Excise Tariff Amendment Act. Most of the processes relate to Parliamentary procedures, however, there are specific provisions in the Excise Act that provide for the making of tariff proposals when Parliament is not sitting.

Effectively 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.

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.<sup>4</sup>

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 technically does not impose excise 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, then any additional amounts will be refunded to you.

### **1.2.2 Excise Act**

The Excise Act imposes controls in two main areas:

- manufacture, storage and movement of excisable goods, and
- payment of duty for excisable goods.

The Excise Act requires that excisable goods not be stored outside our control. This is to ensure that the correct amount of duty is ultimately paid or the excisable goods are otherwise satisfactorily dealt with. This is achieved by making various activities unlawful and allowing us to grant licences and permission to people to carry on those otherwise unlawful activities.

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<sup>4</sup> For an explanation of customs and excise tariff proposals, see [www.aph.gov.au](http://www.aph.gov.au)

## ***Manufacture, storage and movement of excisable goods***

Before you can manufacture excisable goods, you need a manufacturer licence granted under the Excise Act.<sup>5</sup>

Before you can **store** excisable goods that you did not manufacture, you need a storage licence granted under the Excise Act.<sup>6</sup>

Before you can remove excisable goods on which duty has not been paid, you need permission granted under the Excise Act.<sup>7</sup>

Before you can sell excisable goods to **relevant travellers**, you need a permission granted under the Excise Act.<sup>8</sup>

- 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*.
- For more information about selling excisable goods to relevant travellers refer to *Chapter 6 – Making duty free sales: Outwards* and *Chapter 7 – Making duty free sales: Inwards*.

## ***Payment of duty for excisable goods***

In general terms duty free shops will not pay duty. However, payment of duty will be required when excisable goods are not taken overseas or are unable to be accounted for (for example, stock shortages).

The Excise Act in conjunction with the Excise Regulation 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 goods.

- For more information about payment of duty refer to *Chapter 8 – Accounting for excisable goods*.

### **1.2.3 Excise Regulation**

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

- rules for duty free shops, and
- **remissions**.

- For more information about rules for duty free shops refer to *Chapter 6 – Making duty free sales: Outwards* and *Chapter 7 – Making duty free sales: Inwards*.

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<sup>5</sup> Section 25 of the Excise Act.

<sup>6</sup> Subsection 4(1) (definition of 'storage licence') and Part IV of the Excise Act.

<sup>7</sup> Section 61A of the Excise Act.

<sup>8</sup> Sections 61D and 61E of the Excise Act.

➤ For more information about remissions refer to *Chapter 9 – Remissions and exemptions*.

### 1.3 Who administers excise?

The Commissioner of Taxation has the general administration of the Excise Act and the Excise Tariff Act.<sup>9</sup> This means you have to deal with the Australian Taxation Office (ATO) for Australian manufactured spirits and beer.

As excise is only levied on products manufactured in Australia imported alcohol and tobacco goods are not subject to control by us. Customs duty, under the *Customs Act 1901* (Customs Act) and *Customs Tariff Act 1995* (Customs Tariff Act), is applied to imported alcohol and tobacco goods. The Australian Border Force (ABF) within the Department of Home Affairs is responsible for administration of the Customs Act and Customs Tariff Act.

⚠ You must have a **warehouse licence**, under the Customs Act, before you will be granted a storage licence, with permission to sell duty free, under the Excise Act.

⊘ Although cigarettes and other tobacco goods are listed in the Schedule to the Excise Tariff Act, there are currently no licensed manufacturers of tobacco in Australia. All legitimate tobacco goods are imported, subject to Customs duty and administered by the Department of Home Affairs.

Who you need to deal with is summarised in the following table:

|  | ABF | ATO |
|--|-----|-----|
| Australian manufactured alcohol products | No  | Yes |
| Imported alcohol and tobacco goods       | Yes | No  |

### 1.4 When am I involved in the excise system?

You are involved in the excise system if you:

- operate a duty free shop
- store or own excisable goods on which duty has not been paid, or
- manufacture excisable goods.

### 1.5 What do I need to know before I set up a duty free shop?

#### 1.5.1 What is a duty free shop?

A duty free shop is licensed to store goods on which duty has not been paid and has a permission to sell those goods to relevant travellers.

Understanding who is a relevant traveller is fundamental to the operation of a duty free shop.

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<sup>9</sup> Section 7 of the Excise Act and section 1A of the Excise Tariff Act.



A relevant traveller is:

- a person who intends to make an **international flight** or **international voyage**, whether as a passenger on, or as a member of the crew, or the pilot or master of, an aircraft or ship<sup>10</sup>, or
- a person who has arrived in Australia on an international flight, whether as a passenger on, or as a member of the crew, or the pilot of, an aircraft and has not been questioned, for the purposes of the Customs Act, by an officer of Customs, in respect of goods carried on that flight.<sup>11</sup>

There are two types of duty free shops:

- outwards (off-airport and on-airport), and
- inwards (on-airport).

### **About Outwards off-airport duty free shops**

Outwards off-airport duty free shops sell to relevant travellers who are departing from Australia. They can be located away from the airport or at the airport, but *before* the Customs processing point.

Duty free goods can only be sold to relevant travellers. Goods will be placed in a sealed bag<sup>12</sup> and a copy of the sales invoice is placed on the outside of the bag.<sup>13</sup> Relevant travellers must present any sealed bags for inspection, and removal of the outside invoice, by the **proprietor** of the duty free shop, or a servant or agent of the proprietor, either:

- when surrendering them, to airline or shipping staff, for carriage other than in the cabin of an aircraft or ship, or
- in the departure area.<sup>14</sup>

Duty free operators must ensure that invoices are retrieved from the outside of the sealed bags.<sup>15</sup> This is done by Duty Free Security Company Limited (Duty Free Security), who are collection agents (docket pluckers) authorised by the duty free shop.

- For more information about the requirements for outward duty free sales see *Chapter 6 – Making duty free sales: Outwards*.

Changes to airport security arrangements on 31 March 2007 imposed restrictions on passengers carrying any liquid, aerosol or gels goods on board aircraft as hand luggage.

- For information about how we administer the export of liquid, aerosol and gels duty free goods, as a result of these security changes, please refer to 'Exporting liquid, aerosol and gels duty free goods' in *Chapter 6 – Making duty free sales: Outwards*.

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<sup>10</sup> Subsection 61D(1) of the Excise Act.

<sup>11</sup> Subsection 61E(1) of the Excise Act.

<sup>12</sup> Subsection 35(2) of the Excise Regulation.

<sup>13</sup> Subsections 36(4) and (5) of the Excise Regulation.

<sup>14</sup> Sections 41 and 42 of the Excise Regulation.

<sup>15</sup> Subsections 38(1), (2) and (3) of the Excise Regulation.

When an invoice is not retrieved, there is no proof that the goods have left Australia and the duty free shop is liable to pay us an amount equal to the rate of excise duty that was payable on the goods when they were delivered to the relevant traveller.<sup>16</sup>

- For more information about when and how to pay excise duty see *Chapter 8 – Accounting for excisable goods*.

### **About Outwards on-airport duty free shops**

Outwards on-airport duty free shops are located after the customs barrier in the departure lounges at international airports. Goods sold in these shops are not required to be placed in sealed bags.

### **About Inwards duty free shops**

Inwards duty free shops are located at international airports between the disembarkation point and Customs and Immigration processing.

After the goods are sold to arriving passengers, they are presented at the inwards Customs processing point.

There are limits on the quantities of dutiable goods that can be sold. These are linked to Customs Act limits for arriving passengers.

- For more information about these limits contact ABF or visit the ABF website at [www.abf.gov.au](http://www.abf.gov.au)

## **1.5.2 What do you need before you set up a duty free shop that sells excisable goods?**

You need:

- a customs warehouse licence<sup>17</sup>
- an excise storage licence<sup>18</sup>, and
- a permission to sell duty free.<sup>19</sup>

! You may also need permission to move goods **underbond** if your suppliers don't have one.

! You will also need permission to sell duty free goods from ABF if you wish to sell imported goods duty free to relevant travellers.

### **Customs warehouse licence**

You need to be licensed as a warehouse by ABF, before you can be granted a permission to sell excisable goods to relevant travellers.<sup>20</sup>

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<sup>16</sup> Subsection 61D(12) of the Excise Act.

<sup>17</sup> Sections 61D and 61E of the Excise Act.

<sup>18</sup> Section 4 of the Excise Act.

<sup>19</sup> Sections 61D and 61E of the Excise Act.

<sup>20</sup> Sections 61D and 61E of the Excise Act.

A proprietor of a duty free shop is the holder of a Customs warehouse licence.<sup>21</sup> Proprietor has the same meaning in the Excise Act as it has in the Customs Act.<sup>22</sup>

- For more information about customs warehouse licences, contact ABF or visit the ABF website at [www.abf.gov.au](http://www.abf.gov.au)

### **Excise storage licence**

You also require a licence to store excisable goods. This licence is issued by us.

- For information about how to obtain an excise storage licence see *Chapter 2 – Licensing: Applications*.

### **Licence conditions**

Excise storage licences for duty free shops include conditions.<sup>23</sup> These can include limits on the amount of excisable products each shop can receive over a calendar year. The quantity you can receive will be determined according to the bona fide business requirements of your duty free shop.

As part of the application process, we may ask you to nominate and justify, via a business plan, the quantity of excisable products (on which duty has not been paid) you require over the annual period.

### **Permission to sell duty free**

Before you can sell excisable goods on which duty has not been paid, you need a permission to sell duty free. We will also issue you with this permission.<sup>24</sup>

### **Underbond movement permission**

Excisable goods, on which duty has not been paid, cannot be moved unless there is a movement permission. This permission can be held by you or your supplier.

- For information on movement permissions see *Chapter 5 – Movement permissions*.

## **1.6 What do I do if I need more information?**

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We generally respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days of receiving your request to obtain more information or negotiate an extended response date.

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<sup>21</sup> Subsections 61D(1) and 61E(1) of the Excise Act.

<sup>22</sup> Subsections 61D(1) and 61E(1) of the Excise Act.

<sup>23</sup> Subsection 61D(6) and 61E(5) of the Excise Act.

<sup>24</sup> Subsections 61D(2) and 61E(2) of the Excise Act.

## CHAPTER 2 – Licensing: applications

### 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.

## 2.1 Introduction

### 2.1.1 Why is there a licensing regime?

The excise duty attached to **excisable goods** forms a significant component of the overall value of the goods. A licensing regime reduces the risk that the correct amount of duty will not be paid.

### 2.1.2 What is a licence?

A licence is an approval or authorisation to enable you to undertake activities as specified in the licence. If you undertake these activities without a licence or contravene your licence you are committing an offence and may be prosecuted.

A licence is issued to a specific entity and specifies the site where the activities may be undertaken. This may require you to have more than one licence.

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.





A licence is not transferable.

## 2.2 Policy and practice

### 2.2.1 What type of licence do I need?

If you are a duty free shop operator, you will require a storage licence (with permission to sell duty free) to store and sell underbond excisable goods.

 Before your storage licence is issued, you will also need a warehouse licence issued under the Customs Act.

 For more information on Customs warehouse licences, you should contact ABF or visit the ABF website at [www.abf.gov.au](http://www.abf.gov.au)

Duty free shops are different from other licensed premises because they are allowed to display and sell goods that have not had excise paid on them. Your storage licence will specify the type of excisable goods you can store and the location. It will also specify the activities, if any, you can undertake in relation to those goods,<sup>25</sup> for example, sell duty free to:


- relevant travellers
- diplomats or consuls, and/or
- sea-going vessels of the Royal Australian Navy (RAN) or Australian Military Forces (AMF).

Paying duty and **delivering goods into the Australian domestic market**, supplying ship's stores or exporting by other means are *not* allowed unless specifically authorised in your licence or another permission we have issued you. We will only approve these activities when there is a genuine business need, for example, supplying ship's stores in a remote location where there is no alternative source.


### 2.2.2 What are my responsibilities as a licence holder?

You are responsible for the secure storage of all excisable goods held on your premises or under your control and must keep or store excisable goods only at premises that are specified in your licence.

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 goods.<sup>26</sup>

 If you wish to destroy any excisable goods you must first obtain permission from us to do so.

You must not move excisable goods without approval from us. This includes moving excisable goods from your licensed premises to any other location or for export.<sup>27</sup>

 For more information about obtaining permission to move excisable goods 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.

You must keep, retain and produce records in accordance with a **direction under section 50** of the Excise Act.

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<sup>25</sup> Subsection 4(1) of the Excise Act definition of 'storage licence'.

<sup>26</sup> Section 60 of the Excise Act.

<sup>27</sup> Section 61A of the Excise Act.

### 2.2.3 What else can we do?

#### **Access**

We have the right to enter your licensed premises at any time and can examine and take account of all the goods at the premises.<sup>28</sup> Note: we will usually only seek to enter your premises during normal business hours.

#### **Stop vehicles**

We can stop any vehicle leaving your licensed premises and check that there is proper documentation for excisable goods 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.<sup>29</sup>

#### **Search vehicles**

We can stop and search any vehicle (not just vehicles leaving a licensed premises) without a warrant if we have reasonable grounds for believing that the vehicle contains excisable goods and that the vehicle has been used, is being used or will be used in the commission of an offence under the Excise Act (and certain offences in the *Crimes Act 1914*<sup>30</sup> and *Criminal Code Act 1995*<sup>31</sup> 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).<sup>32</sup>

### 2.2.4 What records do I need to keep?

Unlike other taxation laws, the Excise Act does not have a general record keeping provision. The Excise Act does provide that a licence holder shall:

- keep such records and furnish such returns as directed
- keep these records for the period directed, and
- on demand, produce those records to us.<sup>33</sup>

Any such direction will be in writing and included with your licence. We can amend this direction at any time and will provide written notification of this to you.

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.

### 2.2.5 How long is my licence valid for?

Your licence will state its expiry date. When first issued, the licence is valid until the next 30 September two years after the anniversary of the day it is granted.<sup>34</sup>

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<sup>28</sup> Subsection 86(2) of the Excise Act.

<sup>29</sup> Section 87 of the Excise Act.

<sup>30</sup> Section 6 of the *Crimes Act 1914* (Crimes Act).

<sup>31</sup> Sections 11.1, 11.2 and 11.5 of the Schedule to the *Criminal Code Act 1995* (Criminal Code).

<sup>32</sup> Section 87AA of the Excise Act.

<sup>33</sup> Section 50 of the Excise Act.

<sup>34</sup> Section 39E of the Excise Act.

### Example 2A

If we grant a licence on 15 September 2021, it will expire on 30 September 2023.

If we grant a licence on 15 October 2021, it will expire on 30 September 2024.

Upon renewal a licence is valid for a further three years starting from the day after the date of expiry of the existing licence, that is, 1 October three years from the year the existing licence expires.

A storage licence differs from a warehouse licence. You must hold a current section 79<sup>35</sup> Customs Warehouse licence for a licensed duty free shop. You must also hold a storage licence to store excisable goods with permission to sell these products duty free.

➤ For more information see [Application for a license to store excisable goods with permission to sell duty free](#).

### 2.2.6 Is my licence transferable?

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.

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 three months after the licence holder dies.<sup>36</sup>

➤ For more information about cancelling licences refer to *Chapter 4 – Licensing: Suspension and cancellation*.

### 2.2.7 Can my licensing information be disclosed?

As well as the protection provided by the *Privacy Act 1988* (Privacy Act), the tax laws have secrecy provisions about using and disclosing taxpayer information. 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, the Excise Act specifically allows us to disclose information about you to the Department of Home Affairs.

In relation to licensing information, the TAA specifically allows us to disclose information about:

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

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<sup>35</sup> Section 79 of the Customs Act.

<sup>36</sup> Section 39O of the Excise Act.

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.

If 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 or fax.

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 Privacy Act 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 in dealing with your personal information.

 For information about your review rights refer to *Chapter 10 – Reviews and objections*.

## 2.3 Procedures

### 2.3.1 How do I apply 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.

To contact us phone **1300 137 290**.

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.




### ***How do I lodge an application?***


You need to complete the relevant form to apply for a storage licence.<sup>37</sup>


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 storage
- a Declaration of criminal history particulars (NAT 74815), or
- a Consent to criminal history record check (NAT 16358), and
- an application for permission to move underbond goods.

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

 You should contact our Licensing staff on **1300 137 290** or email at [alcohol@ato.gov.au](mailto:alcohol@ato.gov.au) for advice about the forms and supporting documents that you will need to lodge.

 For more information on how to lodge your completed application form and supporting documents – [here](#).

 You must not store excisable goods before your licence has been granted.<sup>38</sup>

 We will process your application within 28 days of the date we receive all required information.

### **2.3.2 How do I change my 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)
- postal address, or
- street name or property address made by a relevant authority.

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.<sup>39</sup> You must advise us of any of these changes within 30 days. We will then provide you with an amended licence.

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<sup>37</sup> Section 39 of the Excise Act.

<sup>38</sup> Section 117 of the Excise Act.

<sup>39</sup> Section 6A of the Excise Act.

### 2.3.3 What do I do if I need more information?

If you need more information on excise, as it relates to duty free shops, contact us via the [Online services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## 2.4 What penalties can apply to offences in relation to licences?

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

### ***Keep or store***

If you possess or have custody or control of excisable goods without permission, the penalty is a maximum of two years in prison or the greater of 500 **penalty units** and five times the amount of duty on the excisable goods.<sup>40</sup>

### ***False or misleading statements***

If you make a false or misleading statement to us in relation to your licence, the penalty is a maximum of 50 penalty units.<sup>41</sup>

### ***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.

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<sup>40</sup> Section 117 of the Excise Act.

<sup>41</sup> Section 120 of the Excise Act.

## **CHAPTER 3 – LICENSING: Assessing applications**

### **Purpose**

This chapter deals with:

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

### **3.1 Introduction**

The Excise Act provides us with the discretion whether to grant or refuse a licence. We base the decision on the information you supply.

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

In summary those criteria are:

- whether you or an associate are not 'fit and proper'
- whether you do not have, or 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 is 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 at section 3.2.

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:

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

## 3.2 Licensing criteria

### 3.2.1 '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:

- if an individual, the individual is assessed
- if a partnership, each partner is assessed, and
- if 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, then 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'<sup>42</sup> 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 person applying for a licence to have access and control over excisable goods.

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
- the honesty of information provided by the applicant
- compliance with tax obligations, and
- licensing history.

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

A single factor will not necessarily be determinative on its own 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. We are deciding whether the person or company is fit and proper, and will do so after considering all relevant information.

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<sup>42</sup> Sections 39B and 39C of the Excise Act.

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

- Individual or company:
  - whether, within a year of lodging the application, the person or company has been *charged with*:
    - an offence under the excise legislation, or
    - an offence under Commonwealth, State or Territory law punishable by imprisonment for one year or longer (for an individual), or by a fine of 50 penalty units or more
  - whether, within 10 years of lodging the application, the person or company has been *convicted of*:
    - an offence under the excise legislation, or
    - an offence under Commonwealth, State or Territory law punishable by imprisonment for one year or longer (for an individual), or by a fine of 50 penalty units or more
  - the extent of the person's or company's compliance, within four years of lodging the application, with any law administered by us (for example, income tax, GST)
  - whether the person has held an excise licence which has been cancelled, or
  - the person's or company's financial resources.
- Individual only
  - whether the person has participated in the management or control of a company that has had its excise licence cancelled
  - whether the person is an undischarged bankrupt
  - any misleading statement made in the application by the person, and
  - where any false statement was made in the application – whether the person knew it was false.

 False and misleading statements are discussed below in 'Where a person makes false or misleading statements in their application'.

- Company only
  - whether a receiver has been appointed over the property, or part of the property, of the company
  - whether the company is under administration under the *Corporations Act 2001* (Corporations Act)
  - whether there is a current deed of company arrangement in place under Part 5.3A of the Corporations Act, or
  - whether the company is being wound up.

### ***Where a person makes false or misleading statements in their application<sup>43</sup>***

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.

#### ***Misleading statements***

With regard to this element, the term 'mislead' is not defined in the Excise Act. *The Australian Oxford Dictionary*, 2004, 2<sup>nd</sup> edn, Oxford University Press, Melbourne defines 'mislead' as follows:

- cause (a person) to go wrong, in conduct, belief, etc.
- 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.

#### **Example 3A**

You advise us that you have installed a state of the art security system at your premises. While true, 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 actually 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.

#### ***False statements***

We can only take false statements into account if you knew they were false.<sup>44</sup>

In essence, a statement is false if it is not true. A false statement may be made expressly, or via omission. An example of the former is where you state you have no criminal convictions when in fact you have been convicted. An example of the latter would be to leave the question on your application form in relation to criminal convictions blank when in fact you have been convicted. In both instances, a false statement has been made.

### ***Who are the associates that can be assessed under the for fit and proper person test?<sup>45</sup>***

To avoid situations where people with a high risk of non-compliance are able to exercise control over licence holders, certain associates can be assessed under the fit and proper person test.

The word associate effectively takes its 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

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<sup>43</sup> Paragraphs 39B(e) and 39B(f) of the Excise Act.

<sup>44</sup> Subsection 39B(f) of the Excise Act.

<sup>45</sup> Subsection 39A(2)(f) of the Excise Act., section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), subsection 318(1) of the *Income Tax Assessment Act 1936* (ITAA 1936).

- a relative<sup>46</sup> 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
- 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.<sup>47</sup>

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.<sup>48</sup>

- An associate of a company includes
  - 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(s) who controls the company, or
  - another company which is under the control of the company or the company's associate.<sup>49</sup>

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.<sup>50</sup>

For a partnership an associate includes each partner of the partnership or associate of the partner.<sup>51</sup>

### 3.2.2 Skills and experience

Skills and experience<sup>52</sup> are not defined in the Excise Act or Excise Regulation. There is no excise case law regarding skills and experience.

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.

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<sup>46</sup> Section 995-1 of the ITAA 1997 for definition of 'relative' for this purpose.

<sup>47</sup> Subsection 318(1) of the ITAA 1936.

<sup>48</sup> Subsection 318(7) of the ITAA 1936.

<sup>49</sup> Subsection 318(2) of the ITAA 1936.

<sup>50</sup> Subsection 318(3) of the ITAA 1936.

<sup>51</sup> Subsection 318(4) of the ITAA 1936.

<sup>52</sup> Paragraph 39A(2)(fa) of the Excise Act.

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 skills 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 Duty Free Pty Ltd, applies for a storage licence with permission to sell duty free.

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 goods 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 Duty Free 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) of the Excise Act.

Z Duty Free Pty Ltd may choose to address the deficiency in skills and experience by such measures as appointing a manager who has the relevant skills and experience.

### **3.2.3 Physical security of the premises**

Physical security<sup>53</sup> relates to measures that prevent unauthorised access to excisable goods 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
- fire alarms, smoke detectors, sprinklers.

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, cartons of cigarettes are easier to move than fuel in a large refinery tank
- the rate of excise duty applicable to the goods (goods that attract a greater rate of excise duty represent a greater revenue risk), and
- the greater the quantity of excisable goods to be dealt with, the higher the level of physical security that would be required.

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<sup>53</sup> Paragraphs 39A(2)(g) of the Excise Act.



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.

### **3.2.4 Suitability of plant and equipment**

Plant and equipment<sup>54</sup> are considered suitable if they are capable of performing the intended tasks and will allow you to properly account for excisable goods and calculate the correct amount of excise duty.

### **3.2.5 Market for the goods**

In this criterion, we are primarily concerned with the presence of an available market<sup>55</sup> within Australia. That market must be legal. Licensing is concerned with minimising the risk of excisable goods 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 (for example, a contract to lease an area, at an International Airport, to be used as a duty free shop), or
- a business plan which outlines the market you have identified.

### **3.2.6 Ability to keep proper books of account**

This criterion is whether you can keep 'proper books of accounts and records' that enable us to audit those records.<sup>56</sup> It is your ability to keep the required records that must be determined.

You may be asked to demonstrate:

- the recording systems you intend to use, whether they are manual or electronic
- where an electronic record keeping system is used, systems documentation showing details such as screens, reports available and security controls, and

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<sup>54</sup> Paragraph 39A(2)(i) of the Excise Act.

<sup>55</sup> Paragraph 39A(2)(ia) of the Excise Act.

<sup>56</sup> Paragraph 39(2)(j) of the Excise Act.

- the internal documentation supporting the recording systems, ensuring that the recording systems will record sufficient detail.

### 3.2.7 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 the duty.<sup>57</sup>

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.

This criterion is not relevant for duty free shops.

### 3.2.8 Protect the revenue

The term 'necessary to protect the revenue'<sup>58</sup> 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*.<sup>59</sup> She said:

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, the finding is equally applicable to duty free shops. '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.

## 3.3 What are licence conditions?

Licence conditions form part of your licence. They are restrictions, limitations or modifying circumstances. They may define permissible activities and require you to take certain actions if

<sup>57</sup> Paragraph 39A(2)(k) of the Excise Act.

<sup>58</sup> Paragraph 39A(2)(l) of the Excise Act.

<sup>59</sup> *Martino and Australian Taxation Office* [2002] AATA 1242.

defined circumstances arise. If you fail to comply with a condition, we may suspend or cancel your licence.<sup>60</sup>

All excise licences are subject to certain conditions imposed by:

- the Excise Act, and
- us ('special conditions').

We are able to add, vary or modify special conditions even after the licence has been granted.<sup>61</sup> 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<sup>62</sup>:

- 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
- you become bankrupt
- a person not listed in the licence application starts to participate in the management or control of the licensed premises 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 the licensed premises or plant and equipment used in relation to excisable goods at the premises, or
- you hold a storage licence and you cease to keep and store goods at the licensed premises.

### ***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.<sup>63</sup> 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 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

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<sup>60</sup> Paragraph 39G(1)(k) of the Excise Act.

<sup>61</sup> Subsection 39D(4) and section 39DA of the Excise Act.

<sup>62</sup> Subsection 39D(1) of the Excise Act.

<sup>63</sup> Subsection 39D(3) of the Excise Act.

- limits to the volume of excisable product you can access annually
- undertake regular stocktakes, and
- ensure that underbond stock is readily identifiable and quantifiable and report on LAGs goods (liquids, aerosols and gels).

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 any decision we make about a special condition, you can ask for a review by lodging an objection.<sup>64</sup>

 For more information about your review rights refer to *Chapter 10 – Reviews and objections*.

### 3.4 What are securities?

We can use special 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.<sup>65</sup>

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 forfeit. 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 cannot apply these securities against other tax debts.


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

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

 For information about your review rights refer to *Chapter 10 – Reviews and objections*.

### 3.5 Assessing your application to renew your licence


Licences are only valid for a specified period. Renewal of a licence is not automatic and you must apply to renew your licence before it expires. In assessing an application to renew a licence we consider the same criteria that exist for cancelling a licence. That is, if reasons exist for us to cancel your licence (assuming that it had not expired) then we cannot renew your licence.

 For more information about the criteria for cancelling a licence refer to *Chapter 4 – Licensing: Suspension and cancellation*.

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<sup>64</sup> Section 39Q of the Excise Act.


<sup>65</sup> Sections 16 to 22 of the Excise Act.

 If you have applied before the date of expiration on your licence but we have not made a decision by this date, the licence remains in force until such time as we do make a decision. If we refuse your licence renewal, you may object against the decision.

 For information about your review rights refer to *Chapter 10 – Reviews and objections*.

As an alternative to non-renewal of a licence, we may:

- alter existing conditions on your licence
- impose new conditions, or
- require you to provide a financial security.

 If you have not applied to renew your licence then the licence expires on 30 September and you can no longer carry out excise related activities.

## 3.6 Procedures

### 3.6.1 What happens if my licence is not granted?

If we do not grant a licence, we will notify you of the decision and provide you with an explanation for 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.<sup>66</sup>

 For information about your review rights refer to *Chapter 10 – Reviews and objections*.

### 3.6.2 What will happen if my licence is granted?

If we grant you a licence, we will send it to you. All special conditions will form part of the licence. We will also provide you with an establishment number for the premises specified on your licence. This will be needed in some of your dealings with us.

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

### 3.6.3 How do I renew my licence?

We will send you an invitation to renew your licence at least six weeks before the licence expires. We will also send an application form containing your details. You must verify the details on the application, provide any required information, sign and return it to us before your licence expires.

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<sup>66</sup> Section 39Q of the Excise Act.

- ! Your existing licence will remain valid until we make a decision about your application for renewal.<sup>67</sup>

Licences are renewed for a period of three years.

### **Example 3C**

Your licence is due to expire on 30 September 2021 (the expiry day). On 1 September 2021 you apply to renew the licence. We have not decided the application by the end of 30 September 2021.

The licence continues in force automatically past 30 September 2021 until we decide the application.

On 15 October 2021 we decide to renew the licence. The renewed licence expires on 30 September 2024.

- ! If you wish to renew your licence but you have not received an invitation to renew within four weeks of the date of expiry you need to contact us.

### **3.6.4 What do I do if I need more information?**

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## **3.7 What penalties can apply for offences in relation to making an application?**

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

### **3.7.1 False or misleading statements**

If you make a false or misleading statement to us, the penalty is a maximum of 50 penalty units.<sup>68</sup>

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<sup>67</sup> Subsection 39F(4) of the Excise Act.

<sup>68</sup> Section 120 of the Excise Act.

## CHAPTER 4 – Licensing: suspension and cancellation

### 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.

### 4.1 Introduction

Your licence remains in force until it expires or 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.

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<sup>69</sup>
  - suspension is necessary for the protection of the revenue, or
  - suspension is necessary to ensure you comply with excise law.

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<sup>69</sup> 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.

## 4.2 Policy and practice

### 4.2.1 What happens if I cease my 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 goods. To be satisfied of this we may:

- arrange a final audit of goods at the licensed premises, 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:

- pay any outstanding excise duty on goods held at the licensed premises 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.<sup>70</sup>

We will cancel your licence by giving you written notice.<sup>71</sup>

### 4.2.2 When can you suspend and/or cancel my licence?

#### ***What is 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.

#### ***When can you suspend or cancel my licence?***

We can suspend or cancel your licence if we have reasonable grounds for believing:<sup>72</sup>

- 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'\*

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<sup>70</sup> Subsection 39L(4) of the Excise Act.

<sup>71</sup> Subsection 39L(3) of the Excise Act.

<sup>72</sup> Subsections 39G(1) and 39L(1) of the Excise Act.



- 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 \*, or
- suspension is necessary to ensure you comply with excise law.

\* For an explanation of these criteria, please refer to section 3.2 – Licensing criteria in *Chapter 3 – Licensing: Assessing applications*.

The criteria which have not been the subject of previous considerations 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 to represent your business activity.
- 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, and
  - 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 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 not been complying with a condition in respect of your permission.<sup>73</sup>

### ***What happens if you suspend my licence?***

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

If we decide to suspend your licence, 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 the licensed premises.

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<sup>73</sup> Sections 61D and 61E of the Excise Act.

A *Notice of suspension* will state that, if you want to stop the cancellation of your licence, you must provide us with a written statement, within seven days of the notice being served, giving reasons why your licence should not be cancelled. We will include our reasons for deciding to suspend 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,<sup>74</sup> unless you have written permission from us, it is against the law to keep or store excisable goods at licensed premises.

During the period of suspension we may give you written permission to<sup>75</sup>:

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

As a result of a suspension, we may:

- require the owner (you or a third party) of excisable goods to move the goods from your premises 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 your licensed premises and any excisable goods 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.

All decisions relating to the suspension of a licence are reviewable by lodging an objection.

 For more information about your review rights refer to *Chapter 10 – Reviews and objections*.

### ***What happens if you cancel my licence?***

We can cancel your licence for the same reasons we can suspend your licence.

-  We can cancel your licence without previously suspending your licence. This may occur where we consider the issues require immediate action. For example, systemic delivery of excisable goods 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 store excisable goods. You are also not permitted to move excisable goods without our permission.

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<sup>74</sup> Section 39K of the Excise Act.

<sup>75</sup> Subsection 39K(6) of the Excise Act

The notice may be served on you, or given to a person who appears to participate in the management or control of the licensed premises. 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 goods (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 remove them from the owner's control. If, after six months, the owner has not:

- lodged a written claim for the goods, and
- paid the duty and other movement and storage related expenses

then we may sell or dispose of the excisable goods.<sup>76</sup>

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

If you are not satisfied with our decision to cancel your licence or dispose of your excisable goods, you can request a review of our decision by lodging an objection.<sup>77</sup>

 For more information about your review rights refer to *Chapter 10 – Reviews and objections*.

### ***Can I apply for another licence if I have had a licence cancelled?***

Yes, you can apply for another licence. However we will take the reasons for the cancellation into account when considering any new application.

## **4.3 Procedures**

### **4.3.1 Service of notices**

Notices of suspension or cancellation and directions to deal with excisable goods will be served either<sup>78</sup>:

- personally or by post<sup>79</sup> on you, or
- personally on a person who, at the time the notice is served, appears to participate in the management or control of the licensed premises.

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<sup>76</sup> Subsection 39N(2) of the Excise Act.

<sup>77</sup> Section 39Q of the Excise Act.

<sup>78</sup> Subsections 39J(2) and 39L(5) of the Excise Act.

<sup>79</sup> Section 39P of the Excise Act.

### **4.3.2 What do I do if I need more information?**

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## **4.4 What penalties can apply to offences in relation to suspensions and cancellations**

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

### **4.4.1 Keep or store**

If you store excisable goods when your storage licence is suspended, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>80</sup>

### **4.4.2 Remove**

If your licence has been cancelled or expired you must not remove excisable goods on which duty has not been paid. The penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>81</sup>

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<sup>80</sup> Paragraph 39K(1)(b) of the Excise Act.

<sup>81</sup> Subsection 39M(1) of the Excise Act.

## CHAPTER 5 – Movement permissions

### 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 licensed
- 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.

### 5.1 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.<sup>82</sup>

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 one specified place to another specified place without excise duty being payable.<sup>83</sup> This permission may be subject to conditions.

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

### 5.2 Policy and practice

#### 5.2.1 What different permission types are there?

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

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<sup>82</sup> This does not mean movements within the bounds of your licensed premises, rather movements from licensed premises to another place.

<sup>83</sup> Section 61A of the Excise Act.

There are four types of movement permission:

- **Single movement permission (non-export)** – a permission to move specified excisable goods from one specified place to another specified place (effective for one movement)
- **Continuing movement permission (non-export)** – a permission to move excisable goods of a kind specified from one specified place to another specified place on a continuing basis
- **Single movement permission (export)** – a permission to move specified excisable goods to a place of export (effective for one movement), or
- **Continuing movement permission (export)** – a permission to move excisable goods 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 ABF. Excisable goods being exported by relevant travellers do not need a movement permission.

### 5.2.2 Can I get a movement permission?

If you have a licence to store excisable goods, you can be granted a movement permission.

### 5.2.3 What is included in a movement permission?

Each movement permission we approve contains three parts:

1. The permission

This specifies

- the permission holder.

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.

### 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 in which the goods may be moved.

If you own both the licensed premises between which goods are being moved, the schedule may not specify all these details but only that any movement of goods between premises licensed to you is approved.

The type of goods may be expressed generally (for example, 'excisable goods', or '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 & cola @ 5% alcohol by volume = 5.4 Lals classified to excise tariff item 2.

#### **5.2.4 Does the receiving premises have to be licensed?**

Generally, the receiving premises should be licensed. However, we may authorise underbond movement of goods to an unlicensed 'specified place', for example, a waste destruction facility.

#### **5.2.5 Will I need to pay 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.<sup>84</sup>

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 forfeit. 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 licensed
- the type of goods involved
- the amount of the liability on the goods
- the tax compliance record of
  - the applicant for the permission
  - the despatching premises

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<sup>84</sup> Sections 16 to 22 of the Excise Act.

- the receiving premises, and
- the susceptibility of the goods to be lost or diverted into home consumption without the payment of duty.

We cannot apply these securities against other tax debts.

We review securities linked to continuous movement permissions every three 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 reviewable 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 10 – Reviews and objections*.

### **5.2.6 What happens when my 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 schedule. You will need to keep appropriate records to track the movement of your goods.

### **5.2.7 What are my 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 good records of any movements of goods both to and from your premises.

If you cannot satisfactorily account for the goods or failed to keep them safe, we may demand an amount equal to the duty that would have been payable on the goods.<sup>85</sup>

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 there is a discrepancy between the quantity shown in the delivery documentation and the physical quantity received you should contact us.

 In the exceptional case where the goods are moved to unlicensed premises, accountability for the goods remains with you, as the permission holder.

### **5.2.8 What happens if my 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. If you are not satisfied with our decision, you can ask us to review it. You will not be able to move the goods to the place nominated in the application.

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<sup>85</sup> Section 60 for excisable goods of the Excise Act.



 For more information about your review rights refer to *Chapter 10 – Reviews and objections*.

### 5.2.9 When and how can a movement permission be revoked or cancelled?


A continuing permission remains in effect until it is cancelled.<sup>86</sup>

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.

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. 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 10 – Reviews and objections*.

## 5.3 Procedures

### 5.3.1 How do I apply for a movement permission?

To apply for a movement permission, please complete the form available on our website.

If you do not have control of the proposed receiving premises (licensed or unlicensed), 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 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 please ensure that you allow sufficient time for your application to be determined. Generally, we will make a decision on your application within 28 days unless we need further information.

### 5.3.2 How do I amend my 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
- a letter including the permission number and necessary changes.

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<sup>86</sup> 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 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 application form contains 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.

### **5.3.3 What do I do if I need more information?**

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## **5.4 What penalties can apply to offences in relation to movement permissions?**

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

### **5.4.1 Move**

If you move excisable goods without a movement permission<sup>87</sup> or contrary to your movement permission<sup>88</sup>, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.

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<sup>87</sup> Section 117A of the Excise Act.

<sup>88</sup> Section 61A of the Excise Act.

## CHAPTER 6 – Making duty free sales: outwards

### Purpose

This chapter deals with:

- making outwards duty free sales
- conditions travellers must be made aware of
- what happens when goods are not exported
- exporting liquid, aerosol and gels duty free goods, and
- penalties that can apply to offences in relation to duty free shops.

### 6.1 Introduction

In general terms, outwards duty free shops will not pay duty. However, excise duty will be payable when excisable goods are not taken overseas or are unable to be accounted for (for example, stock shortages).

This chapter focuses on the rules that you need to follow when making duty free sales from an outwards duty free shop.

### 6.2 Policy and practice


#### 6.2.1 Outwards duty free shops – off-airport

Off-airport outward duty free shops are usually located away from the airport. However, they could also be physically located at an airport, before the Customs processing point.

You are not permitted to sell or deliver duty free goods unless the purchaser is a 'relevant traveller' able to show you a ticket or other approved document showing an international flight or voyage.<sup>89</sup>

You must follow specific procedures in the invoicing, packaging and sealing of goods. Sales made from outwards off-airport duty free shops must use the sealed bag method of delivery.

The number or other identification of the traveller's ticket, or similar approved travel documentation, must be recorded on the sales invoice.

-  You must not deliver the goods to the traveller earlier than 60 days before the traveller is due to depart.<sup>90</sup>

#### **Sales to 'relevant travellers'**

##### *Sealing goods*

You must enclose goods purchased by a 'relevant traveller' in a package:<sup>91</sup>

- sealed so that the goods cannot be removed without the seal being broken
- with a copy of the sales invoice, and

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<sup>89</sup> Subsections 32(1) and (3) of the Excise Regulation.

<sup>90</sup> Subsection 35(1) of the Excise Regulation.

<sup>91</sup> Subsection 35(2) of the Excise Regulation.

- if that package is of a size that will be carried as hand baggage in the cabin of the aircraft or ship the package must be transparent enough for the goods to be easily identifiable.

### *Invoice preparation*

When you deliver goods from your shop for export by a relevant traveller you must prepare, in triplicate, an invoice, being one of a series of sequentially numbered invoices, specifying<sup>92</sup>:

- name and usual residential address of the relevant traveller
- the following particulars of the intended relevant flight or voyage
  - date of departure
  - airport or wharf of departure
  - in the case of a relevant flight – flight number or other designation of the flight
  - in the case of a relevant voyage – name of the ship and the number or other destination of the voyage
  - number or other identification of the traveller's ticket or similar approved travel document
- a precise description of the goods, including
  - quantity, in figures, of each item of the goods
  - the total number, in words, of items on the invoice
  - the sale value, in figures, of each item or quantity of items, and
  - the total sales value of those items and quantities of items.

You must prepare the invoices in a way that would make it impracticable to add other items to the description. For hand prepared invoices, a line should be drawn from the last item to the far right of the page and then diagonally to the bottom left hand corner and then across the page to the bottom right hand column.

### *Distribution of invoices*

You must<sup>93</sup>:

- place one copy of the sales invoice inside the tamper-proof sealed package with the goods
- securely attach a second copy of the sales invoice to the outside of the package in a waterproof envelope, and
- retain a third copy for your records.

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<sup>92</sup> Subsections 36(1) to (3) of the Excise Regulation.

<sup>93</sup> Subsections 36(4) and (5) of the Excise Regulation.

## ***Procedures to be followed at the airport***

### *Goods carried in the cabin*

When a relevant traveller takes packages in the cabin of the aircraft or ship (that is, taken by hand into the departure lounge on the way to the cabin of the aircraft or ship) you must present the sealed bag to Duty Free Security (DFSC) staff or an authorised agent near the Outwards Control Point who will<sup>94</sup>:

- ensure that the package is examined to ascertain whether the seal has been broken or tampered with, and
- if the package has not been tampered with, compare the invoice details to the physical goods and ensure that the attached invoice copy is removed.

This process is commonly referred to as 'plucking' the invoice/sales docket.

### *Goods checked in as hold baggage*

When a relevant traveller does not take packages in the cabin of the aircraft or ship, (that is, they are checked in as hold baggage) you must, at the point of surrender of the goods<sup>95</sup>:

- ensure that the seal has not been broken or tampered with, and
- remove the docket from the outside of the sealed bag and present it to DFSC staff or an authorised agent near the Outwards Control Point.

## **6.2.2 Exporting liquid, aerosol and gels duty free goods**

The Department of Infrastructure and Regional Development introduced restrictions on the volume of liquid, aerosol and gels (LAGs) goods that an international passenger can take on board a flight in carry-on luggage.

This means that any LAGs goods over 100 millilitres must be packed in baggage that is checked in and therefore transported in the hold of the plane. Failure to comply with these arrangements will result in the traveller having to surrender the items at the security screening point. Effectively, this affects all alcohol purchased by relevant travellers from duty free stores.

This change in airport security impacts on outwards off-airport duty free stores as the outwards on-airport and inwards duty free stores operate either after the Customs barrier (outwards on-airport), or before it (inwards duty free), in which case the security risk is not an issue.

Any LAGs sold to a relevant traveller by an outwards off-airport duty free store must be sealed in a separate bag to other duty free purchases. You must complete a sales invoice in the same manner as all other sales although if the relevant traveller has other non-LAG duty free purchases (that is, cigarettes) then a separate docket must be completed for both bags.

The traveller must place the sealed LAGs bag into their luggage that is to be checked into the hold of the plane. They should remove the docket attached to the exterior of the sealed bag and, once inside the airport and past the Customs checkpoint, they must present it to Duty Free Security staff or an authorised agent.

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<sup>94</sup> Subsections 38(1) to (3) of the Excise Regulation.

<sup>95</sup> Subsections 38(1) to (3) of the Excise Regulation.

### **Retrieved Invoices/Dockets**

At monthly intervals, Duty Free Security will send to you a list of all dockets retrieved. You must then compare this list with your sales records and pay excise duty for those dockets which are not listed as retrieved.

This is done by completing a *Duty-free operator return* (NAT 10405) and sending it to us.

A **duty-free operator return** must be lodged within 21 working days of the shop after the end of a month. A return is required even if no stock shortages or missed dockets are identified.<sup>96</sup>

Missed dockets for LAGs should be treated in the same manner as missed dockets for other non-LAG goods.

 For more details see '*Missed dockets*' later in this section.

### **Discrepancies at the airport**

If a discrepancy is detected such as<sup>97</sup>:

- a package is not sealed or has been tampered with
- the invoice enclosed in the bag does not correspond with the attached outside invoice
- there is no enclosed invoice or attached outside invoice
- the package contains goods that are not as specified in the enclosed or attached invoice, or
- the package does not contain the goods that are specified on the attached invoice

you must provide us with:

- the name of the relevant traveller
- particulars of the intended exportation of the goods by the relevant traveller on the relevant flight or voyage such as
  - date and time of departure
  - relevant flight number and destination of the flight
  - relevant voyage, name of the ship and number or destination of the voyage
- the nature of the discrepancy.

You should include shortages detected in this way on your next duty-free operator return and pay the appropriate excise duty.

### **Internet and telephone sales**

You or your staff (including the proprietor and the proprietor's servants and agents) can agree to sell duty free goods through the internet or over the phone as long as<sup>98</sup>:

- the person is a relevant traveller

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<sup>96</sup> Section 39 of the Excise Regulation.

<sup>97</sup> Subsections 38(4) and (5) of the Excise Regulation.

<sup>98</sup> Subsection 32(2) of the Excise Regulation.

- details of their intended travel have been given, and
- the agreement is subject to the condition that the sale takes place in the shop (that is the relevant traveller must pick the goods up from the shop).

Prior to the delivery of goods you must sight the ticket for the relevant flight which must match with the details provided at the time the agreement was entered into.<sup>99</sup>

### **Conditions travellers must be made aware of**

You must ensure that relevant travellers are made aware of any conditions of a permission with which the traveller is required to comply.<sup>100]</sup>

Travellers must, when they take possession of the goods, sign an approved form acknowledging their obligations concerning the export of the goods.<sup>101</sup>

Obligations of the relevant traveller are they:

- shall not remove, alter or otherwise interfere with an invoice attached outside the sealed package (except LAGs)<sup>102</sup>
- shall not break the seals or otherwise tamper with the integrity of the package<sup>103</sup>
- when taking a sealed package into a departure area or checking in a sealed package as baggage shall<sup>104</sup>
  - present the package sealed and with the outside invoice attached, and permit examination of the package and removal of the invoice by the duty free shop proprietor's agent.<sup>105</sup>

### **Sales to Diplomats, Consuls, Navy**

In some circumstances, we may grant you permission to make sales to persons or organisations who are not relevant travellers. This includes sales to diplomatic missions, consular posts and the Royal Australian Navy.

If you make sales to the Navy, diplomatic missions or consular posts you may be entitled to a remission of the excise duty.<sup>106</sup> You should retain relevant documentary orders as proof of this entitlement.

 For more information see *Chapter 9 – Remissions and exemptions*.

<sup>99</sup> Subsection 32(3) of the Excise Regulation.

<sup>100</sup> Paragraph 61D(10)(a) of the Excise Act.

<sup>101</sup> Section 33 of the Excise Regulation.

<sup>102</sup> Section 41 of the Excise Regulation.

<sup>103</sup> Section 41 of the Excise Regulation.

<sup>104</sup> Section 42 of the Excise Regulation.

<sup>105</sup> This is normally a firm contracted by the duty free shop to 'pluck' the invoices. They are known as Duty Free Security. Section 42 of the Excise Regulation.

<sup>106</sup> Section 8 of the Excise Regulation.

## ***Record keeping and reporting***

### *What records need to be kept?*

You must keep, and make available to us when requested, records as directed.<sup>107</sup>

These will typically include proof of export of goods that have been delivered to a relevant traveller. This may be the electronic record of invoice numbers of dockets removed and provided to you by Duty Free Security.<sup>108</sup>

You may also be required to notify us of all sales made to which your permission applies.<sup>109</sup>

Further records to keep may include:

- copy of the sales invoice
- photocopy of the travel documents attached to the sales invoice
- stock records for excisable products
- underbond delivery notes for goods received from suppliers
- underbond delivery notes for goods removed
- copies of approved single movement permissions (SMP) for movement in and out of your licensed premises
- copies of approved remissions
- orders for goods delivered as excise free goods in prescribed circumstances such as diplomatic and consular sales
- documentation relating to your physical stocktakes.

### *What reports need to be prepared?*

#### Prior to departure

If we direct you to, you must provide the following sales information prior to the date of departure of the flight or voyage<sup>110</sup>:

- name of shop
- name of relevant traveller
- details in relation to relevant flight or voyage
  - date and time of departure, and
  - flight number or name of ship and voyage number
- full description of any item included in the sale with a sale value of \$500 or more
- the total number of items of the goods included in the sale
- total number of specially sealed packages in which the goods included in the sale are packed
- the total number of the specially sealed packages

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<sup>107</sup> Section 50 and paragraph 61D(7)(c) of the Excise Act.

<sup>108</sup> Paragraph 61D(10)(b) of the Excise Act and section 46 of the Excise Regulation.

<sup>109</sup> Paragraph 61D(7)(c) of the Excise Act.

<sup>110</sup> Subsections 37(1), (2) and (3) of the Excise Regulation.



- that are able to be carried in the cabin of the aircraft or ship
- that are not able to be carried in the cabin of the aircraft or ship, and
- the invoice numbers in respect of all invoices relating to the sale.

### Proof of export

You must provide proof of export in the following manner:

- an electronic record must be made of the invoice numbers of all retrieved (plucked) invoices/sales dockets, and
- the electronic records must be created within 10 working days after the date of departure of the relevant traveller.<sup>111</sup>

### Missed dockets

Within 21 working days after the end of the month you must lodge a return stating<sup>112</sup>:

- the name of the duty free shop
- the invoice number of each invoice
  - which has been prepared as set out in 'Invoice preparation' in this section
  - with a date of the proposed departure that is in that month, and
  - for which a copy **has not** been removed as set out in 'Procedures to be followed at the Airport' in this section
- full invoice details as set out in 'Invoice preparation' in this section, and
- the amount of excise duty payable in respect of the goods to which the invoice relates.

This is done by completing a *Duty-free operator return* (NAT 10405) and sending it to us.

You must pay to us the sum of the amounts of excise duty payable, at the rate in force when the goods were delivered to the relevant traveller.<sup>113</sup>

A 'nil' return is still required even if no stock shortages or missed dockets are identified.

 *Duty-free operator returns* and rates of duty can be found on our website at [www.ato.gov.au](http://www.ato.gov.au)

### **6.2.3 Outwards duty free shops – on-airport**

On-airport outward duty free shops are located after the Customs processing point.

Sale or delivery of duty free goods is only permitted to a 'relevant traveller'<sup>114</sup> who is able to show a ticket or other approved documentation that shows an international flight or voyage.<sup>115</sup> There is no requirement for the duty-free goods sold at on-airport duty free shops to be in sealed bags.

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<sup>111</sup> Section 46 of the Excise Regulation.

<sup>112</sup> Section 39 of the Excise Regulation.

<sup>113</sup> Section 59 of the Excise Regulation.

<sup>114</sup> Subsection 32(1) of the Excise Regulation.

<sup>115</sup> Subsection 32(2) of the Excise Regulation.

You must follow specific procedures in the invoicing of goods.

### ***Sales to 'relevant travellers'***

#### *Invoice preparation*

When you make a sale to a relevant traveller you must prepare, in duplicate, an invoice, being one of a series of sequentially numbered invoices, specifying<sup>116</sup>:

- the following particulars of the intended relevant flight or voyage
  - date of departure
  - flight number or other designation of the relevant flight
- a precise description of the goods, including
  - quantity, in figures, of each item of the goods
  - the sale value, in figures, of each item or quantity of items, and
  - the total sales value of those items and quantities of items.

Aircraft crew (or the pilots) are also eligible to purchase goods from you when they comply with the definition of 'relevant traveller'. In addition to the above, you must also record on the sales invoice<sup>117</sup>:

- the name and usual residential address of the relevant traveller, and
- the airport of departure.

You must prepare the invoices in a way that would make it impracticable to add other items to the description.<sup>118</sup>

#### *Distribution of invoices*

You must<sup>119</sup>:

- give one copy to the relevant traveller, and
- retain one copy for your records.

#### *Internet and telephone sales*

You or your staff (including the proprietor and the proprietor's servants and agents) can agree to sell duty free goods through the internet or over the phone as long as<sup>120</sup>:

- the person is a relevant traveller
- details of their intended travel have been given, and
- the agreement is subject to the condition that the sale takes place in the shop, that is the traveller picks the goods up in the shop.

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<sup>116</sup> Subsections 45(1) to (3) of the Excise Regulation.

<sup>117</sup> Subsections 45(1) to (3) of the Excise Regulation.

<sup>118</sup> Subsection 45(3) of the Excise Regulation.

<sup>119</sup> Subsection 45(4) of the Excise Regulation

<sup>120</sup> Subsection 32(2) of the Excise Regulation.

Prior to handing the goods to the traveller, you must sight the ticket for the relevant flight which must match with the details provided at the time the agreement was entered into.<sup>121</sup>

### ***Record keeping and reporting***

#### *What records need to be kept?*

You must keep, and make available to us when requested, records as directed.<sup>122</sup>

You may also be required to notify us of all sales made to which your permission applies.<sup>123</sup>

These records may include:

- sales of excisable product
- stock records for excisable products
- underbond delivery notes for goods received from suppliers
- underbond delivery notes for goods removed
- copies of approved single movement permissions (SMP) for movement in and out of your licensed premises
- copies of approved remissions, and
- documentation relating to your physical stocktakes.

#### *What reports need to be prepared?*

You are not required to provide any particular reports however you may be directed to supply specific returns. If this is the case you will receive a specific direction to do so.

## **6.2.4 What happens when the traveller does not export goods?**

### ***The traveller's responsibilities and duties***

If a traveller does not export the goods on the relevant flight or voyage they must, by noon of the next working day after the scheduled departure time:

- notify you<sup>124</sup>
  - if the traveller intends to export the goods on a subsequent flight or voyage, departing not more than 48 hours after the initial scheduled time, they must notify you of that intention along with the flight or voyage numbers and date and intended time of departure, or
  - if the traveller no longer intends to travel they must notify you no later than the close of business on the second working day after the initial scheduled departure time, and return the goods to your shop, and
- if having notified you that they intend departing on a flight or voyage as above, and they do not export the goods they must<sup>125</sup>

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<sup>121</sup> Subsection 32(3) of the Excise Regulation.

<sup>122</sup> Section 50 and paragraph 61D(7)(c) of the Excise Act.

<sup>123</sup> Paragraph 61D(7)(c) of the Excise Act.

<sup>124</sup> Section 43 of the Excise Regulation.


<sup>125</sup> Subsections 43(5) and (6) of the Excise Regulation.

- notify you that the goods have not been exported, not later than noon on the next working day after the specified date of departure, and
- return the goods to your shop no later than the close of business of the second working day after the specified date of departure.

### ***Your responsibilities and duties***

You must:


- take returned goods back into stock (to be able to account for the sales invoice)<sup>126</sup>, or
- advise us of goods that were not exported via the *Duty-free operator return* that you are obliged to submit monthly<sup>127</sup>, and
- pay us the sum of the amounts of excise duty specified in the return.<sup>128</sup>

 For more information about how to calculate and pay excise duty see *Chapter 8 – Accounting for excisable goods*

### **6.2.5 Prevention of collusion**

You or your staff must not collude with passengers to obtain duty free goods. You must not enter into an arrangement with a traveller where goods delivered to the traveller under the permission are to<sup>129</sup>:

- be transferred to you upon return of the relevant traveller to Australia, or
- remain with you.

 Any such collusion may result in the revocation of your permission and/or a court imposed penalty.

## **6.3 What do I do if I need more information?**

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## **6.4 What penalties can apply to offences in relation to duty free shops?**

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

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<sup>126</sup> Section 43 of the Excise Regulation.

<sup>127</sup> Section 39 of the Excise Regulation.

<sup>128</sup> Section 39 of the Excise Regulation

<sup>129</sup> Subsection 32(4) of the Excise Regulation.

#### 6.4.1 Move, alter or interfere

If you move, alter or interfere with excisable goods that are subject to excise control, without permission, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>130</sup>

Note: This includes moving underbond excisable goods from your premises to any other location or for export.

If your movement of underbond excisable goods does not comply with the permission to move the underbond excisable products, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>131</sup>

#### 6.4.2 Deliver

If you **deliver excisable goods into the Australian domestic market** contrary to your permission, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>132</sup>

#### 6.4.3 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.

#### 6.4.4 Evade

If you evade payment of any duty which is payable, the maximum penalty is five times the amount of duty on the excisable goods or where a court cannot determine the amount of that duty the penalty is a maximum of 500 penalty units.<sup>133</sup>

#### 6.4.5 False or misleading statements

If you make a false or misleading statement to us, the penalty is a maximum of 50 penalty units.<sup>134</sup>

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<sup>130</sup> Section 61 of the Excise Act.

<sup>131</sup> Section 61A of the Excise Act.

<sup>132</sup> Section 61C of the Excise Act.

<sup>133</sup> Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.

<sup>134</sup> Section 120 of the Excise Regulation.

## CHAPTER 7 – Making duty free sales: inwards

### Purpose

This chapter deals with:

- making inwards duty free sales
- conditions travellers must be made aware of, and
- penalties that can apply to offences in relation to duty free shops.

### 7.1 Introduction

In general terms, inwards duty free shops will not pay duty. However, excise duty will be payable when excisable goods are unable to be accounted for (for example, stock shortages).

This chapter focuses on the rules that you need to follow when making duty free sales from an inwards duty free shop.

### 7.2 Policy and practice

#### 7.2.1 Inwards duty free shops

An inwards duty free shop is authorised to sell **airport shop goods** which can be excisable or customisable goods. The ATO provides authorisation for excisable goods while ABF is responsible for authorisations dealing with imported goods.

Inwards duty free shops sell to relevant travellers who have just completed an international flight from a place outside Australia and are purchasing excisable product prior to clearing the Customs barrier.

Purchases of excisable goods by inward travellers form part of the (Customs) passenger concession. Provided the excisable goods are within the passenger concession limits they remain free of duty.<sup>135</sup>

Specific controls on inwards duty free shops exist so that sales can only be made to relevant travellers.

#### *Identifying a 'relevant traveller'*

You must not sell goods to a person in your shop unless the person<sup>136</sup>:

- is a relevant traveller<sup>137</sup>, and
- shows a ticket or other document that confirms that they have arrived in Australia on an international flight.

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<sup>135</sup> Table item 7 in clause 2 of Schedule 1 of the Excise Regulation.

<sup>136</sup> Subsection 52(1) of the Excise Regulation.

<sup>137</sup> Subsection 61E(1) of the Excise Act.

### ***Mandatory signage***

You must prominently display signs that clearly state<sup>138</sup>:

- the amount of alcohol products that may be entered for home consumption, by a relevant traveller, free of excise duty, and
- the conditions (if any) under which, for the purposes of the Excise Act, a traveller needs to comply in relation to their purchase.

### ***Internet and telephone sales***

You may arrange sales through the internet or phone. You can do so as long as<sup>139</sup>:

- the person is, or intends to be, a relevant traveller
- they give details of their intended arrival in Australia (including the flight number or other destination of the international flight)
- you inform the traveller of
  - the amount of alcohol that may be entered free of excise duty, and
  - the conditions (if any) under which, for the purposes of the Customs Act, a traveller is to comply in relation to the purchase of the goods, and
- the agreement is subject to the condition that the sale takes place in the shop, that is the traveller picks the goods up in the shop.

Prior to handing the goods to the traveller, you must sight the ticket or other document for the relevant flight confirming the details provided at the time the agreement was entered into.<sup>140</sup>

### ***Record keeping and reporting***

*What records need to be kept?*

You must keep records as specified and may be required to notify us of all sales made to which your permission applies.<sup>141</sup>

These records may include:

- sales of excisable product
- stock records for excisable products
- underbond delivery notes for goods received
- underbond delivery notes for goods removed
- copies of approved single movement permissions (SMP) for movement in and out of your licensed premises
- copies of approved remissions, and
- documentation relating to your physical stocktakes.

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<sup>138</sup> Section 53 of the Excise Regulation.

<sup>139</sup> Subsection 52(2) of the Excise Regulation.

<sup>140</sup> Subsection 52(3) of the Excise Regulation.

<sup>141</sup> Paragraph 61E(6)(b) of the Excise Act.

*What reports need to be prepared?*

You are not required to prepare any special reports.

## **7.3 Procedures**

### **7.3.1 What do I do if I need more information?**

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#)

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## **7.4 What penalties can apply to offences in relation to duty free shops?**

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

### **7.4.1 Move, alter or interfere**

If you move, alter or interfere with excisable goods that are subject to excise control, without permission, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>142</sup>

Note: This includes moving underbond excisable goods from your premises to any other location or for export.

If your movement of underbond excisable goods does not comply with the permission to move the underbond excisable alcohol products, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>143</sup>

### **7.4.2 Deliver**

If you deliver excisable goods into the Australian domestic market contrary to your permission, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>144</sup>

### **7.4.3 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.

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<sup>142</sup> Section 61 of the Excise Act.

<sup>143</sup> Section 61A of the Excise Act.

<sup>144</sup> Section 61C of the Excise Act.



#### **7.4.4 Evade**

If you evade payment of any duty which is payable, the maximum penalty is five times the amount of duty on the excisable goods or where a court cannot determine the amount of that duty the penalty is a maximum of 500 penalty units.<sup>145</sup>

#### **7.4.5 False or misleading statements**

If you make a false or misleading statement to us, the penalty is a maximum of 50 penalty units.<sup>146</sup>

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<sup>145</sup> Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.

<sup>146</sup> Section 120 of the Excise Regulation.

## CHAPTER 8 – Accounting for excisable goods

### Purpose

This chapter deals with:

- accounting for excisable goods
- how to work out the amount of duty to pay
- what to do if you have a dispute as to the duty
- destruction of deteriorated stock
- how to lodge duty-free operator returns, and
- penalties that can apply to offences in relation to accounting for goods.

### 8.1 Introduction

In general terms, duty free shops will not pay duty. However, excise duty will be payable when excisable goods are not taken overseas or are unable to be accounted for (for example, stock shortages).

This chapter explains when and how to pay excise duty.

### 8.2 Policy and practice

#### 8.2.1 Do I have to account for excisable goods?

Where you have or had possession, custody or control of any excisable goods<sup>147</sup> (subject to our control), you have to be able to satisfactorily account for them.

If we ask you to account for excisable goods, and you cannot satisfactorily do so, then you may be required to pay an amount equal to the duty. If we require this payment you will be given a written demand. 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 goods you must be able to show that:

- the goods are still at your premises
- the goods have otherwise been dealt with in accordance with the law (for example, moved under a movement permission or delivered to a relevant traveller)
- duty was not payable (for example, where a remission applied), or
- duty has been paid.

Excisable goods will not have been accounted for satisfactorily just because they were:

- given away for promotional purposes<sup>148</sup>
- stolen from licensed premises<sup>149</sup>, or

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<sup>147</sup> Section 60 of the Excise Act.

<sup>148</sup> ATO Interpretative Decision ATO ID 2004/61 *Excise: goods given away without payment of excise duty.*

<sup>149</sup> 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.*

- **delivered into the Australian domestic market** under the mistaken belief that they were not excisable.<sup>150</sup>

We may also demand payment from you if you have failed to keep excisable goods safely (for example, if you have a break-in and a theft occurs, you will be required to pay an amount equal to the excise duty that would have applied to the excisable goods that have been stolen).

Our decision to demand payment is a reviewable decision.<sup>151</sup>

 For information about your review rights refer to *Chapter 10 – Reviews and objections*.

In determining whether you have accounted for the excisable goods, we may allow you to offset any stock shortages and surpluses.

### Example 8A

A duty free shop is asked to account for their excisable alcohol products. They carry out a stocktake and there is a surplus of 50 bottles of Brand X gin @ 40% by volume of alcohol and a shortage of 200 bottles of Brand Y gin @ 40% by volume of alcohol.

We will allow the duty free shop to offset the surplus and shortage. Therefore, there are 150 bottles that have not been accounted for.

A demand will be issued for an amount equal to the excise duty payable on the 150 bottles.


The duty free shop corrects book stock to take up the surplus floor stock of 50 bottles and, when the demand is paid, write off the shortage of 200 bottles.

### Example 8B

A duty free shop is asked to account for their excisable alcohol products. They carry out a stocktake and there is a surplus of 25 bottles of Brand A Australian rum at 38% by volume of alcohol, and a shortage of 10 bottles of Brand B Australian whisky at 38% by volume of alcohol.

We will allow the duty free shop to offset the surplus and shortage. Therefore, there are no bottles that have not been accounted for but there is a surplus of 15 bottles.

The licence holder corrects book stock to take up the surplus floor stock of 25 bottles of rum and write off the shortage of 10 bottles of whisky

 If you store both imported and excisable goods, you cannot offset one against the other.

## 8.2.2 How do I work out the amount of duty to pay?

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

- check whether your goods are excisable goods according to the Schedule to the Excise Tariff Act<sup>152</sup> and identify the correct duty rate
- work out the quantity of excisable goods subject to duty, in each tariff subitem,

<sup>150</sup> ATO Interpretative Decision ATO ID 2004/62 *Excise: goods sold without payment of excise duty*.

<sup>151</sup> Section 162C of the Excise Act.

<sup>152</sup> See our website at [www.ato.gov.au](http://www.ato.gov.au) for the latest version of the Schedule to the Excise Tariff Act.

- multiply the quantity of excisable goods by the rate of duty on the excisable goods, and
- add up the total for each subitem to work out total duty to be paid.

### ***(i) Classifying excisable goods***

The Schedule to the Excise Tariff Act (Schedule) lists those goods that, if manufactured in Australia, are subject to excise. The Schedule also contains the rate of duty applicable to the goods. For excisable alcohol, an extract of the Schedule is as follows:

| Tariff Item | Subitem | Description of Goods  | Rate from 2 August 2021       |
|-------------|---------|---|-------------------------------|
| 3           |         | Spirits; Other excisable beverages exceeding 10% by volume of alcohol |                               |
|             | 3.1     | Brandy  | \$83.04* per litre of alcohol |
|             | 3.2     | Other excisable beverages exceeding 10% by volume of alcohol          | \$88.91* per litre of alcohol |

\* Rate of duty as at 2 August 2021. For the current rates of duty, refer to the tables on our website at [Excise duty rates for alcohol | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/Excise-duty-rates-for-alcohol).

### ***(ii) Working out quantities of excisable goods***

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

Alcohol quantity is measured in litres of alcohol, or Lals which is calculated by measuring the total volume and multiplying it by the strength.

#### **Example 8C**

My Duty Free Shop in April 2021 has identified two cartons of Australian brandy and one carton of Australian gin missing following a stocktake. The brandy is classified under subitem 3.1 and the gin is an 'other excisable beverages exceeding 10% by volume of alcohol' classified to subitem 3.2 in the Schedule to the Excise Tariff Act.

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

$$2 \times 12 \times 0.7 = 16.8 \text{ litres} \times 37.2\% = 6.24 \text{ Lals}$$

The dutiable quantity of alcohol in the one carton which contains 12 x 700 ml bottles of gin, at 40.0% alcohol by volume is:

$$1 \times 12 \times 0.7 = 8.4 \text{ litres} \times 40\% = 3.36 \text{ Lals}$$

#### *Precision requirements for calculations and reporting*

When calculating quantities of excisable alcohol products, the acceptable level of precision for working out volumes or litres of alcohol (Lals) is two decimal places.

When completing your duty-free operator return, the dutiable quantity in Lals for goods classified to a particular tariff item or subitem in the Schedule to the Excise Tariff Act may be truncated to one decimal place. Truncation to one decimal place means that anything after the first decimal place is disregarded.

### **Example 8D**

The dutiable total for missing goods identified, by My Duty Free Shop, under subitem 3.1 in the Schedule to the Excise Tariff Act is 6.24 Lals and for goods under subitem 3.2 in the Schedule to the Excise Tariff Act is 3.36 Lals.

On the duty-free operator return, My Duty Free Shop reports the dutiable totals as:

Subitem 3.1 – 6.2 Lals

Subitem 3.2 – 3.3 Lals

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

### ***(iii) Calculating duty payable on excisable goods***

The rate of duty is set in the table in the Schedule to the Excise Tariff Act. The rates of duty on excisable alcohol is subject to change. They are indexed twice a year in accordance with increases in the CPI (usually on 1 February and 1 August).<sup>153</sup> For ease of reference we provide tables with up to date duty rates, incorporating indexation changes, on our website at [Excise duty rates for alcohol | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/Excise-duty-rates-for-alcohol)

The rate of duty you use is the rate contained in the working tariff for the subitem.

### **Example 8E**

On 18 August 2021 My Duty Free Shop discovers a shortage of underbond brandy and underbond gin.


The brandy is classified to subitem 3.1 in the Schedule to the Excise Tariff Act.

The gin is an 'other excisable beverages exceeding 10% by volume of alcohol' classified to subitem 3.2 in the Schedule to the Excise Tariff Act.

The rate of duty that applies is the rate in force at the time the stocktake was conducted on 18 August 2021:

subitem 3.1 – \$83.04 per litre of alcohol

subitem 3.2 – \$88.91 per litre of alcohol

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

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<sup>153</sup> Section 6A of the Excise Tariff Act.

### Example 8F

Continuing on from the previous examples, on 18 August 2021 My Duty Free Shop discovers a shortage of two cartons each containing 12 x 700ml bottles of brandy at 37.2% alcohol by volume and one carton containing 12 x 700ml bottles of gin at 40.0% alcohol by volume.

The brandy is classified to subitem 3.1 in the Schedule to the Excise Tariff Act and has a duty rate of \$83.04 per litre of alcohol (as at 2 August 2021).

Therefore, the duty payable is calculated as follows:

2 cartons x 12 bottles x 0.7 litres each = 16.8 litres

16.8 litres x 37.2% = 6.24 Lals

6.24 Lals truncated to one decimal point = 6.2 Lals

6.2 Lals x \$83.04 = \$514.848

\$514.848 of duty is truncated to two decimal points = \$514.84

The gin is classified to subitem 3.2 in the Schedule to the Excise Tariff Act and has a duty rate of \$88.91 per litre of alcohol (as at 2 August 2021).

Therefore, the duty payable is calculated as follows:

1 carton x 12 bottles x 0.7 litres each = 8.4 litres

8.4 litres x 40.0% = 3.36 Lals

3.36 Lals truncated to one decimal point = 3.3 Lals

3.3 Lals x \$88.91 = \$293.403

\$293.403 of duty is truncated to two decimal points = \$293.40

### (iv) Calculating total duty payable

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

### Example 8G

My Duty Free Shop needs to report deliveries for the period ended 30 April 2020.

On their duty-free operator return, My Duty Free Shop reports their duty liability as:

| Line  | Tariff item | Quantity | Units | Duty rate | Excise amount |
|-------|-------------|----------|-------|-----------|---------------|
| 1     | 3.1         | 6.2      | Lals  | \$83.04   | \$514.84      |
| 2     | 3.2         | 3.3      | Lals  | \$88.91   | \$293.40      |
| TOTAL |             |          |       |           | \$808.24      |

### 8.2.3 What do I do if I have a dispute as to the duty?

You may deposit with us the amount of duty demanded if you dispute<sup>154</sup>:

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

<sup>154</sup> 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 a duty-free operator return. The duty-free operator return should be accompanied by a letter which sets out the details of the dispute.



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

The deposit you made will be the proper duty unless you commence court action against us, within six months after you make the deposit, and that action is determined in your favour.

If any action is determined in your favour, any excess of the deposit over the proper duty will be refunded to you along with payment of interest, calculated at 5% p.a.

If the action is not commenced within six months or the court does not find in your favour the amount deposited is taken to be the correct amount of duty.

However, you may not commence court action if you have a taxation objection under Part IVC of the TAA against a private ruling and the matter of the objection<sup>155</sup>:

- relates to the amount or rate of duty, or
- the liability of the goods to duty, and
- the matter of the objection is also in dispute.

Delivery of the goods and payment of interest do not apply in cases where we are of the opinion that any evasion of the excise duty under the Excise Act has been committed or attempted.

## 8.3 Procedures

### 8.3.1 Destruction of deteriorated stock

If excisable goods under your control need to be destroyed for any reason (for example, old stock or damaged) there are special procedures that must be followed.



For more information see *Chapter 9 – Remissions and exemptions*.

### 8.3.2 How do I lodge duty-free operator returns and pay excise duty?

Information on how to lodge your duty-free operator return (NAT 10405) is within this [link](#).

You can pay excise duties:

- by electronic funds transfer, including direct credit and BPAY
- in person at a Post Office
- by credit card, or
- by mail (cheque or money order).

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, for further information, **1800 815 886** and supply us with your Australian Business Number (or Excise Identification Number) and client account number.

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<sup>155</sup> Section 155 of the Excise Act.

- To obtain a *duty-free operator return* (NAT 10405):
- visit our website at [www.ato.gov.au](http://www.ato.gov.au), or
  - phone **1300 137 290**.

### 8.3.3 What do I do if I need more information?

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## 8.4 What penalties can apply to offences in relation to accounting for excisable goods?

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

### 8.4.1 Move, alter or interfere

If you move, alter or interfere with excisable goods that are subject to excise control, without permission, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>156</sup>

**Note:** This includes moving underbond excisable goods from your premises to any other location or for export.

### 8.4.2 Deliver

If you deliver excisable goods into the Australian domestic market contrary to your permission, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>157</sup>

### 8.4.3 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.

### 8.4.4 Evade

If you evade payment of any duty which is payable, the maximum penalty is five times the amount of duty on the excisable goods or where a court cannot determine the amount of that duty the penalty is a maximum of 500 penalty units.<sup>158</sup>

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<sup>156</sup> Section 61 of the Excise Act.

<sup>157</sup> Section 61C of the Excise Act.

<sup>158</sup> Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.



### **8.5.5 False or misleading statements**

If you make a false or misleading statement to us, the penalty is a maximum of 50 penalty units.<sup>159</sup>

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<sup>159</sup> Section 120 of the Excise Act.

## CHAPTER 9 – Remissions and exemptions

### Purpose

This chapter deals with:

- when you can apply for a remission
- when excisable goods are exempt from excise duty
- who can access excisable goods free of excise duty
- how to apply for a remission
- how to obtain permission to deliver goods to diplomatic and consular personnel
- what requirements must be met to make sales to diplomatic and consular personnel, and
- penalties that can apply to offences in relation to remissions and exemptions.

### 9.1 Introduction

A remission of excise duty extinguishes the liability for duty that was created at the point of manufacture. If the remission is approved, you are no longer liable for the duty.

In some circumstances the excise duty may be subject to a complete or partial remission.<sup>160</sup>

### 9.2 Policy and practice

#### 9.2.1 When can I apply for a remission of excise duty?

You can apply for a remission of excise duty payable on your excisable goods if the following circumstances apply while the goods are subject to excise control<sup>161</sup>:

- Where the excisable goods have deteriorated or been damaged, pillaged, lost or destroyed, or become unfit for human consumption<sup>162</sup>
- Where the goods are not worth the amount of excise duty payable on the goods.<sup>163</sup>



'Pillaged' means to strip of money or goods by open violence, as in war; plunder.<sup>164</sup> This does not cover simple cases of theft.



For more information about payment of duty see *Chapter 8 – Accounting for excisable goods*.

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<sup>160</sup> Section 78 of the Excise Act.

<sup>161</sup> Section 8 of the Excise Regulation.

<sup>162</sup> Section 8 and table item 1 in clause 1 of Schedule 1 to the Excise Regulation.

<sup>163</sup> Section 8 and table item 2 in clause 1 of Schedule 1 to the Excise Regulation.

<sup>164</sup> The Macquarie Dictionary – Macquarie Multimedia Version 5.0.0.

### Example 9A

A carton of bottled brandy is dropped inside the duty free shop damaging the contents. The duty free shop applies for a remission of duty on the damaged goods. On receiving approval, the duty free shop destroys the damaged goods and retains records of the destruction.

### Example 9B

Other excisable beverages containing milk products remain unsold in a duty free shop and have deteriorated to a point where they are unfit for human consumption. The duty free shop applies for a remission of duty on the beverages. On receiving approval, the duty free shop destroys the unsaleable stock and retains records of the destruction.




### Example 9C

A carton of spirits is water damaged and the packaging and labels of the bottles is severely affected. They would only be able to be sold at a greatly reduced price, which is less than the excise duty that would be payable on the spirits. The duty free shop applies for a remission of duty on the beverages. On receiving approval, the duty free shop destroys the unsaleable stock and retains records of the destruction.


## 9.2.2 How do I apply for a remission?

An application for a remission must be submitted in writing. Records to substantiate your claims must be maintained and produced when requested.<sup>165</sup>

To ensure the excisable goods do not find their way into the Australian domestic market we may wish to inspect or supervise the disposal of the goods. If underbond goods must be destroyed off site, you must apply for a movement permission to move them from the licensed premises to the place of destruction.

-  Unless excisable goods have been accidentally destroyed, you should contact us before moving or destroying any that are subject to remission. 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*.
-  To apply for a remission, send us a completed Excise remission (NAT 4289). You can use the Excise remission instructions (NAT 15769) to help you complete this form.

If you are not satisfied with our decision to refuse your remission, you can request a review of our decision by lodging an objection within 60 days.

-  For information about your review rights refer to *Chapter 10 – Reviews and objections*.

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<sup>165</sup> Section 10 of the Excise Regulation.

### 9.2.3 When are excisable goods not liable to excise duty?

Excisable goods are not liable to duty if they are:

- sold for use as ship's or aircraft's stores<sup>166</sup>, or
- subject to remission without application.<sup>167</sup>

#### ***What are ship's and aircraft's stores?***

Ship's and aircraft's stores are goods for the use of passengers or crew on international journeys or for the service of ships or aircraft on international journeys (for example, alcohol for sale to passengers on board a cruise liner).

There are limits on the quantities of excisable products that are not liable to excise duty as ship's or aircraft stores.<sup>168</sup>

Excisable alcohol beverages other than beer must not be sold to a passenger or crew other than by the glass or by nip.<sup>169</sup>

If you supply ship's or aircraft's stores underbond, you must obtain a movement permission to move the goods from the licensed premises to the place of export.

#### ***When are excisable goods subject to remission without application?***

Excisable goods are subject to remission without application (this effectively means they are free from duty) when they are sold by duty free shops:

- to diplomatic missions and foreign consular posts for official use but not for trade<sup>170</sup> (see section 9.3.1), and
- for use by the personnel of sea-going vessels of the Australian Defence Force.<sup>171</sup>

Some restrictions apply to excisable goods for the Australian Defence Force:

- 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.<sup>172</sup>
- Only certain excisable goods are eligible for this concession, including
  - ale, port and other beer
  - brandy
  - whisky
  - rum

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<sup>166</sup> Section 160A of the Excise Regulation.

<sup>167</sup> Section 8 of the Excise Regulation.

<sup>168</sup> Section 55 of the Excise Regulation.

<sup>169</sup> Subsection 55(2)(a) of the Excise Regulation.


<sup>170</sup> Item 8 of Clause 2 of Schedule 1 to the Excise Regulation.

<sup>171</sup> Item 6 of Clause 2 of Schedule 1 to the Excise Regulation.

<sup>172</sup> Item 6(b) of Clause 2 of Schedule 1 to the Excise Regulation.

- gin
- liqueurs, and
- tobacco goods.

To supply excisable goods 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.

-  You do not have to apply for a remission and you do not have to include these transactions on a duty-free operator return.

## 9.3 Procedures

### 9.3.1 How do I get permission to deliver goods to diplomatic missions and consular personnel?

Duty free Shops are only allowed to sell underbond goods to diplomatic missions (embassies) and consular posts and claim a remission without application, providing that they have applied for and been granted a separate permission to deliver goods for home consumption 'without entry' to diplomatic and consular personnel.<sup>173</sup>


A periodic settlement permission (PSP) is the most common arrangement for the recurrent delivery of goods subject to excise into the Australian domestic market. A PSP allows the reporting of deliveries and payment of duty owed on a periodic basis **after** the goods have been delivered into the Australian domestic market.<sup>174</sup>

Your PSP will be conditioned to only allow duty free deliveries to diplomatic missions and consular posts<sup>175</sup>. As sales to diplomatic missions and consular posts are not liable to excise duty, the period for lodging returns can be set for any period (for example, weekly, monthly or annually)<sup>176</sup>. Your PSP requires you to lodge an excise return (even a 'nil' return) following the end of the set period.<sup>177</sup>

If you apply for a storage licence with permission to sell duty free, you can use your application form to indicate whether you need permission to deliver goods to diplomatic and consular missions. You do not need to complete a separate application.

If you originally chose not to apply for permission to deliver goods to diplomatic and consular missions, contact us and provide us in writing with your:

- licence details (if you have one), and
- reasons for applying for this permission.

-  Permission to deliver goods to diplomatic and consular missions is not transferable to another person and remains in force until revoked.

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<sup>173</sup> Item 8 of Clause 2 of Schedule 1 to the Excise Regulation.

<sup>174</sup> Section 61C of the Excise Act.

<sup>175</sup> Subsection 61C(3)(h) of the Excise Act.

<sup>176</sup> Subsection 61C(3A) of the Excise Act.

<sup>177</sup> Subsections 61C(3)(c) and 61C(3A) of the Excise Act.

We may also:

- refuse to grant permission
- impose further conditions on your permission, or
- cancel your permission.

Failure to comply with a condition may result in the cancellation of the permission. In such an instance, we would take into account a variety of factors, including your compliance history.

A decision to refuse or to cancel a permission is not reviewable under the objection process. However, there may be other avenues for review, for example, you may seek an informal review of our decision.

➤ For information about your review rights refer to *Chapter 10 – Reviews and objections*.

➤ For more information about diplomatic and consular sales, contact us by phoning **1300 137 295**.

### 9.3.2 What requirements apply to sales to diplomatic and consular personnel?

When making diplomatic and consular sales you are required to:

- only make sales after receiving official orders from appropriate diplomatic mission or consular post personnel
- only deliver goods to diplomatic mission or consular posts or authorised personnel
- ensure each order is accompanied by an appropriate invoice and retain appropriate records
- You should only accept orders on the official stationery, or official order, of eligible people or organisations. You must keep a copy of this documentation.

#### Example 9D

A duty free shop receives an order from a diplomatic mission for alcohol, for official use. The duty free shop delivers the alcohol, into the Australian domestic market (to the diplomatic mission), under the terms of their periodic settlement permission.

The duty free shop retains copies of the order, invoice and all other relevant documentation for their records.

### 9.3.3 What do I do if I need more information?

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## **9.4 What penalties can apply to offences in relation to remissions and exemptions?**

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

### **9.4.1 Deliver**

If you deliver excisable goods into the Australian domestic market contrary to your permission, the penalty is a maximum of two years in prison or the greater of 500 penalty units and five times the amount of duty on the excisable goods.<sup>178</sup>

### **9.4.2 Evade**

If you evade payment of any duty which is payable, the maximum penalty is five times the amount of duty on the excisable goods or where a court cannot determine the amount of that duty the penalty is a maximum of 500 penalty units.<sup>179</sup>

### **9.4.3 False or misleading statements**

If you make a false or misleading statement to us, the penalty is a maximum of 50 penalty units.<sup>180</sup>

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<sup>178</sup> Section 61C of the Excise Act.

<sup>179</sup> Paragraphs 120(1)(iv) and 120(2)(b) of the Excise Act.

<sup>180</sup> Section 120 of the Excise Act.

## CHAPTER 10 Reviews and objections

### Purpose

This chapter deals with:

- the types of review you can ask for
- what decisions you can object to
- how to request an informal review
- how to lodge an objection, and
- how to request an external review.

### 10.1 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:

- informal review<sup>181</sup>
- objection<sup>182</sup>, or
- external review.<sup>183</sup>

Where there is more than one review option, 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.

### 10.2 Policy and practice

#### 10.2.1 What are informal reviews?

Under the Taxpayers' Charter, you can seek an informal (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 informal review, both prior to or after receiving notification of the decision in writing.

An informal review does not waive or defer your rights to object to the decision.

However, if you choose to pursue an informal review, awaiting the outcome of the informal review may prejudice your right to object to the decision and, ultimately, your right for external review. For example, the time allowed to lodge an objection may have expired by the time an informal review is finalised.



This is particularly crucial if the original decision attracts only a 60-day objection period.

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<sup>181</sup> For example, a decision not to issue a movement permission under section 61A of the Excise Act.

<sup>182</sup> Objections are governed by Part IVC of the TAA.

<sup>183</sup> These are conducted in the Administrative Appeals Tribunal or the Federal Court.



## 10.2.2 Facilitation process

Facilitation is a process where an impartial ATO facilitator meets with you (and/or your representative) and the ATO case officer/s 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](mailto:facilitation@ato.gov.au). Alternatively the ATO may offer you facilitation to help resolve a dispute.

## 10.2.3 Can I object against any decision?

No, you can only lodge an objection against those decisions contained in sections 39Q and 162C of the Excise Act.

However, if you informally ask us to review a decision we will try to resolve any problems as quickly as possible. If we have made a mistake, we want to fix it at the least cost to both of us.

## 10.2.4 When can I seek an external review?

For decisions in relation to an objection, or 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* (ADJR Act).

# 10.3 Procedures

## 10.3.1 How do I request an informal review?

To request an informal 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.

## 10.3.2 How do I lodge 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.<sup>184</sup>

If you are a registered user, you can lodge your objection through the [Online Services for Business](#).

You can also lodge your objection via the other contact options as listed on the [excise and EEG's contact webpage](#).

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<sup>184</sup> Section 14ZU of the TAA.

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 Appeals Tribunal (AAT).

If you are dissatisfied with the objection decision, there are further review rights available to you. You can:

- apply to the AAT for a review of the decision, or
- appeal against the decision to the Federal Court.

 For To obtain a copy of our objection forms and for more information about how to lodge an objection, refer to *How to lodge an objection* on our website at [www.ato.gov.au](http://www.ato.gov.au)

For more information about what to do if you believe your legal rights or the standards outlined in the Taxpayers' Charter have not been met, refer to *If you're not satisfied* (NAT 2556).

### **10.3.3 How do I request an external review?**

We suggest you obtain legal advice if you are considering using external review options provided by the AAT or Federal Court.

### **10.3.4 What do I do if I need more information?**

If you need more information on excise, as it relates to duty free shops, contact us via the [Online Services for Business](#) or the other options as listed on the [excise and EEG's contact webpage](#).

We will ordinarily respond to written information requests within 28 days. If we cannot respond within 28 days, we will contact you within 14 days to obtain more information or negotiate an extended response date.

## CHAPTER 11 – Offences

### Purpose

This chapter deals with:

- offences under the Excise Act
- penalties
- infringement notices, and
- application of the Criminal Code.

### 11.1 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.

### 11.2 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 two 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).

Section 26 of the Excise Act prescribes that licensed manufacturers are to manufacture in accordance with the Act and their licence.

- 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: two years imprisonment or 500 penalty units.
- A licensed manufacturer must not manufacture excisable goods in contravention of this Act or the manufacturer licence. Strict liability applies.  
Penalty: 100 penalty units.

## 11.3 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 then you can receive a penalty not exceeding the penalty mentioned.<sup>185</sup> The penalty listed is thus the maximum penalty, but the courts can impose a lesser penalty.

As indicated above certain offences provide for alternative penalties, for example, subsection 33(1) of the Excise Act provides for a penalty of two years imprisonment or 500 penalty units.

For some offences if a person is convicted of that offence then the courts can impose both penalties.<sup>186</sup>



Where an offence also causes goods to be forfeited,<sup>187</sup> conviction by the courts results in the forfeited goods being condemned.<sup>188</sup> This means they are no longer your property and we can dispose of the goods as we see fit.

## 11.4 Infringement notices

We may issue an infringement notice<sup>189</sup> as an alternative to prosecution for unlawfully possessing, or unlawfully selling excisable goods.<sup>190</sup> 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.<sup>191</sup>

In the event of non-payment, prosecution action may be brought against you.

You cannot be prosecuted for the same offence where an infringement notice has been issued unless the infringement notice is withdrawn.

We can withdraw an infringement notice and if we do so after you have paid the penalty we must refund that to you.

## 11.5 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 of the Criminal Code, which are in Chapter 2, do not apply.<sup>192</sup> 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.

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<sup>185</sup> Section 5 of the Excise Act and section 4D of the Crimes Act.

<sup>186</sup> Section 127A of the Excise Act.

<sup>187</sup> Section 116 of the Excise Act.

<sup>188</sup> Section 151 of the Excise Act.

<sup>189</sup> Part XA of the Excise Act.

<sup>190</sup> Subsections 117(2) and 117B(2) of the Excise Act.

<sup>191</sup> Section 129B of the Excise Act.

<sup>192</sup> Section 6B of the Excise Act.

## Terms we use in these Guidelines

### Deliver into the Australian domestic market<sup>193</sup>

'Deliver into the Australian domestic market' is the term we use in this manual for when excisable goods 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 licensed premises 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.<sup>194</sup>

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.

### Duty-free operator return

A duty-free operator return is a document that you use if you operate a duty-free store that is:

- on-airport – to report stocktake shortages or surpluses of excisable alcohol goods
- outwards off-airport – to report missed or found dockets and stocktake shortages or surpluses of excisable alcohol goods, or
- where you also hold a licence to store excisable alcohol goods at a site that is not a duty-free store – to report any shortages or surpluses of stock at your storage site.

### Excisable goods

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, and manufactured or produced in Australia.

For operators of duty free shops this will include:

- alcohol goods that are produced or manufactured in Australia and are subject to excise, and
- imported alcohol goods that have undergone a process of manufacture or production in Australia. For example, high strength imported whisky which has been reduced by adding water (in Australia) before it is bottled, constitutes manufacture or production for excise purposes. Vodka imported in bulk and repackaged in Australia, does not constitute manufacture for excise purposes.

This will not include:

- other imported alcohol goods (because these goods are subject to customs duty)
- wine (which is generally subject to wine equalisation tax (WET)), and
- cigarettes and other tobacco goods as there is currently no licensed manufacture of tobacco in Australia.

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<sup>193</sup> Note the legislation uses the term 'delivered for home consumption' (see, for example, sections 61 and 61C of the Excise Act).

<sup>194</sup> See *R v. Lyons* (1906) 3 CLR 770; *Collector of Customs (NSW) v. Southern Shipping Co Ltd* (1962) 107 CLR 279; *Carmody v. F C Lovelock Pty Ltd* (1970) 123 CLR 1.

- For more information about customable alcoholic beverages refer to Chapter 22 of Schedule 3 to the *Customs Tariff Act 1995*.

Examples of excisable goods include Australian made:

- beer
- spirits, and
- premixed drinks known as ready-to-drink (RTD) beverages.

### **Excise control**

Section 7 of the Excise Act refers to the CEO as having general administration of this Act. In this manual we will also refer to this general administration as Excise Control.

Goods are subject to excise control from the point of manufacture until they have been delivered into the Australian domestic market (referred also as to home consumption<sup>195</sup>) or for export.

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

### **International flight**

An international flight is defined as:

- a flight, whether direct or indirect, by an aircraft between a place in Australia from which the aircraft takes off and a place outside Australia at which the aircraft lands or is intended to land<sup>196</sup>, or
- a flight, whether direct or indirect, by an aircraft between a place outside Australia from which the aircraft took off and a place in Australia at which the aircraft landed.<sup>197</sup>

### **International voyage**

An international voyage is defined as:

- a voyage, whether direct or indirect, by a ship between a place in Australia and a place outside Australia.<sup>198</sup>

### **Penalty units**

A penalty unit is specified in section 4AA of the *Crimes Act 1914*. The current value of a penalty unit is on [www.ato.gov.au](http://www.ato.gov.au) at [Penalties](#)

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<sup>195</sup> The term used in section 58 of the Excise Act is 'entry for home consumption'.

<sup>196</sup> Subsection 61D(1) of the Excise Act.

<sup>197</sup> Subsection 61E(1) of the Excise Act.

<sup>198</sup> Subsection 61D(1) of the Excise Act.

## Proprietor

In relation to a duty free shop, a proprietor is the holder of the warehouse licence that relates to the outwards duty free shop<sup>199</sup> or inwards duty free shop.<sup>200</sup>

## Relevant traveller

- For outwards duty free shop purposes – A person who intends to make an international flight or international voyage, whether as a passenger on, or as a member of the crew (or the pilot or master) of an aircraft or ship,<sup>201</sup> or
- For inwards duty free shop purposes – A person who has arrived in Australia on an international flight, whether as a passenger on, or as a member of the crew (or the pilot) of, an aircraft and has not been questioned, for the purposes of the Customs Act, by an officer of Customs, in respect of goods carried on that flight.<sup>202</sup>

## 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 9 – Remissions and exemptions*.

## Section 50 direction

This is a written instruction issued under section 50 of the Excise Act to a licensed manufacturer, or proprietor of licensed premises, to keep specified records, furnish specified returns, retain records for a specified period and produce those records on demand by us. This instruction is part of 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 excise 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.

## Warehouse licence<sup>203</sup>

Has the same meaning as it has in the *Customs Act 1901* which states:

**'Warehouse'** means a place that a person or partnership is licensed under section 79 to use for warehousing goods.<sup>204</sup>

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<sup>199</sup> Subsection 61D(1) of the Excise Act.

<sup>200</sup> Subsection 61E(1) of the Excise Act

<sup>201</sup> Subsection 61D(1) of the Excise Act.

<sup>202</sup> Subsection 61E(1) of the Excise Act.

<sup>203</sup> Subsection 61D(1) of the Excise Act.

<sup>204</sup> Subsection 4(1) of the Customs Act.

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