


TA 2021/1 - Retail sale of illicit alcohol

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Retail sale of illicit alcohol

Alerts provide a summary of our concerns about new or emerging higher risk tax or superannuation arrangements or issues that we have under risk assessment.

While an Alert describes a type of arrangement, it is not possible to cover every potential variation of the arrangement. The absence of an Alert on an arrangement or a variation of an arrangement does not mean that we accept or endorse the arrangement or variation, or the underlying tax consequences.

Refer to [PS LA 2008/15](#) for more information about Alerts. See [Alerts](#) issued to date.

Overview

We are currently reviewing a number of arrangements involving the manufacture, distribution and sale of illicit alcohol. This Alert focuses on arrangements where retailers are knowingly or recklessly purchasing illicit alcohol for the purposes of resale. 'Illicit alcohol', for the purposes of this Alert, refers to excisable alcohol on which duty has not been paid or otherwise properly acquitted. Duty is ordinarily paid by an excise licensed manufacturer or distributor and is embedded in the price of the product.

Description

The arrangements described in this Alert all involve alcohol entering the Australian market for consumption without payment of the required amount of excise duty.

A feature common to all of these arrangements is that the alcohol can be sold in retail outlets at a much greater profit and/or for a lower price than the same or similar products on which excise duty has been properly paid. This creates an unfair competitive advantage.

Retail outlets include, but are not limited to, retail bottle shops, bars and restaurants.

Illicit alcohol may be supplied directly to the retail outlet by the alcohol manufacturer (who may be licensed or unlicensed) or by a wholesale distributor. It is usually sold or offered for sale to the retail outlet for a significantly reduced price (because the selling price does not include excise duty).

Alcohol may be illicit for any of the following reasons:

- unlicensed manufacture and non-payment of duty
- licensed manufacture with unreported excise duty – including not reporting all goods delivered into home consumption on an excise return, or intentional product misclassification (that is, reported as goods with a lower excise tariff rate, or as a beverage subject to the wine equalisation tax)
- product diversion including
 - concessional spirit used for non-concessional purposes, and
 - goods reported as exported or sent for destruction and diverted back into the domestic market.

We take these illicit alcohol manufacturing and distribution behaviours very seriously and impose substantial penalties. In the most serious cases, we make referrals to the Commonwealth Director of Public Prosecutions for criminal prosecutions.

The following examples highlight the more common features of arrangements involving the retail sale of illicit alcohol.

Example 1 – ‘bonus stock’

- *An entity that holds an excise manufacturer licence sells alcohol it has manufactured to a retail bottle shop and includes in the sale a significant amount of ‘bonus stock’.*
- *The manufacturer gives the retailer an invoice for the sale for a price that seemingly includes excise duty, but the quantity of alcohol on the invoice is significantly lower than what was actually supplied (that is, the invoice does not reflect the inclusion of the bonus stock).*
- *The provision of the bonus stock to the retailer means the cost of the total supply is less than the amount of the excise duty component of the supply.*
- *The retailer sells the product at a discount, while still making a profit.*

Example 2 – low-priced stock manufactured without a licence

- *A person distils spirit without an excise manufacturer licence.*
- *The spirit is bottled and labelled to give the appearance of a legitimate product.*
- *The manufacturer details specified on the label are made up or are not those of the entity that distilled the product, and the barcode on the label belongs to an entity other than the manufacturer specified.*
- *The manufacturer does not report or pay any excise duty on the product.*
- *The manufacturer sells the product to an interposed wholesale distributor for a price that is significantly lower than the excise duty and goods and services tax (GST) that should be included in the selling price.*
- *The wholesale distributor does not hold an excise storage licence and should know the purchase price should include excise duty and GST.*
- *The wholesale distributor on-sells it to a retail outlet for a price that is less than or similar to the excise duty and GST component that should be included in the selling price.*
- *The retailer sells the product at a much cheaper price than similar alcohol products, while still making a profit.*

Example 3 – export diversion

- *An entity stores well-known brands of beer and spirits at a licensed warehouse. The goods are stored underbond.*
- *A small quantity of the beer is delivered for home consumption and the duty paid at the correct rate. The remaining beer is entered in the Integrated Cargo System (ICS) and duty paid at the correct rate, however it is not sold within Australia. The internal documents at the warehouse nevertheless indicate a sale has occurred in Australia and the goods removed.*

- *The duty-paid beer that remains in the warehouse is, in fact, loaded into a container for export. Once this occurs, relevant documentation will show all beer in the warehouse can be accounted for and the beer will have been physically removed.*
- *However, the beer that has been physically loaded for export is incorrectly declared in the ICS as spirits. It is the beer that is physically exported. Although the spirits have purportedly been exported, they have not left Australia. The spirits are instead sold into the Australian domestic market without the payment of duty.*
- *By declaring the spirits as exported, the goods can be accounted for in the relevant documents and all documentation at the warehouse and in the ICS will therefore match.*
- *The spirits, upon which no duty has been paid, are sold to the retailer at a price significantly below that which the brand would usually sell for. The product description on the invoice is vague (for example, the invoice is for 'alcohol' and exact quantities are not specified).*
- *The retailer sells the product at a discount, while still making a profit.*

Example 4 – suspicious packaging / tampered lot codes

- *A licensed manufacturer of excisable alcohol applies to the ATO for permission to destroy a specific quantity of alcohol on which duty has not been paid, and for a remission of the excise duty, on the basis the alcohol is unfit for human consumption.*
- *The ATO grants permission for the alcohol to be moved to a destruction facility and destroyed.*
- *The manufacturer sends the alcohol to the destruction facility.*
- *The alcohol is not destroyed, and is instead re-packaged or lot/batch codes are removed and supplied to a wholesale distributor, who on-sells the alcohol on which duty has not been paid to a retailer at a significantly reduced price.*
- *The retailer sells the product at a much cheaper price than similar alcohol products, while still making a profit.*

What are our concerns?

We are concerned that, as a result of entities entering into arrangements of the type described in this Alert, excisable alcohol is being sold to consumers in Australia without duty ever being paid on it. In the arrangements described in the Examples in this Alert, the retailers should know or suspect excise duty has not been included in their purchase price. This complicit (or reckless) behaviour undermines the integrity of the excise regime, deprives the community of funds required to fund essential community services, and creates an uneven playing field for businesses that comply with the law.

Penalties apply under the *Excise Act 1901* for any entity that sells (whether by wholesale or retail), offers for sale, or otherwise enters alcohol on which duty has not been paid into the Australian domestic market for consumption. These penalties include the payment of up to five times the amount of excise duty that would have been payable on the goods.

Arrangements of the type described in this Alert breach provisions in the *Excise Act 1901*, including:

- subsection 25(1) – intentionally manufacturing without a licence
- subsection 26(1) – intentionally not acting in accordance with a licence
- subsection 27(1) – intentionally manufacturing at unlicensed premises
- subsection 54(1) – non-payment of excise duty
- section 60 – failure to keep excisable goods safely and account for them
- subsection 61A(4) – move underbond excisable goods contrary to a permission
- section 62 – duty not paid on the full quantity of goods
- section 117 – unlawful possession of excisable goods, and
- section 117B – unlawfully selling excisable goods.

What are we doing?

We are currently undertaking a number of activities in relation to the arrangements outlined in this Alert and these include:

- contacting alcohol retailers about their obligations with regard to the purchase and retail sale of excisable alcohol on which duty has not been paid
- auditing entities exhibiting behaviours which suggest non-compliance with the law
- issuing demands for unpaid excise duty, including to individuals when appropriate
- monitoring information we receive on entities that may be engaging in this conduct, or facilitating non-compliant behaviour, and taking further compliance action where required
- updating our web guidance on [What attracts our attention – illicit alcohol](#)
- publishing articles in industry publications, and
- disseminating information through industry bodies.

In addition to our retailer-focused activities, we have a strong focus on the manufacturers and distributors of illicit alcohol, thereby ensuring our activities address the whole supply chain.

What should you do?

If you are offered a suspiciously cheap consignment of alcohol, it might be illicit and something you should avoid. If you think you may have purchased illicit alcohol, we can help you rectify the problem.

More specifically, if you become aware of, or have entered, or are contemplating entering, into activities described of this type we encourage you to:

- phone or email us via the contact details provided at the end of this Alert
- seek independent professional advice, and/or
- make a voluntary disclosure to reduce penalties that may apply.

To avoid the risk of becoming involved in these arrangements, we recommend retailers check our website for the excise rates on alcohol, check their internal controls (including stock controls), verify the bona fides of any new suppliers, and be alert to the following which may indicate a supplier is involved in the supply of illicit alcohol:

- the supply is at a commercially-unrealistic price given the excise duty that should apply
- the supplier is the manufacturer of the alcohol but does not hold an ATO-issued manufacturer or storage licence
- whether the product is labelled correctly (including, but not limited to, country of origin, supplier details, lot identification, barcode, tampered lot codes)
- bonus stock is offered, or received, in substantial amounts and/or on a regular basis which reduces the overall unit average price
- the amount of product specified on the invoice differs to what was delivered
- missing, vague, or incorrect product descriptions on invoices, and
- requests by suppliers to hold or temporarily store product without purchasing it.

Further information can be found on the internet at: [What attracts our attention – illicit alcohol](#), or through the contact details at the end of this Alert.

Penalties may apply to participants in, and promoters of, these types of arrangements. This includes serious penalties under Division 290 of Schedule 1 to the *Taxation Administration Act 1953* for promoters. In more serious cases, sanctions under criminal law may apply. Registered tax agents involved in the promotion of these types of arrangements may be referred to the Tax Practitioners Board to consider whether there has been a breach of the *Tax Agent Services Act 2009*.

Do you have information?

To provide information about this type of arrangement:

- phone us on **1300 137 290** (between 8am and 6pm Monday to Friday) and select option 1
- complete the [ATO Tip-Off Form](#)
- contact the officer named in this Alert.

Contact officer: Naomi Schell
Email address: naomi.schell@ato.gov.au
Telephone: (08) 8218 9226

Commissioner of Taxation
1 April 2021

References

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ATOlaw topic(s)	Excise ~ Alcohol ~ Liability Excise ~ Alcohol ~ Licensing Excise ~ Alcohol ~ Product classification Excise ~ Alcohol ~ Remissions/refunds Excise ~ Penalties ~ Penalties only
Legislative references	Excise Act 1901 25(1) Excise Act 1901 26(1) Excise Act 1901 27(1) Excise Act 1901 54(1) Excise Act 1901 60 Excise Act 1901 61A(4) Excise Act 1901 62 Excise Act 1901 117 Excise Act 1901 117B Excise Tariff Act 1921 TAA 1953 Sch 1 Div 290 Tax Agent Services Act 2009
Related practice statements	PS LA 2008/15
Authorised by	Timothy Dyce, Deputy Commissioner

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