



Explanatory Statement

Excise (Spirit blending exemptions) Determination 2020 (No. 1)

General Outline of Instrument

1. This instrument is made under subsection 77FM(3) of the *Excise Act 1901* (Excise Act).
2. The instrument specifies circumstances where spirit blending to produce spirit is not taken to constitute the manufacture of that spirit under the Excise Act.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Under subsection 12(2) of the Legislation Act, this instrument does not adversely affect the rights or liabilities of any person other than the Commonwealth.

What is the effect of this instrument

6. The effect of this instrument is to identify circumstances in which spirit produced by blending spirits is not taken to constitute the manufacture of that spirit under the Excise Act and therefore excluded from goods described by item 3 of the Schedule to the *Excise Tariff Act 1921* (the Schedule).
7. Paragraph 4(a) excludes the incidental blending of spirit (whether previously entered for home consumption or under bond) within a vessel or container. The exclusion applies where there is no intention to benefit from the blend as such and practical considerations prevent the complete emptying of a vessel or container of a small quantity of spirit or another substance before filling it with spirit. It is a matter of fact and degree whether the contents of the vessel or container should be regarded as 'remnants' and whether the blend should be regarded as 'incidental'.
8. Paragraph 4(b) excludes the blending of spirit that has been previously entered for home consumption under subitems 3.5, 3.6 and 3.7 of the Schedule with like spirit that has also been previously entered for home consumption under the same tariff subitem or another substance, by a person who has approval under the Excise Act to use that spirit.

9. For example, where a person has an approval to use spirit for fortifying Australian wine and receives spirit previously entered for home consumption under subitem 3.5 of the Schedule and that spirit is blended with other spirit for fortifying Australian wine, the blending of these spirits will not be considered to constitute manufacture and the spirit produced as a result is excluded from goods described by item 3 of the Schedule. This applies in the same way to spirit entered under subitems 3.6 and 3.7 of the Schedule.
10. Also, where a person has approval under the Excise Act (either by way of a specific approval or under a determination) to use spirit entered under subitems 3.6 and 3.7 for a specified purpose (e.g. industrial, manufacturing, scientific, medical, veterinary or other purpose), and that purpose involves blending the spirit with another substance (such as water, glycerine, aloe vera, essential oils, fragrance oils, colouring), the resultant product will not constitute manufacture and be excluded from goods described by item 3 of the Schedule.
11. Paragraph 4(c) excludes the blending of denatured spirit that has been previously entered for home consumption under subitem 3.8 of the Schedule with like spirit that has also been previously entered for home consumption or another substance (such as water, glycerine, essential oils, fragrance oils, colouring). It is illegal to make a beverage out of denatured spirit, and any beverage that is created through the blending of denatured spirit will render the resultant product liable to excise duty.
12. Therefore, where spirit has been denatured according to a formula determined under section 77FG of the Excise Act (other than spirit for use as fuel in an internal combustion engine) and entered for home consumption under subitem 3.8 of the Schedule, and that spirit is blended with another substance, the resultant product will not constitute manufacture and be excluded from goods described by item 3 of the Schedule.
13. Paragraph 4(d) excludes the blending of spirit that has been previously entered for home consumption with like spirit previously entered for home consumption and the blending process does not result in a product that would attract a different rate of excise duty.
14. By setting out in this instrument the circumstances where spirit blending does not constitute manufacture for the purposes of the Excise Act, this instrument will ensure that certain blending of spirits will not fall into the excise system where it is not the intention of the legislation.

Background

15. The concessional spirits regime is a mechanism under the Schedule which allows domestic high strength neutral spirit (HSNS) to be delivered into the domestic market at a 'free' rate of duty. HSNS is generally not intended for consumption as an alcoholic beverage and is generally used for 'a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose'.
16. Section 77FM of the Excise Act was introduced to deem spirit blending to produce spirit as manufacture for the purposes of the Excise Act. The effect of section 77FM of the Excise Act is that when imported HSNS is blended with domestically produced HSNS, the blending results in its transfer into the excise system and the extinguishment of any customs liability other than any *ad valorem* component that must be paid. The entirety of the excisable HSNS blend is then delivered into the Australian domestic market at a 'free' rate of duty under the concessional spirits regime.

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

Consultation

19. Consultation
 - (1) For this instrument, broad public consultation was undertaken for a period of four weeks from 22 June 2020 to 20 July 2020.
 - (2) The draft instrument and draft explanatory statement was published to the ATO Legal database. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation' page on www.ato.gov.au. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members. This ensures advice of the draft is disseminated widely across the tax professional community, and that they are in an informed position to provide comments and feedback.
 - (3) No comments were received as a result of the consultation.
20. The Revenue Analysis Branch has assessed the compliance cost impacts of this instrument and expects that it will result in minor compliance cost impact. There will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature.

Legislative references

Acts Interpretation Act 1901

Excise Act 1901

Legislation Act 2003

Schedule to the Excise Tariff Act 1921

Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Excise (Spirit blending exemptions) Determination 2010 (No.1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument outlines circumstances where the blending of spirit to produce spirit is not taken to constitute manufacturing of that spirit.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms because it just specifies circumstances where blending of spirit to produce spirit is not taken to be manufacturing of that spirit.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.