



**Australian Government**  
**Australian Taxation Office**

# Australian Taxation Office Submission

Inquiry into the effect of red tape on the sale, supply and taxation of alcohol

31 January 2017

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# Executive summary

The ATO is responsible for administering the excise system, which includes duties of excise payable on alcoholic products (other than wine) that are manufactured or produced in Australia.

It is also responsible for the administration of excise equivalent goods (EEGs) warehouses involved in the storage of imported alcohol, under delegation from the Department of Immigration and Border Protection (DIBP).<sup>1</sup> It should be noted that policy matters relating to the administration of EEGs remain with DIBP. The administrative system for excisable goods and EEGs is highly regulated when compared with other taxes.

Additionally, the ATO administers the wine equalisation tax (WET) system, which is a self-assessment system. There is significantly less regulatory burden for members of the wine industry relative to businesses that are involved with excisable goods and EEGs.

This submission focuses on the red tape that exists for businesses involved with the alcohol taxation systems in Australia within the context of the ATO's administrative function. It specifically focuses on the common regulatory controls that exist within the excise, EEG and WET systems. It discusses some of the opportunities we have identified for red tape reduction within the tax framework, what has been done to date to reduce administrative imposts, what clients have told us they see as compliance burdens and irritants, and the broader consequential impacts of removing certain regulatory requirements that are built into the current systems.

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<sup>1</sup> In addition to alcohol, the excise and EEG systems include fuel and tobacco. Unless explicitly stated, most of the regulatory controls within these systems that apply to the processes of manufacture, storage, movement and payment of duty also apply to fuel and tobacco.

# Legislative and administrative framework – regulatory touch points

## Current structure and operation of the Excise system

1. The Excise Tariff Act 1921 (Excise Tariff Act) imposes excise duty on goods that are specified in the Schedule to the Excise Tariff Act 1921 (Schedule) and that are manufactured or produced in Australia. These goods include fuel, tobacco and alcohol (excluding wine).
2. Excise duty is a commodity based tax that attaches to excisable good at the time the goods are manufactured. However, the obligation to pay the liability will not necessarily arise at that time. The Schedule lists the goods that are subject to excise duty and the rate of duty applicable.
3. Excisable alcoholic goods include beer, spirits, brandy and other excisable products. These products are subject to different rates of duty.
4. Rates of duty for alcohol are indexed biannually in February and August according to the consumer price index (CPI), provided the CPI change is an increase.<sup>2</sup>
5. The *Excise Act 1901* (Excise Act) deals with the administrative arrangements applying to the excise system and imposes controls in two main areas:
  - manufacture, storage and movement of excisable alcohol products, and
  - payment of duty for excisable alcohol products.
6. The object of the Excise Act is to ensure the protection of the revenue. As excise liability attaches to the goods themselves, the regulatory controls written into the Act are designed to achieve its objective by maintaining control over excisable goods from the time of manufacture until the liability attached to the goods is acquitted.

## Manufacture, storage and movement of excisable alcohol - Controls built in to the excise licensing system

7. Excisable alcohol must not be manufactured without a manufacturer licence granted under the Excise Act.<sup>3</sup> A legislated exception to this requirement is in relation to home brewed beer (beer manufactured for non-commercial use, using non-commercial equipment).<sup>4</sup>

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<sup>2</sup> *Excise Tariff Act 1921* section 6A.

8. Similarly, a person must not store excisable alcohol they did not manufacture and on which excise duty has not been paid without a storage licence granted under the Excise Act.<sup>5</sup>
9. By storing excisable alcohol at licenced premises, the payment of excise duty can be deferred until the owner or manufacturer of the goods is ready to enter the goods into the Australian market (otherwise referred to as delivery for home consumption), export them, or otherwise acquit the liability. Excisable goods held like this are referred to as being 'underbond'.
10. A person will only be granted a manufacturer or storage licence upon application.<sup>6</sup> In determining whether to grant or refuse to grant a licence, the Commissioner of Taxation must take into account a number of legislative criteria.<sup>7</sup> Such criteria include whether the applicant and its associates are 'fit and proper' (including any criminal history), the security of the premises to be licenced, whether there is a legitimate market for the goods, the skills and experience available to the applicant etc. These criteria are considered within the context of ensuring the protection of the revenue. Once granted, licences are subject to legislated conditions, and the Commissioner may impose additional conditions that may be varied or revoked at any time.<sup>8</sup>
11. Prior to granting a licence, the Commissioner may require the applicant to provide a security. A security may also be required at any time after the licence is granted.<sup>9</sup> Further, the Commissioner may require an increase to the value of any security a person may have already given.
12. A security is another mechanism built in to the Excise Act to increase the level of revenue protection. It can be in the form of a bond, guarantee, cash deposit or similar financial product for an amount of money which may be forfeited in the event of failure to comply with the Excise Act.<sup>10</sup> The security may be a documentary security either with or without financial surety. The Commissioner has an unfettered discretion in relation to whether, when and in what amount a security may be required. The ATO has recently simplified and streamlined the processes and requirements in relation to taking securities and very few are now held.<sup>11</sup>
13. A licence granted under the Excise Act authorizes the licence holder to undertake the activities specified in the licence at the premises specified in the licence. If a person undertakes these activities without a licence or if the licence or conditions are contravened, the person has committed an offence and may be criminally prosecuted. Where the person holds a licence, the license may also be suspended or cancelled. Administrative penalties do not apply to excise.

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<sup>3</sup> *Excise Act 1901* sections 25, 26 and 39A.

<sup>4</sup> Preamble to the Schedule to the *Excise Tariff Act 1921*. As set out below, there are also no licensing requirements under the WET Act for the manufacture of wine, either for commercial purposes or for personal use.

<sup>5</sup> *Excise Act 1901* sections 4 and 117.

<sup>6</sup> *Excise Act 1901* section 39.

<sup>7</sup> *Excise Act 1901* section 39A.

<sup>8</sup> *Excise Act 1901* section 39D.

<sup>9</sup> *Excise Act 1901* section 16.

<sup>10</sup> *Excise Act 1901* section 17.

<sup>11</sup> Refer to subparagraph 80(c) below.

14. There are no application or renewal fees attached to excise licences. Once granted, an excise manufacturer or storage licence is valid from the date it is granted until the next 30 September after the second anniversary of the date it was granted. A licence will only be renewed on application and if renewed, will be valid for three years, expiring on 30 September of the relevant year.<sup>12</sup>

## Commissioner's control over the movement of underbond alcohol

15. Underbond alcohol must not be removed or otherwise interfered with, without permission granted under the Excise Act.<sup>13</sup>

16. A movement permission (one-off or continuous) will only be granted upon application, and the Commissioner has an unfettered discretion to grant or refuse to grant the permission. The permission may also be subject to conditions. The permission holder retains responsibility for any excise liability arising on the excisable alcohol until it is taken up into the stock of the receiving premises.<sup>14</sup>

17. A movement permission may also be required where excisable alcohol is to be moved for the purpose of export. A permission to move the goods is not a permission to export them. This must be obtained separately from DIBP.

18. A person who moves or otherwise interferes with excisable goods without permission has committed an offence and may be criminally prosecuted.<sup>15</sup> Where a person contravenes their movement permission, it may be cancelled.

19. Any person that has or had possession, custody or control of excisable alcohol must be able to account for the product to the satisfaction of the Commissioner when requested to do so. Where an entity fails to satisfactorily account for excisable goods or fails to keep excisable goods safely, the Commissioner may issue a demand for payment equal to the amount of duty that would have been payable on the goods at the rate in force on the day the demand is issued.<sup>16</sup>

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<sup>12</sup> *Excise Act 1901* sections 39E and 39F.

<sup>13</sup> *Excise Act 1901* section 61.

<sup>14</sup> *Excise Act 1901* section 61A.

<sup>15</sup> *Excise Act 1901* section 117A.

<sup>16</sup> *Excise Act 1901* section 60.

## Payment of duty for excisable alcohol - Controls built in to the excise payment system

20. Excise duty attaches to excisable alcohol from the time it is manufactured.<sup>17</sup> The liability to pay duty can only be acquitted by payment of the duty, export of the goods, remission, or use of the goods in the manufacture of excisable goods.
21. When the liability for payment of excise duty becomes payable depends on how authority is given by the ATO to deliver the excisable alcohol. Authority to deliver excisable alcohol into the Australian market (otherwise referred to as delivery into home consumption), can be given on a continuing basis (known as periodic settlement permission)<sup>18</sup>, or on an ad hoc basis (known as pre-payment).<sup>19</sup>
22. Under a periodic settlement permission (PSP), the duty is paid after the excisable alcohol is delivered into the Australian market. A PSP may only be granted on application.<sup>20</sup> The Commissioner may grant or refuse to grant the permission and may specify special requirements of the periodic settlement.<sup>21</sup>
23. A PSP will usually cover a recurring seven-day reporting period; however, eligible small businesses can apply for a monthly PSP.<sup>22</sup>
24. Under a PSP, the permission holder must lodge an excise return with the ATO on the due date specified in the permission, including details of the goods delivered into the Australian market during the period, and pay the duty on the first business day following the end of the period.<sup>23</sup>
25. Under pre-payment, duty is paid before the excisable alcohol is delivered into the Australian market. If a person does not have a PSP, they must request and receive a delivery authority from the ATO before the excisable alcohol is delivered into the Australian market. To request a delivery authority, a person must lodge an excise return and pay the relevant duty.<sup>24</sup>
26. A person who does not have a PSP and delivers excisable alcohol into the Australian market without a delivery authority has committed an offence and may be criminally prosecuted.<sup>25</sup>

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<sup>17</sup> *Excise Tariff Act 1925* subsection 5(1).

<sup>18</sup> *Excise Act 1901* section 61C.

<sup>19</sup> *Excise Act 1901* paragraph 58(1)(a).

<sup>20</sup> *Excise Act 1901* subsection 61C.

<sup>21</sup> *Excise Act 1901* section 61C.

<sup>22</sup> *Excise Act 1901* subsection 61C(1).

<sup>23</sup> *Excise Act 1901* section 61C.

<sup>24</sup> *Excise Act 1901* section 58, and *Excise Guidelines for the Alcohol Industry* Chapter 6 -

<http://law.ato.gov.au/atolaw/view.htm?DocID=SAV%2FALCOHOL%2F00007#FTFN109>

<sup>25</sup> *Excise Act 1901* sections 61 and 117A.

## Measuring equipment

27. Duty for excisable alcohol is levied on the quantity of alcohol in the product (e.g. duty is not paid on the water contained within the product). Alcohol quantity is measured in 'litres of alcohol', which is calculated by measuring the total volume and multiplying it by the strength.
28. There are two legislative determinations that set out the rules for measuring the volume and strength, respectively, of excisable alcoholic products.<sup>26</sup> Under these determinations, there are specific requirements around measuring and equipment (including calibration requirements) and permitted variations in strength and volume. To work out the quantity of alcohol the volume and strength must be measured at a temperature of 20 degrees Celsius.<sup>27</sup>

## Controls specific to spirits and distillation

29. There are a number of provisions in the Excise Act that relate specifically to distillation and spirits. While these controls are aimed at ensuring the protection of the revenue, there are consequential impacts for health issues and industry protection:

- Under the Excise Act, it is illegal to make, move, sell, or possess a still or part of a still with a capacity exceeding 5 litres without first obtaining permission from the ATO (regardless of whether it is to be used for the distillation of alcohol). Doing any of these things is an offence against the Excise Act that may be criminally prosecuted.<sup>28</sup>

Notably, stills are the only equipment used in the manufacture of excisable alcohol for which these types of legislated controls exist under the Excise Act.

- The Excise Act provides that spirit and other excisable beverages must not be entered for home consumption in bulk containers without the Commissioner's written approval. A bulk container is a container that has the capacity to have packaged in it more than 2 litres of liquid.<sup>29</sup>
- There are provisions in the Excise Act that specifically deal with 'brandy', 'whisky' and 'rum'. Each of these products is separately defined.<sup>30</sup> The Excise Act provides that these products (as defined) must not be delivered into home consumption unless they have been matured in wood for at least 2 years.<sup>31</sup> In effect, this means that 'immature' brandy, whisky or rum must not be delivered into the Australian market for

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<sup>26</sup> Preamble in the Schedule to the *Excise Tariff Act 1925*; *Excise Act 1901* section 65; *Excise (Volume – Alcoholic excisable goods) Determination 2009 (No. 1)*, and *Excise (Alcoholic strength of excisable goods) Determination 2009 (No. 1)*.

<sup>27</sup> Preamble to the Schedule to the *Excise Tariff Act 1925*.

<sup>28</sup> *Excise Act 1901* section 77FK.

<sup>29</sup> *Excise Act 1901* subsections 58(4) and 58(5).

<sup>30</sup> *Excise Act 1901* section 77FI.

<sup>31</sup> *Excise Act 1901* subsection 77FI(1).



at least 2 years following manufacture. This can cause cash flow difficulties for new businesses.

- Another offence provision that relates specifically to spirits is section 77FL. Under this section, it is an offence to describe spirit as 'old' unless it has been matured in wood for at least 5 years, or 'very old' unless it has been matured in wood for at least 10 years. The burden of proof in respect of this offence rests with the defendant.

## Concessional spirits

30. There is a category of spirit referred to as 'concessional spirit'. Concessional spirit is spirit that may be delivered into the Australian domestic market at an excise duty rate of 'free' (i.e. no amount of duty is payable) when it is either used for a specific purpose, or denatured (so that it is unfit for human consumption) in accordance with a formula approved by the Commissioner.<sup>32</sup>
31. A person will either have to apply for specific approval to use concessional spirit (e.g. spirit used for fortifying Australian grape wine), or, as a member of a class of persons, will be able to access concessional spirit under a legislative determination to use for an industrial, manufacturing, scientific, medical, veterinary, scientific, or educational purpose without having to obtain specific approval.<sup>33</sup>
32. Prior to the 2014 class of persons determination, there were a number of class of persons determinations that specified an upper limit of concessional spirit that could be obtained. Under the ATO's Excise Re-invention Program, these determinations were consolidated into one determination and the upper limit was removed to make it easier for entities to obtain spirit for use in their business.<sup>34</sup>
33. An entity that manufactures and stores underbond concessional spirit will still need to hold an excise manufacturer licence.
34. Where a person uses spirit that has been approved for concessional use for an unapproved purpose, the Commissioner can issue a demand in writing to the person demanding payment of an amount equal to the duty that would have been payable on the spirit had it not been obtained for an approved purpose.<sup>35</sup>

## Refunds, remissions and drawbacks

35. Under section 78 of the Excise Act an entity may be entitled to claim a refund or remission of excise duty in specific circumstances. These circumstances are set out in Excise

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<sup>32</sup> Schedule to the *Excise Tariff Act 1925*, sub-items 3.5, 3.6, 3.7, and 3.8.

<sup>33</sup> *Excise (Concessional spirits - class of persons) Determination 2014 (No. 1)*.

<sup>34</sup> *Excise (Concessional spirits - class of persons) Determination 2014 (No. 1)*.

<sup>35</sup> *Excise Act 1901* section 77FH.

Regulation 2015. Under section 79 of the Excise Act, an entity may be able to claim a drawback of excise duty for exported alcohol.

36. A remission of excise duty extinguishes the liability for duty that was created at the time of manufacture. A refund is the repayment of duty that has already been paid, and a drawback is the repayment of duty already paid (similar to a refund) on goods that are exported.
37. Broadly, a refund of duty may be claimed where alcohol on which excise duty has been paid is returned to an excise licenced premises for destruction or further manufacture, duty was paid by mistake, the duty-paid alcohol has become unfit for human consumption, or there is an entitlement to a refund under the brewery refund scheme.<sup>36</sup> In most circumstances, there is a 12 month time limit for claiming a refund.<sup>37</sup>
38. A drawback will be granted on application for duty that has been paid (either directly or in the purchase price) on excisable alcohol that is subsequently exported. A drawback claim must be lodged within 12 months of the date the goods were exported.<sup>38</sup>
39. A remission may be given where underbond alcohol has deteriorated or been damaged, pillaged, lost or destroyed, is not worth the amount of excise duty payable if delivered into home consumption, or is for sale to diplomatic or consular missions and are to be delivered under a PSP.<sup>39</sup>
40. A remission or refund will usually only be given after an application has been made to the Commissioner in the approved form. However, there are some very limited circumstances in which a remission or refund may be made without application.<sup>40</sup>
41. The legislation is silent about whether an application for remission must be made in each instance a remission circumstance arises for an entity. As such, as part of the ATO's Excise Re-invention Program, the remission process has recently been streamlined for some clients.<sup>41</sup>

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<sup>36</sup> *Excise Act 1901* section 78; Excise Regulation 2015 Schedule 1, subclause 1(1) table items 1,2,3,5 ,7, 19 and 20.

<sup>37</sup> Excise Regulation 2015 section 11.

<sup>38</sup> Excise Regulation 2015 section 16(1), item 3.

<sup>39</sup> Excise Regulation 2015 Schedule 1, subclause 1(1), table items 1 and 2; Excise Regulation 2015 Schedule 1, and clause 2.

<sup>40</sup> Excise Regulation 2015 Schedule 1, subclause 1(1), paragraph(b), and clause 2.

<sup>41</sup> Refer to subparagraph 80(l) below.

## Imported alcohol - Excise equivalent goods administration

42. The Customs Tariff Act 1995 (Customs Tariff) imposes duties of customs on certain imported goods that are specified in Schedule 3 to the Customs Tariff, including imported alcohol. Like excise duty, customs duty is a commodity based tax.<sup>42</sup>
43. The Customs Act 1901 (Customs Act) sets out the administrative framework for and imposes controls in relation to the export<sup>43</sup> and import of customable goods, including alcohol. Many of these controls are similar to, but not the same as the controls that are built into the Excise Act. An object of the Customs Act is also to ensure the protection of the revenue.
44. EEGs are imported goods which, if manufactured or produced in Australia, would have been liable for excise duty. As these goods are equivalent to excisable goods and subject to the same rates of duty, they are referred to as EEGs.
45. As with excise, rates of duty for imported alcohol (customable alcohol) are indexed biannually in February and August according to the consumer price index (CPI), provided the CPI change is an increase.<sup>44</sup>
46. In 2008, the Productivity Commission's Annual Review of Regulatory Burdens on Business Manufacturing and Distributive Trades<sup>45</sup> recommended the Government review administrative arrangements for EEGs. Prior to this time, imported alcohol was administered wholly by DIBP and domestically manufactured or produced alcohol was administered by the ATO.
47. With a view to harmonizing EEGs and excise systems, a joint project team between the ATO and DIBP was established. The team developed options to reduce compliance costs and duplication across agencies and as a result, the administration of customs EEG warehouses was transferred to the ATO under delegation from DIBP in 2010. The ATO and DIBP entered into a Memorandum of Understanding detailing the joint administration of EEGs. There was no change in legislation and as a result, there continues to be two regimes, with separate excise duties and EEGs duties in operation.

## Controls around the importation and movement of excise equivalent alcohol

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<sup>42</sup> In some circumstances, EEGs are also subject to an ad valorem component, which is calculated as a percentage of the goods' 'customs value'. This is the value of the goods determined from rules set out in the Customs Act. Any ad valorem component must be paid to DIBP.

<sup>43</sup> This submission is intended to provide specific comment about the ATO's administration of EEGs under delegation from DIBP and does not intend to provide commentary about aspects of the export and importation of goods that are under the control of DIBP and in relation to which the ATO has no involvement.

<sup>44</sup> *Customs Tariff Act 1995* section 19AB.

<sup>45</sup> <http://www.pc.gov.au/inquiries/completed/regulatory-burdens/manufacturing/report/manufacturing-regulatory-burdens.pdf>

48. Certain imported goods, including alcohol, must be declared to DIBP. The ATO normally only deals with importations that have been lodged on an electronic import declaration and arrived as air or sea cargo. Specifically, the ATO only deals with EEGs in respect of which DIBP has given permission for movement underbond to a warehouse that is licenced under section 79 of the Customs Act (customs warehouse).
49. To move underbond EEGs to a licenced customs warehouse, a Warehouse Declaration (Nature 20) must be lodged with DIBP. This authorizes the movement of the goods to the customs warehouse and defers the payment of duty.<sup>46</sup>
50. As with underbond excisable goods, it is an offence to move or otherwise interfere with underbond goods without permission.<sup>47</sup> Permission to move underbond EEGs from a customs warehouse may be granted by the ATO upon application and, as with excisable goods, a single movement permission or continuing movement permission may be granted.<sup>48</sup> The ATO may require a security to be lodged to facilitate compliance with the Customs Act and the protection of the revenue.<sup>49</sup>
51. To clear underbond EEGs from a customs warehouse, an ex-warehouse declaration (Nature 30) must be lodged with DIBP and customs duty paid before the goods will be cleared for delivery.
52. A Nature 30 must also be lodged with DIBP to report imported alcohol used in the manufacture of excisable goods in a customs warehouse that is also covered by an excise manufacturer licence. In these circumstances, 'treatment code 444' will be cited on the Nature 30 and, if applicable, the ad valorem component paid. This transfers the EEGs into the excise regime and extinguishes the customs duty liability.<sup>50</sup>
53. As with the excise system, entities may apply to the ATO for a PSP in relation to EEGs, which authorizes the delivery of EEGs into the Australian domestic market or the use of EEGs in the manufacture of excisable goods over a specified period. A PSP has the effect of deferring payment of customs duty (if applicable) and reporting the goods until the end of the settlement period.<sup>51</sup> At the end of the settlement period, a Nature 30 must be lodged with DIBP, detailing the deliveries made into the Australian market and/or the EEGs used in excise manufacture, with payment of the applicable customs duty. As with excisable goods, the ATO may grant or refuse to grant a PSP.

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<sup>46</sup> *Customs Act 1901* sections 68 and 71.

<sup>47</sup> *Customs Act 1901* section 33.

<sup>48</sup> *Customs Act 1901* sections 33 and 71E.

<sup>49</sup> *Customs Act 1901* section 42.

<sup>50</sup> *Customs Act 1901* section 105B, 105C.

<sup>51</sup> *Customs Act 1901* section 69.

54. As with excise, if an entity is eligible for the small business entity concessions (broadly, having an aggregated turnover of less than \$2 million), it may apply to defer weekly settlement to a monthly reporting cycle.<sup>52</sup>

## Customs warehouse licences – storage of underbond EEGs

55. The ATO administers all warehouses that deal in or will deal in underbond EEGs (unless they are a duty free shop, catering bond or provedore). As with underbond excisable goods, underbond EEGs cannot be stored without a licence issued under the Customs Act.

56. The licensing system for underbond imports is very similar (albeit not identical) to the excise licensing system. For instance, excise licences permit the licence holders to carry on activities at specified premises which would otherwise be offences under the Excise Act. A customs warehouse licence is similarly governed by the Customs Act.

57. The criteria taken into account when determining whether to grant or refuse to grant a customs licence are also very similar to the licensing criteria in the Excise Act.<sup>53</sup> However, before applying for a customs warehouse licence, the applicant must first register as a client with DIBP.

58. Under section 82 of the Customs Act, every customs warehouse licence is subject to certain general conditions. In accordance with the general conditions, licence holders have approval to store, unpack, repack and package underbond imports entrusted to them.

59. As with excise licences, other conditions may be put in place by and at the discretion of the ATO for the protection of the revenue or to ensure compliance with the Customs Act. In addition to conditions, a security may also be required.<sup>54</sup>

60. Unlike excise licences, customs warehouse licences must be renewed annually. Also, obtaining a customs warehouse licence requires the payment of a fee by the applicant in accordance with section 85 of the Customs Act. Currently, the application fee is \$3000, then \$4000 per year (pro rata for the first year), and \$4000 on renewal each year.

61. Also in line with the Excise Act, where an entity has or had possession, custody or control of underbond EEGs at any time, under the Customs Act, the Commissioner may demand that the entity satisfactorily account for the goods. Where the entity fails to satisfactorily account for the goods, the Commissioner may issue a written demand that the entity pay an amount equal to the amount of duty payable on the goods at the rate in force on the day the demand issues.<sup>55</sup>

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<sup>52</sup> *Customs Act 1901* section 69.

<sup>53</sup> *Customs Act 1901* section 81.

<sup>54</sup> *Customs Act 1901* section 42.

<sup>55</sup> *Customs Act 1901* section 35A.

## Refunds, remissions and drawbacks

62. As with excise duty, a refund or drawback of customs duty on EEGs may be available in specific circumstances.<sup>56</sup> All Refunds and drawbacks of customs duty paid on EEGs are administered by DIBP.
63. Where underbond EEGs will not be delivered into the Australian market for home consumption because they have deteriorated, been damaged or destroyed, or are unfit for human consumption, a remission of customs duty may be allowed.<sup>57</sup> A remission of customs duty on underbond EEGs will only be granted on application to the ATO.<sup>58</sup>

## Dealings with wine

64. Wine is taxed under the A New Tax System (Wine Equalisation Tax) Act (WET Act). The wine equalisation tax (WET) is a value based tax (unlike excise and customs duty) that is designed to fall on the last wholesale sale of wine in Australia.
65. 'Wine' is a defined term in the WET Act and includes grape wine, grape wine products, fruit and vegetable wine, cider and perry, mead, and sake. Each of these products is separately defined.<sup>59</sup>
66. Where an alcoholic beverage does not meet the definition of 'wine', it will be excisable or subject to customs duty if imported.
67. Where an entity that is registered or required to be registered for GST (other than for importations), has an assessable dealing with wine to which no exemption applies, it will have a WET liability. The amount of the liability is self-assessed and calculated as 29 per cent of the taxable value of the relevant dealing.<sup>60</sup>
68. For GST registered entities, WET is reported and paid via label 1C on the activity statement.<sup>61</sup> For imported wine, WET is paid to DIBP at the same time and in the same manner as any customs duty that is or would have been payable on the wine.<sup>62</sup>
69. Some entities are able to defer the payment of GST on importations by participating in the deferred GST scheme.<sup>63</sup> The scheme allows the deferral of GST on taxable importations until the first activity statement lodged after the goods are imported. Certain criteria must be

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<sup>56</sup> *Customs Act 1901* sections 163 and 168; Customs Regulation 2015 regulation 102; Customs (International Obligations) Regulation 2015 regulation 34.

<sup>57</sup> *Customs Act 1901* section 163; Customs Regulation 2015 regulation 102.

<sup>58</sup> Customs Regulation 2015 regulation s 106 and 107.

<sup>59</sup> *A New Tax System (Wine Equalisation Tax) Act 1999* section 33-1 and Division 31-A.

<sup>60</sup> *A New Tax System (Wine Equalisation Tax) Act 1999* section 5-5 and Division 7.

<sup>61</sup> *A New Tax System (Wine Equalisation Tax) Act 1999* section 21-5, 21-10 and 21-15.

<sup>62</sup> *A New Tax System (Wine Equalisation Tax) Act 1999* section 23-5.

<sup>63</sup> *A New Tax System (Goods and Services Tax) Act 1999* section 33-15; *A New Tax System (Goods and Services Tax) Regulations 1999* regulation 33-15.01 to 33-15.09.

met to be eligible to participate in the scheme. Participation may be approved upon application to the ATO.<sup>64</sup>

70. In specified circumstances, an entity will be able to quote its ABN in an approved form to the supplier of wine (or for imported wine, to DIBP). The quote can be a one-off quote or it may be put in place for a period not exceeding 12 months (periodic quote), and exempts a supply of wine from WET.<sup>65</sup> The system of quoting is designed to exempt certain dealings with wine from WET or defer the payment of WET to a later dealing.
71. The WET Act also contains a wine tax credit table, which sets out the circumstances in which an entity may be entitled to claim a WET credit.<sup>66</sup> The system of credits (and quoting) is designed to ensure that wine is not taxed twice and that WET ultimately falls on the last wholesale sale of wine in Australia.
72. GST registered entities self-assess their WET credit entitlement and claim WET credits at label 1D on the BAS. There are circumstances in which an entity that is not registered for GST may claim a WET credit and this is done via direct refund from the ATO upon application and with supporting documents.<sup>67</sup>
73. One such WET credit is the producer rebate. Currently, where a producer of wine has a dealing with wine in respect of which they have a WET liability<sup>68</sup> or would have had a WET liability had the purchaser not quoted, they are entitled to a rebate of WET.<sup>69</sup> An eligible producer (or group of associated producers) can claim up to \$500,000 per year in producer rebates.
74. In 2005, the producer rebate scheme was extended to producers of wine in New Zealand that export their wine to Australia and on which WET has been paid. Before a NZ producer can claim a producer rebate, they must be approved as a New Zealand participant by the Commissioner. They are required to lodge a claim for the rebate in the approved form and with supporting documents, which may be approved or refused by the Commissioner.<sup>70</sup>
75. From December 2010, producers that use other wine in blending or further manufacture, are required to reduce any claims for blended or further manufactured wine by the sum of any earlier rebates on the wine used in blending or further manufacture.<sup>71</sup>

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<sup>64</sup> A New Tax System (Goods and Services Tax) Regulations 1999 regulation 33-15.02.

<sup>65</sup> A New Tax System (Wine Equalisation Tax) Act 1999 Division 13.

<sup>66</sup> A New Tax System (Wine Equalisation Tax) Act 1999 section 17-5.

<sup>67</sup> A New Tax System (Wine Equalisation Tax) Act 1999 section 17-10.

<sup>68</sup> There is no WET Liability for GST-free supplies (including GST-free exports) and as such, the rebate is not available in respect of wine that is exported from Australia.

<sup>69</sup> A New Tax System (Wine Equalisation Tax) Act 1999 section 19-5.

<sup>70</sup> A New Tax System (Wine Equalisation Tax) Act 1999 sections 19-5, 19-7 and subsections 17-10(2A) and 17-10(2B).

<sup>71</sup> A New Tax System (Wine Equalisation Tax) Act 1999 section 19-17.

## Cross agency and other relationships

76. In administering the Excise, EEGs and WET systems, the ATO and its clients have dealings with multiple State and Federal Government agencies. In the case of EEGs administration, and the administration of the WET producer rebate for New Zealand producers, these arrangements and roles and responsibilities are the subject of formalised agreements with DIBP and New Zealand Inland Revenue respectively.
77. With respect to the illicit manufacture of excisable goods and other offences against the legislation, the ATO liaises with the Commonwealth Department of Public Prosecutions, the Australian Federal Police, and State and Territory police as and when required. The ATO will also share information with State and Territory liquor licensing authorities when necessary.
78. From time to time, the ATO's role in controlling the manufacture and supply of alcohol is called into question from a health and safety or from an industry protection perspective. This usually occurs by way of press articles or coronial inquests following poisonings or accidents linked to the volatility of high strength alcohol.
79. Under the relevant legislation, the ATO's role in relation to the manufacture, sale and supply of alcohol is limited to revenue collection. Although other regulatory bodies bear responsibility for community health and safety issues and industry protection considerations, the ATO has some regard to the Australian New Zealand Foods Standards Code and various labelling laws (particularly when considering product classification issues). Although the ATO draws the attention of applicants for licences and concessional spirit permits to the fact that there are other regulatory bodies they should be aware of, it is not formally obligated to do so.



# ATO Excise Reinvention and red tape reduction

80. Excise administration is undergoing some transformational change in support of the ATO's Reinvention Program and in response to changes in the business environment. This includes identifying and implementing opportunities for reducing red tape in administration of Excise, EEGs and WET. To this end, between 2014 and 2016, the ATO has:

- a) Streamlined the excise licensing application process through a series of licensing changes. Changes implemented include reduced equipment calibration requirements prior to point of entry/payment of liability, replacing crimtrac checks with a declaration form for most clients, simplified application forms, processing and evidentiary requirements, and the potential to grant licence pre-approvals in certain cases, as a means of providing additional certainty for applicants.
- b) Eliminated unnecessary correspondence and simplified the excise renewal process. A number of alcohol clients who hold multiple licences now benefit from receiving only a single renewal form and manufacturing and storage licences for the same premises have been consolidated.
- c) Reviewed the securities policy so that only higher risk clients now provide securities (bank guarantees). Documentary securities are no longer taken for EEGs licences, removing an irritant for the client which held no real value as security against liabilities. All documentary securities have now been cancelled.
- d) Offered small businesses with a satisfactory risk profile, monthly settlement when they apply for a licence. This assists with cash-flow. Across the excise product (not just alcohol), 140 small businesses were given monthly settlement. This number will increase if the small business turnover threshold is increased.
- e) Reduced permission requirements for concessional spirits. A new legislative Determination was published in November 2014 that allows certain classes of persons to take delivery of a volume of concessional spirit necessary to meet their need without a permit (volume limit removed). It is expected that 1,100 clients no longer need to apply for concessional spirit permits, which represents a 25 per cent reduction in concessional spirit permits and reduced paperwork and recordkeeping obligations for clients.
- f) Converted 24 forms to fillable PDFs, which can be easily filled out and most attached to a secure message online. Taxpayers can also now register for WET roles via the ATO Business Portal secure mail facility. This means that clients save time by no longer having to manually complete and sign paper forms.

- g) Made it easier for brew shops selling stills over 5 litres capacity, by providing them with a single authorization to sell stills instead of requiring a separate authorization for each still.
- h) Implemented a 'new to excise' one-on-one support program to assist clients that are new to the excise system get their obligations right. New to excise clients are contacted by phone at least twice in the first year of operation and some will receive a face to face visit if required or requested. The majority of clients that are receiving assistance in the early stages of their business operations are alcohol licenced entities.
- i) Improved the client experience through effective digital engagement and simplified support, using social media platforms such as LinkedIn, Twitter, Facebook, as well as SMS communications.
- j) Removed the requirement for most applicants for movement permissions to provide 'receiving bond' letters, negating the need to gain third party approval correspondence.
- k) Revised the content of our excise authorization templates (such as movement permissions) to make them easier for our clients to understand.
- l) Streamlined alcohol remissions for a small number of large alcohol clients. These clients have received pre-approval to destroy goods that are damaged, lost or otherwise unfit for human consumption (subject to providing a quarterly report to the ATO). These clients can now destroy such goods without waiting for permissions from the ATO. Clients save time and money and can get on with running their business. This has significantly reduced the number of remission applications required.
- m) Published a correcting WET mistakes legislative determination in July 2015. WET clients that have made errors in an earlier tax period can now correct those errors in a later tax period. WET amendments made by clients have decreased by more than 40 per cent since the determination was introduced.
- n) Amended online guidance material to make it easier for clients to find the information and assistance they need.

In 2016-17 the ATO is:

- o) Implementing a 'new to WET' support program for clients entering the WET system.
- p) Developing options for enhancing excise capability across industry.
- q) Exploring further options to remove irritants, streamline licensing and improve provision of advice processes.

## Other matters for possible consideration

81. Other than what has been set out above the ATO suggests that possible consideration for reducing compliance burdens further could include changing basis for monthly lodgment to excise liability. Under the law at present, the capacity to apply monthly lodgment to excise settlement permission holders is based on turnover. This can result in some entities with turnovers exceeding the specified limits for monthly settlement having to report weekly where the excise liabilities are small.
82. If capacity to access monthly lodgment were applied to excise liability thresholds it may result in lower compliance costs for business, reduced administration for the ATO without having any meaningful effect on government cash flow.

