



## Australian Government

### The Treasury

6 March 2009

Mr Elton Humphery  
Secretary  
Senate Community Affairs Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Humphery

Thank you for your email of Friday 13 February 2009 inviting Treasury to provide a submission to the Senate Community Affairs Committee Inquiry on Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 and Customs Tariff Amendment (2009 Measures No. 1) Bill 2009. Please find Treasury's submission attached.

Treasury's submission provides an overview on the following issues:

1. the Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 and the Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 and what they are seeking to achieve;
2. changes to the alcohol excise arrangements as part of *A New Tax System* (ANTS) in 2000;
3. changes in ready to drink (RTD) consumption that occurred following ANTS;
4. the impact of the excise tariff proposals tabled on 13 May 2008 on alcohol consumption;
5. revenue collected to date under Tariff Proposal;
6. the emergence of malternatives onto the market and the Australian Tax Office's view on these malternatives;
7. the Government's proposed amendments to the taxation definitions of beer and wine to ensure that malternatives are subject to the same tax rate as that applying to RTDs; and
8. the *Australia's Future Tax System (Henry) Review*.

I trust the attached information will be of assistance to the Inquiry. Please do not hesitate to contact me on 02 6263 4479, or Glen McCrea on 02 6263 3502 if you have any questions regarding any of the information provided.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Christine Barron', with a stylized flourish at the end.

Christine Barron  
General Manager  
Indirect Tax Division

## **1. The Excise Tariff Amendment (2009 Measures No. 1) Bill and the Customs Tariff Amendment (2009 Measures No. 1) Bill and what they are seeking to achieve**

*The Commonwealth of Australia Constitution Act* ('the Constitution') provides that the Commonwealth can exclusively impose duties of excise. Excise duty is imposed by the *Excise Tariff Act 1921*, *Excise Act 1901* ('the Excise Act') and *Excise Regulations 1925*.

For alcohol, 'excisable goods' refers to beer, brandy and 'other excisable beverages'. Other excisable beverages are beverages containing more than 1.15% alcohol other than beer, brandy and wine; this category includes spirits such as vodka, gin and whiskey. Other excisable beverages not exceeding 10 per cent by volume of alcohol are commonly referred to as ready to drink (RTD) beverages or alcopops. Excise is levied on the basis of alcohol content, that is, dollars per litre of alcohol. Wine is excluded from the excise regime; instead it is subject to the wine equalisation tax (WET) (a value added tax applied at the rate of 29 per cent generally on the value of the last wholesale sale).

Excise is only levied on alcohol manufactured in Australia. Imported alcoholic products are subject to an excise-equivalent customs duty imposed by the *Customs Act 1901* ('the Customs Act') and the *Customs Tariff Act 1995*.<sup>1</sup>

Provisions of the excise and customs legislation allow for increases in the excise and excise-equivalent tax rates to be made through tariff proposals. The Government tabled such proposals in the House of Representatives on 13 May 2008 following gazettal of the intention to make the proposals on 26 April 2008. The tariff proposals increased the rate of excise and excise-equivalent customs duty applying to 'other excisable beverages not exceeding 10 per cent by volume of alcohol', from \$39.36 to \$66.67 per litre of alcohol content. This rate is subject to indexation on a half yearly basis and is increased in February and August each year. The current rate as at 1 February 2009 is \$69.16.

Officers of the Australian Tax Office and Australian Customs and Border Protection Service are protected from proceedings for actions they take to protect the revenue during this period. This protection exists for 12 months from the time the tariff alterations are proposed in the Parliament or until the close of the Parliamentary session, whichever occurs first. This ensures that the additional amounts of revenue, the subject of the tariff proposals, can be collected during this time.

The Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 and Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 seek to confirm in legislation the tariff proposals mentioned above.

## **2. Changes to alcohol excise arrangements as part of the *A New Tax System (ANTS)* in 2000**

On 30 June 2000, the previous government abolished the wholesales sales tax (WST) and on 1 July 2000 increased the excise duties and excise-equivalent customs duties on alcohol to offset the removal of WST.

In addition, all Australian made alcoholic beverages other than those which became subject to the WET were brought within the excise regime. This led to the creation of a definition known as 'other excisable beverages'.

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<sup>1</sup> Some imported alcoholic beverages are also subject to a five per cent protective duty in addition to the excise-equivalent duty.

Other excisable beverages became subject to two separate tariff items with different rates. One tariff item was for 'other excisable beverages not exceeding 10 per cent by volume of alcohol' and the other for 'other excisable beverages exceeding 10 per cent by volume of alcohol'. The former tariff item became the excisable beverage rate applicable to RTDs while the latter tariff item was applicable to full strength spirits.

Prior to the introduction of the other excisable beverages rate in the excise and customs tariff on 1 July 2000, RTDs made using spirits were taxed at the same rate as spirits.

The introduction of the specific excise and excise-equivalent customs duty classification for other excisable beverages not exceeding 10 per cent alcohol by volume (the excise rate applicable to RTDs) was established at a rate similar to the excise rate applicable to full strength beer. This rate was well below the spirit rate and resulted in alcohol being taxed in RTDs at a considerably lower rate than alcohol in bottled spirits.

### **3. The change in ready to drink (RTD) consumption that occurred following ANTS**

The establishment of this taxation treatment was followed by high growth in consumption of RTDs. The Distilled Industry Council of Australia (DSICA) report that since 2000 there was an increase in RTD sales. The DSICA *Pre-Budget Submission 2008-09* states<sup>2</sup>:

*DSICA acknowledges that RTD sales have been growing (from a very low base) since 1993-94. The excise duty on RTDs was reduced on 1 July 2000, under the A New Tax System. There was significant growth in RTDs immediately after that time. RTD sales have increased 254% between 1999-00 (4.9 Lals) and 2006-07 (17.2 million Lals).<sup>3</sup>*

Evidence of high growth in RTD consumption is also provided by the Australian Bureau of Statistics (ABS) publication, *Apparent Consumption of Alcohol*.<sup>4</sup> Between 2003-04 and 2006-07 the apparent consumption of alcohol in the form of RTDs grew 30.2 per cent (13.9 million litres of alcohol was consumed during the 2003-04 financial year and 18.1 million litres in the 2006-07 financial year).<sup>5</sup> Over the same three year period, apparent beer consumption increased by 2.5 per cent (74.9 million litres of alcohol in 2003-04 and 76.8 million litres of alcohol in 2006-07), apparent wine consumption increased by 4.3 per cent (49.2 million litres of alcohol in 2003-04 and 51.3 million litres of alcohol in 2006-07) and apparent full strength spirits consumption increased by 4.8 per cent (18.9 million litres of alcohol in 2003-04 and 19.8 million litres of alcohol in 2006-07). The overall apparent consumption of alcohol increased by 5.9 per cent over the period 2003-04 to 2006-07 (156.8 million litres of alcohol was consumed in 2003-04 and 166 litres of alcohol in 2006-07).

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<sup>2</sup> Distilled Industry Council of Australia (DSICA), *Pre-Budget Submission 2008-09*, page 34

<sup>3</sup> Lals measures the percentage of total litres of pure alcohol

<sup>4</sup> Australian Bureau of Statistics various, *Apparent Consumption of Alcohol*, Cat. no. 4307.0.55.001, ABS, Canberra.

<sup>5</sup> Comparison with data prior to 2003-04 is not possible as, previously, RTDs were not separately identified from other spirits.

#### **4. The impact of the excise tariff proposals tabled on the 13 May 2008 on alcohol consumption**

The amendments reverse the decision to tax ready to drink (RTD) beverages and alcopops at a rate similar to the full strength beer rate. The new rate restores the treatment of taxing RTDs at a rate similar to full strength spirits.

The impact of the rate increase on RTD consumption can be analysed using alcohol excise clearance data provided by the Australian Tax Office (ATO). The ATO clearance data is the amount of taxable alcohol in beer, spirits and RTDs sold in Australia.

The clearance data reveals a 34.6 per cent decrease in RTD consumption over the period May 2008 to January 2009, compared with the same period in the previous year. In contrast, solid growth was recorded for this period in each of the previous three years (12.3 per cent in 2005-06, 8.2 per cent in 2006-07 and 10.1 per cent in 2007-08).

Whilst the clearance data does show an increase in full strength spirits consumption of 17 per cent (May 2008 to January 2009) overall spirit consumption (RTDs combined with full strength spirits) has fallen by around 7.9 per cent when compared to the same period in 2007-08.

Over the same period there was an increase in beer consumption of 6.1 per cent. However, since the increase in the rate of excise on RTDs, the growth in excisable alcohol consumption (beer, spirits and RTDs) has slowed. The ATO clearance figures show that the growth in excisable alcohol weakened to 0.1 per cent in the period May 2008 to January 2009, compared with the same period the year before. In contrast, solid growth was recorded for this period in each of the previous three years (6.6 per cent in 2005-06, 2 per cent in 2006-07 and 2.7 per cent in 2007-08).

Excise clearance data does not include wine. Wine is not subject to excise duty and similar volume data is not available from the wine equalisation tax (WET) regime. However, it is noted that the recent article in the *Medical Journal of Australia* reported that the consumption of standard drinks in the form of wine in the period May to July 2008 fell by 2.6 per cent compared to the same period in 2007.<sup>6</sup> This contributed to a fall in total standard drinks consumed in this period of 2.7 per cent compared to the same period in 2007.

It is also noted that differing economic circumstances between years can also affect alcohol consumption.

#### **5. Revenue collected to date under Tariff Proposal**

Section 114 of the Excise Act and section 226 of the Customs Act provide protection to officers of the Australian Taxation Office (ATO) and Australian Customs and Border Protection Service (Customs) from the commencement of legal proceedings for anything done by them for the protection of the revenue in relation to a tariff alteration (that is, an Excise Tariff Proposal or Customs Tariff Proposal).

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<sup>6</sup> TN Chiktritzhs, PM Dietze, SJ Allsop, MM Daube, WD Hall & K Kyri 2009, "The "alcopops" tax: heading in the right direction", *Medical Journal of Australia*, 2 March 2009, [http://www.mja.com.au/public/issues/190\\_06\\_160309/chi11362\\_fm.html](http://www.mja.com.au/public/issues/190_06_160309/chi11362_fm.html)

In the event that Parliament does not pass the bills, the ATO has advised that it would proactively return the monies to those who have paid it. Customs have advised that they also would proactively seek to return those monies paid by importers in relation to the proposal. We note that under the Excise Act and the Customs Act the entity legally required to pay the duty is the entity that enters the goods, this is typically the manufacturer or importer.

#### **6. The emergence of malternatives onto the market and the Australian Tax Office's view on these malternatives**

There have been attempts by some manufactures and importers to find ways to circumvent the RTD tariff proposal.

The ATO has released an Interpretative Decision (ATOID) (ATO ID 2009/10 Excise definition of beer: hops) which concludes that a beverage requires at least sufficient bitters to impart a bitter flavour in the final product to be considered as beer. The release of the ATOID coincided with the withdrawal of advice that was previously provided to a company that a beverage they intended to manufacture would meet the beer definition.

The ATO advise that this interpretation will mean that some beverages, sometimes known as malternatives, will not be classified as beer.

#### **7. The Government's proposed amendments to the taxation definitions of beer and wine to ensure that malternatives are subject to the same tax rate as that applying to RTDs**

The Government has decided to alter the taxation definitions of beer and wine to ensure beer and wine based products that attempt to mimic spirit based products (in relation to their taste) are taxed as a spirit product, that is, at a higher tax rate. These amendments seek to prevent the development of new beer and wine-based products that attempt to overcome the current definition.

In the case of beer, these amendments change the definition of beer to set a combination of minimum limits on bitterness and maximum limits on sugar content that must be present in the final beverage.

As part of the sugar requirement, artificial sweeteners will not be permitted to be added to beer. It is considered that the changes will exclude RTD substitutes from the definition of beer as such substitutes tend to be less bitter and contain more sugar than beer.

The proposed revised definition of beer will also make it clear that substances, including flavours containing ethyl alcohol (from a non-beer source), can be added to beer. However, a limit will be set such that the alcohol contained in such substances did not add more than 0.5 per cent to the total volume of alcohol in the final beverage.

The amendments also establish a limit on the amount of spirit distilled from beer that can be used in the brewing process, such that the spirit did not add more than 0.5 per cent to the total volume of alcohol in the final beverage.

The taxation definition of wine will also be amended to preclude the addition, at any time, of the flavour of any alcoholic beverage (other than wine), whether the flavour is natural or artificial and whether the flavour contains alcohol or not. For example, the addition of a rum flavour (whether that flavour contains alcohol or not) or a number of flavours that combine to produce a rum flavour would lead to the beverage no longer being classified as a wine.

Supporting this change, other changes to the definition will act to provide certainty as to the circumstances where ethyl alcohol can be added to a grape wine product.

The amendments reflect consultation undertaken by Treasury with the domestic beer and wine industry. Treasury is currently undertaking consultations with importers.

Should the amendments be passed by the Parliament, they will take effect on 1 July 2009.

#### **8. The *Australia's Future Tax System (Henry) Review***

Lastly, Treasury would like to note the taxation of alcohol falls within the terms of reference of the comprehensive review of Australia's tax system announced by the Treasurer on 13 May 2008. The review has been asked by the Government to examine enhancing the taxation arrangements on consumption, including excise taxes.

The review panel will provide a final report to the Treasurer by the end of 2009 for the Government's consideration.

### **REFERENCES**

Australian Bureau of Statistics (ABS) 2006, *Apparent Consumption of Alcohol, Australia 2004-2005* (4307.0.55.001), ABS, Canberra

Australian Bureau of Statistics (ABS) 2008, *Apparent Consumption of Alcohol, Australia 2006-2007* (4307.0.55.001), ABS, Canberra

Distilled Spirits Industry Council of Australia 2008 (DSICA), *Pre-Budget Submission 2008-09*, DSICA, Melbourne

Chikritzhs, T, Dietze, P, Allsop, S, Daube, M, Hall, W and Kypri, K 2009, "The "alcopops" tax: heading in the right direction", *Medical Journal of Australia*, 2 March 2009, [http://www.mja.com.au/public/issues/190\\_06\\_160309/chi11362\\_fm.html](http://www.mja.com.au/public/issues/190_06_160309/chi11362_fm.html)