DSICA

Distilled Spirits Industry Council of Australia Inc.

Excise Equivalent Goods Administration

Response to the Legislation and Policy Better Regulation Ministerial Partnership Consultation Paper

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Who is DSICA?

The Distilled Spirits Industry Council of Australia Inc (DSICA) is the peak body representing the interests of distilled spirit manufacturers and importers in Australia. DSICA was formed in 1982, and the current member companies are:

- Bacardi Lion Pty Ltd;
- Beam Global Australia Pty Ltd;
- Brown-Forman Australia;
- Bundaberg Distilling Company Pty Ltd;
- Diageo Australia Limited;
- Mast-Jägermeister AG;
- Moët-Hennessy Australia Pty Ltd;
- Rémy Cointreau International Pte Ltd;
- Suntory (Australia) Pty Ltd; and
- William Grant & Sons International Ltd.

DSICA's goals are:

- to create an informed political and social environment that recognises the benefits of moderate alcohol intake and to provide opportunities for balanced community discussion on alcohol issues; and
- to ensure public alcohol policies are soundly and objectively formed, that they include alcohol industry input, that they are based on the latest national and international scientific research and that they do not unfairly disadvantage the spirits sector.

DSICA's members are committed to:

- responsible marketing and promotion of distilled spirits;
- supporting social programs aimed at reducing the harm associated with the excessive or inappropriate consumption of alcohol;
- supporting the current co-regulatory regime for alcohol advertising; and
- making a significant contribution to Australian industry through primary production, manufacturing, distribution and sales activities.

DSICA

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Overview

As the peak industry body representing over 80 per cent of Australia's distilled spirits importers and manufacturers, DSICA and its members are well aware of the administrative complexities and burdens borne by alcohol manufacturers and importers in Australia. Indeed, a majority of DSICA members have interests in both domestically manufactured goods (which are subject to excise duty), and imported goods (which are subject to excise equivalent customs duty), compounding the financial, resourcing and time cost associated with alcohol manufacture and importation in Australia.

The existing alcohol taxation administration and regulatory systems in Australia are particularly burdensome on industry. The operation of multiple licensing regimes at state and territory level, multiple systems for taxing alcohol and dealing with several entities creates significant costs for business – both financially, and in terms of staff resourcing. The time and resources expended on complying with various regulatory and administrative requirements inhibits the continued growth and development of the Australian distilled spirits industry, at both a domestic and international level.

The *Australia's Future Tax System Review* (Henry Review) acknowledged the complexities faced by the Australian alcohol industry and made the following recommendation (Recommendation 72):

> *The introduction of a common alcohol tax should be accompanied by a review of the administration of alcohol tax, to ensure that alcohol taxpayers do not face redundant compliance obligations (emphasis added).*[1]

[1] Ken Henry et. al., *Australia's future tax system: Report to the Treasurer (Part Two – Detailed Analysis)* (Australian Government, 2009) 442.

DSICA strongly supports this recommendation, and notes that the previous *Better Regulation Ministerial Partnership* to transfer the administration of customs warehouse licences and warehoused excise equivalent goods (EEGs) from the Australian Customs and Border Protection Service (Customs) to the Australian Taxation Office (ATO) has only been marginally effective in reducing the regulatory burden borne by its members. DSICA is strongly supportive of the single administration initiative, and the collaborative manner in which the reforms were developed and implemented.

However, the full potential for compliance cost reduction from the single administration initiative is yet to be realised. DSICA has identified a number of opportunities to further streamline alcohol taxation administration into a single body, and to further reduce the administration burden borne by businesses. As such, DSICA welcomes the opportunity to provide input into this Consultation Paper, and to work with relevant government, departmental and industry stakeholders to identify and implement potential reform opportunities.

Structure of this submission

DSICA has identified a range of administrative burdens associated with the current excise duty and excise equivalent customs duty regimes. These burdens relate to:

- administrative alignment between the treatment of EEGs and excisable goods;
- importation of EEGs, particularly in relation to application of the five per cent ad valorem customs duty;
- licensing arrangements;
- current processes and practices relating to returns and settlement permissions;

- current processes and practices relating to remissions, drawbacks and refunds; and
- export requirements.

In total, DSICA has identified 18 reform opportunities across the excise duty and customs duty regimes. Each reform opportunity is outlined in Figure 1-2.

Of the 18 reforms proposed, DSICA notes that the following three opportunities present the greatest potential benefit to businesses in terms of administrative effort and financial value:

- **Key Reform Priority 1:** Removal of (or, if this is not possible, amendment to) the five per cent ad valorem customs duty applying to imported distilled spirits and Ready-to-Drink products (RTDs).
- **Key Reform Priority 2:** Amending the current Periodic Settlement Permission (PSP) period from a weekly arrangement to a monthly one for all taxpayers.
- **Key Reform Priority 3:** Demonstrating alignment in the circumstances in which a refund of excise duty or customs duty may be sought for alcohol beverages and tobacco products by permitting refunds in instances where alcohol beverages are returned and destroyed.

In the interests of brevity, and acknowledging that a number of the reform proposals are easily explained, this submission provides detail in relation to DSICA's three key reform priorities, and lists the key issues, reform proposals and potential benefits to be derived through the remaining reforms identified. DSICA welcomes the opportunity to discuss any of its proposed reforms in greater detail and looks forward to ongoing dialogue with The Treasury, Customs and the ATO in this regard.

1 The legislative framework for excisable goods and excise equivalent goods

1.1 Taxation of alcohol in Australia

The legislative framework and administrative arrangements relating to alcohol products in Australia is highly complex. Figure 1-1 provides an overview of the different taxation regimes applying to imported and domestically-produced alcohol products in Australia as at 1 August 2012.

Figure 1-1: Taxation of alcohol products in Australia (as at 1 August 2012)

Product	Imported goods			Domestic goods		Goods and Services Tax
	MFN ad valorem customs duty	Excise equivalent customs duty[2]	Wine Equalisation Tax	Excise duty[3]	Wine Equalisation Tax	
Beer						
Draught beer	Not applicable		Not applicable		Not applicable	10%
Exceeding 1.15° abv but not exceeding 3° abv[4]		$7.61 per LPA[5]		$7.61 per LPA		
Exceeding 3° abv but not exceeding 3.5° abv		$23.87 per LPA		$23.87 per LPA		
Exceeding 3.5° abv		$31.24 per LPA		$31.24 per LPA		
Packaged beer						
Exceeding 1.15° abv but not exceeding 3° abv		$38.09 per LPA		$38.09 per LPA		
Exceeding 3° abv but not exceeding 3.5° abv		$44.37 per LPA		$44.37 per LPA		
Exceeding 3.5° abv		$44.37 per LPA		$44.37 per LPA		
Wine and wine products						
Still wine, sparkling wine and fortified wine	5%	Not applicable	29%	Not applicable	29%	10%
Cider, perry and mead	Not applicable					
Distilled spirits						
Brandy	5%	$70.19 per LPA	Not applicable	$70.19 per LPA	Not applicable	10%
Other spirits; other excisable beverages exceeding 10° abv	5%	$75.17 per LPA		$75.17 per LPA		
Other beverages not exceeding 10° abv	5%	$75.17 per LPA		$75.17 per LPA		

[2] Note that all beer products are subject to a 1.15° abv excise-equivalent customs duty free threshold.
[3] Note that all beer products are subject to a 1.15° abv excise free threshold.
[4] Abv refers to 'alcohol by volume'.
[5] LPA refers to 'Litre of Pure Alcohol'.

At least ten pieces of legislation are used to regulate the taxation of and administrative arrangements pertaining to alcohol beverages in Australia. These are:

- *Excise Act 1901* (Cth);
- *Excise Tariff Act 1921* (Cth);
- *Excise Regulations 1925* (Cth);
- *Customs Act 1901* (Cth);
- *Customs Tariff Act 1995* (Cth);
- *Customs Regulations 1926* (Cth);
- *A New Tax System (Wine Equalisation Tax) Act 1999* (Cth);
- *A New Tax System (Wine Equalisation Tax Imposition – Customs) Act 1999* (Cth);
- *A New Tax System (Wine Equalisation Tax) Regulations 2000* (Cth);
- *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

In addition to this, a variety of state-based legislation relates to liquor licensing and sales matters, and the alcohol industry complies with a number of voluntary codes of practice relating to advertising and marketing restrictions.

DSICA acknowledges the need to protect government revenues and ensure that excisable goods and EEGs are appropriately warehoused and accounted for. However, there is a need to balance these considerations with the administrative burdens incurred by businesses in complying with relevant reporting requirements, and the time and labour costs associated with this.

1.2 Previous reforms under the Better Regulation Ministerial Partnership

Under a previous partnership, responsibility for the majority of functions relating to warehoused EEGs was transferred from Customs to the ATO on 1 July 2010. Under this arrangement:

- a number of DSICA members have been assigned a dedicated Client Relationship Manager to oversee the excise, Goods and Services Tax (GST) and customs affairs;
- applications for licences and permissions (settlement and movement) for excisable goods and EEGs are assessed, processed and approved by the ATO;
- compliance activities for excisable goods and EEGs have been centralised within the one agency; and
- there have been reduced compliance costs and the development of a single point of contact for customs and excise obligations.

DSICA is strongly supportive of the single administration initiative, and acknowledges the highly collaborative, industry-inclusive manner in which the reforms were developed and implemented. However, it remains the case that not all responsibilities for the administration of EEGs have been transferred from Customs to the ATO, and a number of burdensome regulatory and administrative issues continue to arise.

Figure 1-2 provides an overview of the regulatory and administrative issues which continue to affect DSICA members, along with reform proposals and the key benefits to be derived through the suggested reforms.

Figure 1-2: DSICA's alcohol administration reform priorities

Issue	Reform proposal	Benefits
Administrative alignment between excisable goods and excise equivalent goods		
Responsibility for legislative policy development for EEGs rests with Customs, while execution of these responsibilities has been delegated to the ATO.	Transfer responsibility for legislative policy development for EEGs to the Treasury portfolio to enable legislative policy alignment between EEGs and excisable goods.	• Removes room for confusion and potential misinterpretation of Customs legislation. • Enables legislative developments to better-reflect practical realities and issues affecting EEG administration, which is undertaken by the ATO. • Enables further streamlining of administrative practices relating to EEGs and excisable goods, giving greatest effect to the single administration initiative.
Importation of excise equivalent goods		
Imported spirits and RTD products imported from countries other than those with which Australia has a preferential trade agreement are subject to a five per cent Most-Favoured Nation (MFN) ad valorem customs duty, creating significant administrative complexities and burdens. ***Key Reform Priority 1: Refer to Section 2 for detailed explanation and discussion***	**Reform Option 1** Remove the five per cent ad valorem customs duty.	• Aligns with World Trade Organization (WTO) recommendations relating to removal of trade barriers, enhancing Australia's trade competitiveness. • Gives effect to Henry Review recommendation, removing complexities in the Australian alcohol taxation regime. • Conforms with Productivity Commission recommendations relating to unilateral reform. • Removes an inefficient, discriminatory and distortionary method of taxation. • Removes a protective trade barrier which serves no purpose due to little/no significant domestic spirits production. • Reduces retail prices for consumers. • Gives effect to Government-stated imperative of pursuing unilateral, non-discriminatory trade policy reform.
	Reform Option 2 Provide for separate payment of the five per cent ad valorem customs duty and deferral of the relevant excise equivalent customs duty payment, enabling the goods to be treated as 'excisable goods' in a similar manner to RTD manufacture in Australia using bulk imported spirits.	• Removes the need to maintain a complicated, time and labour intensive Nature 20 bond register, as entries would be recorded directly in the excise system. • Enables development of one set of rules for drawback and remission applications which would relate to both EEGs and excisable goods. • Facilitates one payment pertaining to excisable goods to the ATO, rather than two payments – one pertaining to excise duties made to the ATO, and one pertaining to excise equivalent customs duties made to Customs.

Issue	Reform proposal	Benefits
		• Reduces the administrative and reporting burden borne by importers of EEGs (and commensurate use of resources in the ATO and Customs), further enhancing effectiveness of the single administration initiative.
Licences		
The ATO has discretion to confer low-risk reputation status on certain businesses, resulting in minimal audits for excisable goods. Customs do not maintain a similar system and undertake audits on a more regular basis.	Develop a single regime conferring risk statuses for businesses across both ATO and Customs. Undertake single audits for both excisable goods and EEGs, where a single representative from the ATO is present and one submission of documents is required.	• Performance of more targeted audits which focus on businesses with a high-risk status or demonstrated history of non-compliance. • Preparation of a single set of documents which can be reviewed to provide a more comprehensive audit assessment. • Reduces the time and administrative burden borne by businesses (especially in preparing for audits and collating relevant documentation for review). • Improves incentive(s) for businesses to demonstrate long-term compliance and comprehensive record-keeping, especially if they are likely to receive a 'low-risk' rating.
Multiple (often identical) licences required for single entities with multiple sites.	Introduction of a single entity licence administered by the ATO which is sufficient for an entire distribution network.	• Streamlines licence application and renewal processes for multiple sites into a single transaction. • Acknowledges the reality that many larger entities have nationwide distribution networks, with multiple sites. • Reduces the reporting burden borne by businesses (and corresponding processing burden borne by the ATO and Customs).
In circumstances where an entity seeks approval for new licences (i.e. Excise Manufacture or Storage Licence and Customs Warehouse Licence) two separate applications are made – one to the ATO, and one to Customs.	Introduction of a single application which relates to both excise manufacture/storage and customs warehousing. Single application to be processed by the ATO.	• Reduces the administrative burden borne by entities in applying for new licences (and corresponding application processing burden borne by the ATO and Customs). • Further streamlines administration of excisable goods and EEGs into a single entity (i.e. the ATO).
Returns and settlement permissions		
Larger businesses are required to lodge settlement of their excise duty and excise equivalent customs duty liabilities on a weekly basis, while small businesses are able to lodge their periodic settlement permission on a monthly basis.	Permit all businesses to lodge settlement of their excise duty and excise equivalent customs duty liabilities on a monthly basis.	• Reduces the number of excise duty/excise equivalent customs duty lodgements prepared by larger businesses from 52 to 12 per year. • Enables all businesses to benefit from this reduced reporting burden, rather than small businesses only. • Gives effect to Henry Review recommendation relating to removal of

Issue	Reform proposal	Benefits
Key Reform Priority 2: Refer to Section 3 for detailed explanation and discussion		redundant compliance obligations. • Gives effect to *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* recommendation relating to minimising reporting and compliance requirements for businesses.
Excise duty settlements for beer, sprits and RTDs are remitted to the ATO, while excise equivalent customs duties for beer, spirits and RTDs are acquitted to Customs. Wine Equalisation Tax (WET) payable on wine products is noted on the entity's Business Activity Statement (BAS), which is submitted to the ATO. Dealing with multiple agencies and multiple reporting mechanisms is particularly burdensome, especially for businesses with interests in excisable goods/EEGs and products subject to the WET.	Streamline the payment of all alcohol taxation duties (i.e. excise, excise equivalent customs duty and WET) into a single regime, preferably the BAS.	• Removes administrative complexities associated with managing two different payment schemes, reporting requirements and reporting periods for those businesses with interests in excisable goods/EEGs and products subject to the WET. • Leverages use of the BAS, which is already completed by all businesses on a regular basis.
New settlement permissions require the completion of one form with two pieces of information, one for use by the ATO and the other for use by Customs.	Introduce a single reference code which is recognised by both the ATO and Customs.	• Reduces the margin for potential errors. • Reduces the administrative burden borne by businesses in collating relevant information for inclusion in a new settlement permission.
Returns and settlement permissions documents are issued by both the ATO and Customs in both hard copy and Portable Document Format (PDF).	The ATO to issue a single returns and settlement permission document which details the permissions in place and any updates. Provide the single returns and settlement permission document in a user-friendly format which can easily be updated (e.g. Microsoft Excel).	• Provides a comprehensive listing of all permissions, enabling easier reference when confirming whether or not a permission is in place. • Provision of a user-friendly document (e.g. in Microsoft Excel format) enables easy reconciliation of permissions.
Excise returns can only be lodged on a paper form and must be faxed or mailed to the ATO. Customs declarations can be made on a paper form or electronically with customs in the Integrated Cargo System (ICS).	Create a single form which includes both excise returns and customs declarations and is to a single agency (i.e. the ATO).	• Reduces the administrative burden associated with reporting excise duty and customs duty liability. • Facilitation of a single agency (i.e. the ATO) responsible for managing excise returns and customs duty declarations, minimising the number of agencies a business is required to deal with.
Excise duty can be paid to the ATO by Electronic Funds Transfer (EFT) or mail,	Facilitation of a single payment system for both excise duty and customs duty to a single agency	• Reduction in the administrative burden associated with payment excise duty and customs duty liability.

Issue	Reform proposal	Benefits
while customs duty can be paid to Customs electronically via the ICS or in person at a Customs client services counter.	(i.e. the ATO).	• Facilitation of a single agency (i.e. the ATO) responsible for managing excise duty and customs duty payments, minimising the number of agencies a business is required to deal with.
Remissions, drawbacks and refunds		
Remissions of excise and customs duty are completed on a monthly basis for each warehouse. Although applications are submitted to a central number, two separate forms are completed – an application for remission of excise duty is processed by the ATO, while an application for remission of customs duty is processed by Customs. Each application form requires the inclusion of different information.	Provide one application form/system pertaining to remission of both excise duty and customs duty which is submitted to a single agency (i.e. the ATO) on a monthly basis.	• Reduction in the administrative burden borne by businesses in separating the items for remission between the ATO and Customs. • Facilitation of a single agency (i.e. the ATO) responsible for managing excise duty and excise equivalent customs duty remissions, minimising the number of agencies a business is required to deal with.
Customs frequently requests to be present at processes involving destruction of EEGs, while the ATO rarely attends destructions of excisable goods – generally only in the case of high-value destructions.	Customs to follow ATO process whereby a representative only attends and oversees high-value destructions.	• Reduction in the level of coordination required between businesses, Customs and destruction contractor.
Excise duty refunds processed by the ATO do not amend the original payment form, and are processed in a timely and efficient manner. Excise equivalent customs duty refunds processed by Customs require amendment to be made to the original Nature 30 entry, resulting in processing delays of up to two months.	Customs should follow the approach adopted by the ATO in processing refunds.	• Reduction in the administrative burden borne by businesses in reviewing, amending and re-submitting the Nature 30 entry. • Reduces the margin for error in Customs processing procedures, particularly as product refunds may be applied to incorrect orders under the current process.
Refunds on excise duty and excise equivalent customs duty are only available for alcohol products: • with production issues (i.e. 'leakers', or in instances of contamination); • which, while subject to excise control	Adoption of an approach which is consistent with that applied to tobacco products, whereby the excise duty and/or customs duty paid in respect of goods which are returned and destroyed may be refunded.	• Demonstrates consistency and alignment in the treatment of alcohol beverages and tobacco products. • Ensures that alcohol taxpayers pay excise duty and customs duty of products *actually* consumed, rather than those which are not.

Issue	Reform proposal	Benefits
deteriorated or had been damaged, pillaged, lost or destroyed, or become unfit for human consumption; or • with manifest error (e.g. keying/dispatch errors).[6] Conversely, refunds are available for tobacco products in a greater variety of circumstances. ***Key Reform Priority 3: Refer to Section 4 for detailed explanation and discussion***		
The current *Customs Regulations 1926* (Cth) provisions relating to customs duty drawbacks lack clarity. There are technical flaws with the working of the current regulations in relation to imported bulk spirit which is re-bottled and sold to a third party who then re-exports the goods and claims a customs duty drawback.	Clarify and simplify customs duty drawback provisions.	• Ensures that there is clear guidance for importers, manufacturers and exporters in undertaking necessary steps to fulfil requirements to receive a customs duty drawback.
Export of goods		
Prior to 28 November 2011, RTD products to be exported did not require the issuance of a Warehouse Release Notice. Following the introduction of Australian Customs Notice 2011/54 and the insertion of a reference to 2208.90.00 in the *Customs Regulations 1926* (Cth) Schedule1AAA covering 'certain undenatured ethyl alcohol etc', RTD and full-strength spirits products are now treated in an identical manner, requiring the issuance of a Warehouse Release Notice prior to export.	Remove the requirement for a Warehouse Release Notice to be issued in respect of RTD products.	• Removes processing delays and additional costs in the supply chain experienced by exporters in exporting RTD products which pose a low revenue risk to Customs. • Removes duplication, as exporters are already required to have a Section 77G Bond Depot Licence permission (and a permit number attributed to this permission) in place in order to remove products.

[6] Note that this list of circumstances in which a refund may be sought is not exhaustive. Refer to the *Excise Regulations 1925* (Cth) reg 50(1) for further detail.

1.3 DSICA's vision for excise duty and excise equivalent customs duty administration

As noted in Section 1.2, DSICA strongly supports the single administration initiative and the reduction in the administrative and compliance burden borne by Australian alcohol manufacturers and importers. While the burden borne by DSICA's members has reduced following the single administration reforms, further progress is required.

It is in this regard that DSICA considers a wholly single administration initiative to present the greatest opportunities for businesses and government alike. In particular, DSICA contends that all alcohol taxation revenue matters should be the prerogative of the ATO, while border protection issues should be the prerogative of Customs. In practice, this would result in:

- the ATO assuming responsibility for:
  - all revenue collection matters for both excisable goods and EEGs, including collections, remissions, drawbacks and refunds pertaining to excise duty, excise equivalent customs duty and the five per cent ad valorem customs duty;
  - all licensing and warehouse matters (including licence applications) for both excisable goods and EEGs;
  - all movement permissions, returns and settlement permissions for both excisable goods and EEGs;
  - all supervisions relating to the disposal of excisable goods and EEGs; and
  - all compliance and/or audit functions, including inspections.
- Customs maintaining responsibility for all import, export and ICS transaction related inquiries.

The system envisaged by DSICA above would enable importers and manufacturers to deal with one single agency (i.e. the ATO) for alcohol taxation and revenue matters, and one single agency (i.e. Customs) for all border protection issues, greatly simplifying the volume of administrative transactions a business is required to complete, and reducing the number of representatives dealt with. DSICA further notes that this model conforms to the observed evolution of the roles of each agency, whereby:

- the ATO is the Government's principal revenue collection agency;[7] and
- Customs manages the security and integrity of Australia's borders.[8]

In moving to this model, DSICA contends that the ATO's proactive approach to management of tangible risks (as opposed to the Customs' approach of requiring a paper-based trail of documentation to demonstrate compliance) – most particularly, differentiating the ATO's engagement with businesses based on its view of their relative likelihood of non-compliance and the consequences of any potential non-compliance. This reduces the compliance costs borne by business and enables the ATO to allocate its compliance resources in the most efficient and effective manner.

In giving effect to this model, it is noted that legislative obligations and regulations pertaining to both excisable goods and EEGs ought to be identical to ensure consistency in treatment of both product categories. DSICA understands that there are constitutional limitations which prevent a customs duty and an excise duty being imposed in the same Act, and, further, the imposition of customs duties and excise duties must remain separate in law.[9] However, at the very least, the legislative provisions regulating excisable goods and EEGs contained in the *Excise Regulations 1925* (Cth) and the *Customs Regulations 1926* (Cth) should be reflective of one another. Given that DSICA envisages a majority of the revenue collection and administration functions are to fall within the responsibilities of the ATO under its proposed model, a logical option would be to transfer legislative policy development responsibility for EEGs from the Customs portfolio to the Treasury portfolio to

[7] Australian Taxation Office, *About Us* (2012) http://www.ato.gov.au/corporate/pathway.aspx?sid=42&pc=001/001/002&mfp=001&mnu=39504#001_001_002.

[8] Australian Customs and Border Protection Service, *About Customs and Border Protection* (5 September 2012) http://www.customs.gov.au/site/page4222.asp.

[9] *Australian Constitution* s 55.

facilitate alignment with administrative arrangements pertaining to excisable goods, as noted in Figure 1-2.

DSICA understands that the model envisaged above is a long-term reform objective – but not an unachievable one. Therefore, this submission focuses on the top three reform priorities identified by DSICA members as presenting the greatest benefit to businesses in terms of administrative effort and financial value at the present time, being:

- **Key Reform Priority 1:** Removal of (or, if this is not possible, amendment to) the five per cent ad valorem customs duty applying to imported distilled spirits and RTDs.
- **Key Reform Priority 2:** Amending the current PSP period from a weekly arrangement to a monthly one for all taxpayers.
- **Key Reform Priority 3:** Demonstrating alignment in the circumstances in which a refund of excise duty or customs duty may be sought for alcohol beverages and tobacco products by permitting refunds in instances where alcohol beverages are returned and destroyed.

The ensuing chapters focus on each of these reforms respectively.

2 Removal or reform of the five per cent ad valorem customs duty

As demonstrated in Figure 1-1 earlier, the customs and excise duty regimes applying to alcohol beverages in Australia are highly complex, and inevitably require considerable time and effort to comply with. For businesses with interests in both excisable goods and EEGs, this level of complexity is substantially greater, especially for those businesses with interests in imported distilled spirits and RTDs which attract a five per cent ad valorem customs duty.

Imported spirits and RTDs are currently subject to a five per cent ad valorem customs duty (the duty) where imported from countries other than countries with which Australia has a preferential trade agreement. In addition to this 'protective' customs duty, a volumetric excise equivalent customs duty of $75.17 per LPA (as at 1 August 2012) applies to imported spirits and RTDs, whilst domestically-produced spirits and RTDs are subject to an excise duty of $75.17 per LPA only.[10] The complexities associated with administering this duty are significant for businesses – such that some DSICA members require additional staff to assist in managing warehoused goods as a result of the time and labour intensive processes associated with managing EEGs subject to this duty. In light of the low revenue this duty generates for government, and the significant administrative burden it carries, DSICA contends that removal, or at the very least, reform is a key priority for government.

2.1 How does application of the five per cent ad valorem customs duty (to excise equivalent goods) affect DSICA members?

Complying with administrative requirements relating to payment and tracking of the five per cent ad valorem customs duty is particularly burdensome on businesses, as outlined below.

When importing EEGs into Australia, an entry is lodged with Customs as either:

- duty paid (Nature 10); or
- duty deferred (Nature 20).

The five per cent ad valorem duty component is calculated on the basis of import purchase price, less freight and insurance. As purchase prices, freight costs, insurance costs and container quantities frequently change, the calculation of the ad valorem duty payable is variable, however it is generally a small amount, especially when compared to excise equivalent customs duty liability, as demonstrated in Figure 2-1.

[10] Note that there is a concessional rate of $70.19 per LPA applying to brandy products.

Figure 2-1: Comparison of ad valorem and excise equivalent customs duties payable – imported spirits products

Product	Country of Origin	Estimated customs value per case	Ad valorem customs duty		Excise equivalent customs duty	
			Rate	Duty payable	Rate	Duty payable
Imported spirits (12 x 700mL; 40° abv)	Scotland (MFN customs duty rate)	$50	5%	$50 x 5% **$2.50**	$75.17 per LPA	40° x 8.4L x $75.17 **$252.57**
Imported spirits (12 x 700mL; 40° abv)	United States of America (preferential customs duty rate)	$50	0%	$50 x 0% **$0.00**	$75.17 per LPA	40° x 8.4L x $75.17 **$252.57**

Significant administration burdens are incurred by businesses in accounting for and paying this particularly low-value ad valorem customs duty. Most notably:

- Customs recording necessitates the goods can be tracked according to the original entry (Nature 20);
- until the ad valorem customs duty applying to EEGs is duty-paid, an importer must receipt, store, transfer and/or settle the tax liability via the original Nature 20 entry; and
- a bond register (at the import container level) needs to be maintained where EEGs are recorded via a Nature 20 entry. As the ad valorem duty component is variable due to changes in cost per shipment, a bond register must be kept to ensure that the importer's warehouse has the capacity to record inventory appropriately and trace back to the shipment and its calculated ad valorem customs duty.

As such, all transactions must be recorded from this Nature 20 register. This requirement is not a standard part of most inventory systems and therefore must be custom-built into the inventory system (which is particularly expensive), or run in parallel to the inventory system (which results in significant duplication).

Further, in instances where EEGs are imported from a country with which Australia has a preferential trade agreement (and therefore there is no ad valorem customs duty payable), this identical process must be completed (including a Nature 20 entry to account for the excise equivalent customs duty payable), even though there is no variable cost due to there being no ad valorem duty payable.

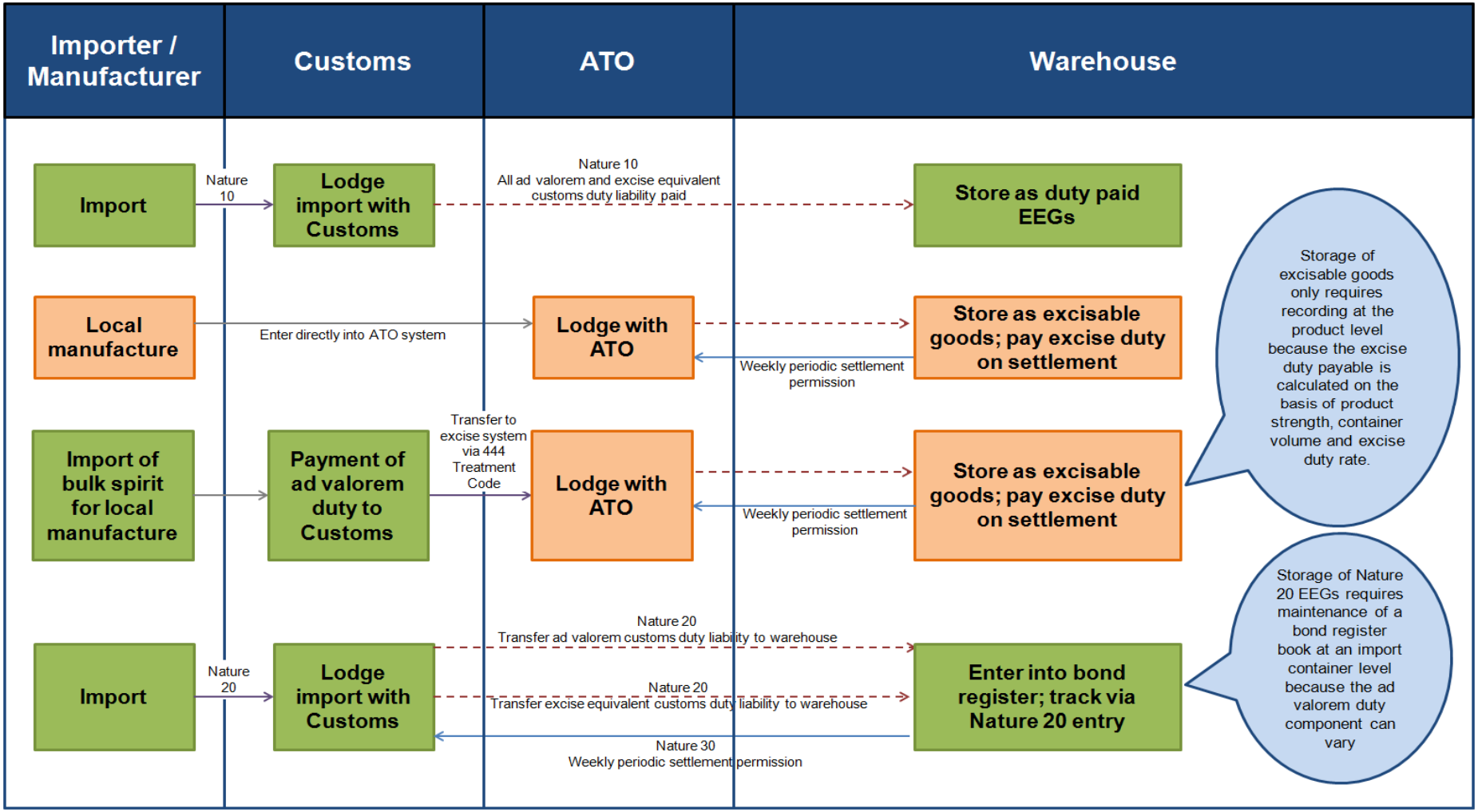
This minimal ad valorem customs duty creates a significant administrative burden for importers as it requires:

- tracking to the original shipment or clearance, as opposed to reporting at the product level;
- a complicated bond register at a warehouse level to record the inventory at a Nature 20 level;
- additional functionality in the inventory system (e.g. sequential number reporting);
- added complexity in transferring to other bonds;
- payments of customs duty and lodgement of ex-warehouse declarations (Nature 30 entries) to reference the original Nature 20 entry; and
- extra resources to manage the complexity of Nature 20 entry recording for smaller businesses.

Conversely, tracking and payments pertaining to domestically-manufactured spirits and RTDs (which do not attract this ad valorem customs duty) are undertaken at the product level. This is considerably simpler, and only requires knowledge of the product's bottle size, applicable excise duty rate and alcohol strength.

Figure 2-2 contrasts the complex nature of managing EEGs, and the simplicities associated with management of excisable goods.

Figure 2-2: Administration of domestically produced goods versus imported goods



As demonstrated in Figure 2-2, there is a need to enhance the current administrative processes to reflect this simplicity and reduce the burden borne by importers. This consideration is further magnified by the fact that this significant administrative burden is borne by businesses to account for a very small tax amount payable – as demonstrated in Figure 2-1, approximately only $2.50 per case of spirits. Given this, it is unsurprising that ad valorem customs duty collections are expected to deliver only approximately $17 million in revenue in 2012-13.[11]

2.2 What opportunities does DSICA see to reduce the difficulties or inefficiencies associated with the five per cent ad valorem customs duty?

DSICA has identified two potential reform opportunities in relation to the five per cent ad valorem customs duty:

- **Reform Option 1:** abolish the five per cent ad valorem customs duty (preferred DSICA position).
- **Reform Option 2:** allow payment of the ad valorem customs duty and excise equivalent customs duty to be split, effectively treating EEGs as excisable goods.

Each of these reform options are discussed below.

Reform Option 1: Abolish the five per cent ad valorem customs duty

DSICA seeks immediate removal of the five per cent ad valorem customs duty on all spirits and RTDs imported into Australia. This position is supported by:

- the **World Trade Organization (WTO),** which has consistently recommended removal of protective tariffs which hinder market access for exporters and inhibit free trade and competition;[12]
- the **Henry Review,** which proposed the immediate removal of the five per cent ad valorem customs tariff on imported spirits, RTDs and wine in order to remove structural complexity from the current alcohol taxation system;[13] and
- the **Productivity Commission,** which noted that unilateral reform (such as the removal of this duty) is the most direct means of reducing Australia's trade and investment barriers.[14]

Removal of the five per cent ad valorem customs duty would significantly reduce the administrative burden borne by alcohol importers, and overcome the time and labour-intensive reporting requirements outlined in Section 2.1.

DSICA further notes that removal of the five per cent ad valorem customs duty will result in broader benefits for the industry and consumers alike. In particular, DSICA advocates for total removal of the duty on the following grounds:

- **Discriminatory effect:** As the duty is calculated on a customs value basis, it applies unequally to products with the same alcohol content and as such it is an inefficient, discriminatory and distortionary method of taxation.
- **Disproportionate impact on products of European origin:** The duty affects all imported spirits and RTDs originating in countries with which Australia does not have a preferential trade agreement. Therefore, it has a significant impact on products of European origin, including brandy/cognac from France, liqueurs from Germany, aperitifs from Italy and vodka from the Netherlands, Poland and Sweden. However, whisk(e)y products are

[11] The Treasury, *Costing Minute: AFTS Proposal – Alcohol Tax Reform* (Australian Government, 2010).

[12] World Trade Organization, *Doha Ministerial Declaration (The Doha Mandate)* (World Trade Organization, 2001)[16], [31].
[13] Henry et. al., above n 1, 443.
[14] Productivity Commission, *Productivity Commission Research Report: Bilateral and Regional Trade Agreements* (Productivity Commission, 2010) 213.

the most disadvantaged as a result of this duty.[15] This pronounced distortionary impact is seen in this market segment, where, as a result of the *Australia-United States Free Trade Agreement:*

- whisk(e)y products imported from Scotland, Ireland, Japan and Canada (comprising 55 per cent of all whisk(e)y products imported into Australia) are subject to a five per cent customs duty discrimination; while
- American whiskeys (which include bourbon) imported from the United States (comprising 45 per cent of these total whisk(e)y imports) are free from this duty.[16]

- **Little/no significant domestic spirits production:** With changing trends, there is no significant domestic spirits industry in Australia which justifies protection from overseas competition.
- **Increased retail prices for consumers:** The five per cent customs duty is generally 'absorbed' into a product's cost base which is used as a basis for determining wholesale, and ultimately, retail prices. Accordingly, margins and GST are calculated on the 'duty inclusive' price paid by an importer. This import cost 'flow through' effect magnifies the impact of the duty component in the final retail price paid by the Australian consumer.

DSICA also notes that Australia's trade policy is currently driven by ongoing productivity-focused domestic reform coupled with the negotiation of improved access for exporters to overseas markets. The Government's trade policy statement is framed around the principle that trade policy is an indivisible part of overall economic reform and is facilitated by unilateralism, non-discrimination, separation and transparency. Under this principle:

> *Adopting a bargaining-chip approach of refusing to liberalise at home unless other countries offer trade barrier reductions as a quid pro quo only damages the home country's long-term prosperity. Using domestic reform as a bargaining chip in negotiations is akin to an athlete refusing to get fit for an event unless and until other competitors also agree to get fit.*[17]

Removal of the five per cent ad valorem customs duty would be an example of unilateral reform which removes discrimination in the current customs tariff regime and is to be strongly supported as a potential reform option. While removal of the duty is expected to result in revenue losses in the vicinity of $80 million over the period 2012-13 to 2015-16,[18] DSICA has proposed a change to the taxation of traditional cider products which is forecast to provide additional revenue of $496 million over the period 2012-13 to 2015-16.[19] This additional revenue may be used to offset any revenue loss arising through removal of the duty.

Reform Option 2: Allow payment of the ad valorem customs duty and excise equivalent customs duty to be split

Should Reform Option 1 not be accepted, DSICA proposes that payment of the ad valorem customs duty and the excise equivalent customs duty be split, thereby treating the goods as excisable goods, rather than subject to excise equivalent customs duty. In essence, this proposal would allow for:

- payment of the ad valorem customs duty at the time of clearance; then
- deferral of the excise equivalent customs duty payable (i.e. at the time the goods are entered for home consumption, effectively treating it as excise duty).

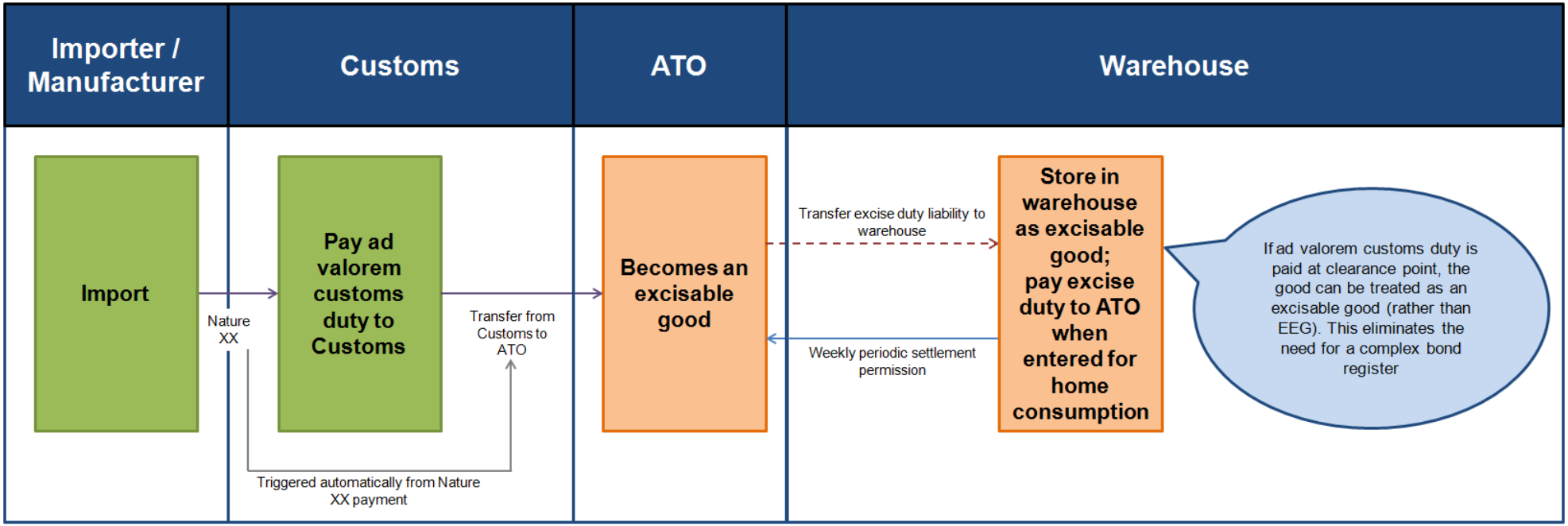
In implementing this regime, DSICA envisages that:

[15] Note that the term 'whisk(e)y' is used to describe all possible products in this market segment. It includes Scotch whisky, whisk(e)y products originating in Ireland and Japan and whiskey products (including bourbon) from the United States of America.
[16] 2010-11 figures, sourced from the Liquor Merchants Association of Australia (LMAA) Database (Domestic Market; July 2010 – June 2011; industry figures converted to 100 per cent; bulk spirits imported for manufacture of beverages no exceeding ten per cent abv are assumed to be imported at 80 per cent abv.
[17] Department of Foreign Affairs and Trade, *Gillard Government Trade Policy Statement: Trading our way to more jobs and prosperity* (Australian Government, 2011) 7.
[18] The Treasury, *Costing Minute: AFTS Proposal – Alcohol Tax Reform* (The Treasury, 2010).
[19] Details of this taxation reform proposal are available in DSICA's 2012-13 Pre-Budget Submission (Chapter 3).

- a new Customs payment regime would be arranged, facilitating payment of the ad valorem customs duty to Customs at the time of clearance; and
- payment of the ad valorem customs duty would extinguish liability for payment of excise equivalent customs duty, simultaneously transferring the EEGs to the excise system, where they would subject to excise duty (which is payable when the goods are entered for home consumption).

Figure 2-3 provides a diagrammatic representation of DSICA's proposal.

Figure 2-3: DSICA's proposal to split ad valorem customs duty and excise equivalent customs duty payments, treating EEGs as subject to excise duty



An arrangement similar to that proposed by DSICA in Figure 2–2 is currently in operation in the context of domestic RTD manufacture using imported bulk spirit. Under this system:

- the five per cent ad valorem customs duty payable on the bulk spirit is recorded and paid using a Nature 20 entry; and
- the liability to pay excise equivalent customs duty on the bulk spirit is extinguished when the goods are entered for warehousing (in a warehouse which has both an Excise Manufacture Licence and a Customs Warehouse Licence) and manufactured into excisable goods (i.e. RTDs).[20] This excise

[20] For further detail, refer to the *Customs Act 1901* (Cth) s 105B.

duty liability is payable when the goods are entered for home consumption.

Multiple benefits are to be derived from implementing this arrangement, including:

- removing the need to maintain a complicated, time and labour intensive Nature 20 bond register, as entries would be recorded directly in the excise system;
- the development of one set of rules for drawback and remission applications, which would relate to both EEGs and excisable goods; and
- the development of one payment pertaining to excisable goods to the ATO, rather than two payments – one pertaining to excise duties made to the ATO, and one pertaining to excise equivalent customs duties made to Customs.

These benefits would greatly reduce the administrative and reporting burden borne by importers of EEGs (and commensurate use of resources in the ATO and Customs), and would further enhance effectiveness of the single administration initiative.

Key Reform Priority 1

Removal of the five per cent ad valorem customs duty applying to imported distilled spirits and RTD products.

If outright removal of the duty is not possible, pursue reforms which enable the payment of the ad valorem customs duty and excise equivalent customs duty applying to EEGs to be split, extinguishing the excise equivalent customs duty payable upon payment of the ad valorem customs duty, and creating an excise duty liability.

3 Reform to a monthly periodic settlement permission period for larger businesses

A permission to deliver goods into home consumption without an entry is known as a PSP. Under a PSP, the entity must lodge a return specifying the goods delivered during the settlement period and pay the relevant duty on those goods. Until recently, all taxpayers were required to lodge a PSP on a weekly basis. Recent legislative changes now permit small businesses to lodge a PSP on a monthly basis. DSICA strongly encourages expansion of this legislative amendment to include all taxpayers.

3.1 What impact do the current requirements and processes for periodic settlement permissions have on DSICA members?

Traditionally, all alcohol taxpayers in Australia have been required to lodge settlement of their excise duty and excise equivalent customs duty on a weekly basis.

Recent changes introduced through the *Excise Amendment (Reducing Business Compliance Burden) Act 2012* (Cth) and the *Customs Amendment (Reducing Business Compliance Burden) Act 2012* (Cth) (the Acts) have significantly reduced this administrative burden on businesses through:

- **Streamlining of accounting procedures:** the Acts permit all taxpayers to select the most convenient day on which to lodge settlement of their excise duty and excise equivalent customs duty under the seven-day reporting option.[21] This greatly assists reporting businesses as it enables them to select a reporting day which coincides with their existing accounting practices, and provides significant assistance for businesses without full-time in-house accounting assistance, who can now select a reporting day to coincide with a day on which an accounts administrator is present.
- **Deferment of reporting period in cases of no duty payments:** the Acts facilitate the use of a longer reporting period in cases where the taxpayer does not have any duty liability.[22] This reform is available for all taxpayers and will result in a significant reduction in the existing reporting burden borne by taxpayers, minimising the time spent on preparing nil returns.
- **Clarity regarding reporting periods:** the Acts clarify the circumstances under which either a weekly or calendar month reporting period is available and notes that this will assist in resolving existing uncertainty for taxpayers as the *Excise Act 1901* (Cth) s 61C is silent on the relevant 'timeframe' for which a settlement period permission may apply. While historic practice has resulted in most permissions being granted on a standard seven-day accounting period basis, DSICA understands that some reporting entities have been granted longer reporting periods. The basis on which permissions for extended reporting timeframes have been granted is unclear.[23]

In addition, the Acts introduce an option for monthly settlement of excise duty and excise equivalent customs duty for small business entities, i.e. broadly those with turnover of less than $2 million per annum.[24] DSICA strongly supports this reform and notes that it will result in a significant reduction in the time-consuming and labour-intensive reporting burden borne by small business entities. As such, this reform will reduce the number of excise and customs returns lodged per year by these businesses from 52 to 12.

DSICA highlights the fact that this reform builds on the Government's *Ahead of the Game: The Blueprint for Reform of Australian Government Administration* (Ahead of the Game Review) agenda which outlined the following recommendation:

[21] *Excise Act 1901*(Cth) s 61C(1A); *Customs Act 1901* (Cth) s 69(2).

[22] *Excise Act 1901* (Cth) s 61C(3A).

[23] Explanatory Memorandum, Excise Amendment (Reducing Business Compliance Burden) Bill (Cth) 2011 and Customs Amendment (Reducing Business Compliance Burden) Bill (Cth) 2011 [1.16].

[24] *Excise Act 1901* (Cth) s 61C(1)(b); *Customs Act 1901* (Cth) s 69(1)(d).

Recommendation 1.4: Reduce unnecessary business regulatory burden

Minimise reporting and compliance requirements for business and remove any unnecessary or poorly designed regulation.[25]

Despite this positive reform, DSICA notes that it is only available to 'small business entities' as defined by the *Income Tax Assessment Act 1997* (Cth) s 328-110. As this definition is limited to businesses which have an aggregated turnover for the previous year of less than $2 million, or are likely to have aggregated turnover for the current year of less than $2 million, DSICA members' business operations are effectively excluded from receiving the benefit of this reform. Indeed, one DSICA member has noted that the requirement to settle excise and customs duties on a weekly basis requires the use of substantial resources and time, including:

- two analysts, each of which spend half a day each week preparing settlement reports;
- the use of a customs broker, who spends two hours each week lodging the members' submission in the ICS;
- a Finance Manager who spends one hour each week reviewing and approving each submission;
- one hour expended by the Payment Team each week in processing relevant payments; and
- three hours each week spent by an Analyst in actioning the payment clearing process.

It is noted that this process is not only time, labour and administratively intensive for DSICA members, but there must also be a commensurate use of resources in Customs and the ATO, actioning and reconciling relevant payments.

3.2 How can these requirements and processes be improve to reduce compliance costs or administrative burdens?

DSICA strongly supports the reforms outlined in Section 3.1 and strongly recommends that the operation of the monthly PSP period be expanded to include all taxpayers, rather than applying to small businesses only.

In expanding this reform, DSICA notes that:

- the proposed preferential treatment afforded to small business entities would be removed, and all taxpayers would be able to benefit from the reduced reporting burden; and
- this would give greatest effect to the recommendations outlined in the Ahead of the Game Review and the Henry Review by expanding implementation of these reforms to include all taxpayers of excise duty and excise equivalent customs duty.

DSICA's reform proposal is supported by a number of key stakeholders. In particular:

- the **Corporate Tax Association of Australia** noted "although we support these initiatives, we feel that the policy supporting these administrative concessions can be equally applied to large payers of excise who…would derive the same administrative benefits from such changes";[26] and
- The **Australian Institute of Petroleum,** representing another key group of excise taxpayers, stated that it is "strongly opposed to excise

[25] Australian Government (Advisory Group on Reform of Australian Government Administration), *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* (Australian Government, 2010) 37.

[26] Corporate Tax Association of Australia Incorporated, Australian Institute of Petroleum, Submission to The Treasury, *Exposure Draft - Excise Amendment (Reducing Business Compliance Burden) Bill 2011* (Cth) and *Customs Amendment (Reducing Business Compliance Burden) Bill 2011* (Cth), 4 November 2011, 1.

administration arrangements that confer commercial advantage on some businesses within a competitive market, but not others".[27]

To this end, DSICA would welcome expansion of the operation of the monthly settlement arrangements to include all taxpayers rather than small business entities only. This reform measure would significantly reduce the number of excise and excise equivalent customs duty returns prepared by businesses, offering substantial time and resource savings.

Key Reform Priority 2

Expand operation of the current monthly PSP arrangements to include all taxpayers, rather than small businesses only.

[27] Australian Institute of Petroleum, Submission to The Treasury, *Exposure Draft - Excise Amendment (Reducing Business Compliance Burden) Bill 2011* (Cth) and *Customs Amendment (Reducing Business Compliance Burden) Bill 2011* (Cth), 28 October 2011, 2.

4 Reform of circumstances in which a excise and customs duty refunds may be sought for alcohol beverages

Refunds of excise duty on excisable goods or customs duty on EEGs are allowed in certain circumstances. DSICA members have long expressed concern that the circumstances in which refunds are payable are not consistent between the excise duty and excise equivalent customs duty regimes. There is a need to demonstrate alignment and equal treatment between alcohol beverages and tobacco products respect of excise duty and customs duty refunds.

4.1 How does the administration of refunds affect DSICA members?

The differing circumstances in which a refund of excise duty or customs duty is available is particularly evident in the treatment of alcohol beverages and tobacco products. Most notably, a refund of excise duty or customs duty in respect of alcohol beverages is only available on goods:

- with production issues (i.e. 'leakers', or in instances of contamination);
- which, while subject to excise control, deteriorated or had been damaged, pillaged, lost or destroyed, or become unfit for human consumption; or
- with manifest error (e.g. keying/dispatch errors).[28]

Conversely, in the case of tobacco products, any goods returned and destroyed (e.g. aged stock) or mixed with other tobacco may receive a refund of excise duty or customs duty.[29]

For DSICA members, the inability to receive excise duty and customs duty refunds for aged stock is particularly problematic. Indeed, one DSICA member noted that a potential $185,000 in refunds of excise duty and customs duty may have been received if the same refund provisions relating to tobacco were also available in respect of alcohol beverages. The current arrangements have a most detrimental impact on alcohol taxpayers' profitability.

4.2 How can the administration of refunds be improved?

DSICA contends that there should be a consistent approach adopted for both alcohol beverages and tobacco products. In particular, DSICA strongly supports expansion of the provision the *Excise Regulations 1925* (Cth) Reg 55(1) (and corresponding customs legislation) which permits a refund of excise duty in circumstances where a tobacco products has been returned and destroyed or mixed with other tobacco to apply to alcohol beverages in an equal manner. This would ensure that alcohol taxpayers pay excise duty and customs duty on products actually consumed, rather than those which are not.

Key Reform Priority 3

Adopt a consistent approach to refunds of excise duty and customs duty between alcohol beverages and tobacco products, whereby a refund of excise duty or customs duty may be sought in respect of alcohol beverages which are returned and destroyed.

[28] Note that this list of circumstances in which a refund may be sought is not exhaustive. Refer to the *Excise Regulations 1925* (Cth) reg 50(1) for further detail.
[29] *Excise Regulations 1925* (Cth) re 50(1)(h) and 55.

5 Conclusion

DSICA reiterates its support for the single administration initiative, and commends progress made to date in simplifying the administrative burden borne by Australian alcohol beverage manufacturers and importers. The collaborative manner in which the reforms were developed, the ongoing consultation process with industry and staged transition process seen throughout 2010 and 2011 is to be applauded and viewed as a best practice foundation on which to design and implement future reforms.

Despite these positive changes, there is a need to pursue further reform opportunities to give greatest effect to the single administration initiative and further consolidate alcohol taxation administration matters into a single agency, the ATO. It is DSICA's long-term vision that the ATO assumes responsibility for all alcohol taxation revenue matters, while border protection issues remain the prerogative of Customs. A system such as this would greatly simplify and reduce the volume of administrative transactions a business is required to complete, and minimise the number of representatives businesses are required to deal with. This is not an unachievable objective, but rather a long-term one which should be borne in mind during the course of administrative policy and legislation design, implementation and execution.

In the interim, DSICA notes that a number of issues still remain in relation to the administrative and reporting requirements pertaining to excisable goods and EEGs. Of these, DSICA members note that the following reform opportunities present the greatest potential benefit to businesses in terms of administrative effort and financial value at the present time:

- **Key Reform Priority 1:** Removal of (or, if this is not possible, amendment to) the five per cent ad valorem customs duty applying to imported distilled spirits and RTDs.
- **Key Reform Priority 2:** Amending the current PSP period from a weekly arrangement to a monthly one for all taxpayers.
- **Key Reform Priority 3:** Demonstrating alignment in the circumstances in which a refund of excise duty or customs duty may be sought for alcohol beverages and tobacco products by permitting refunds in instances where alcohol beverages are returned and destroyed.

DSICA contends that there is an urgent need to address these reform priorities identified to reduce the administrative and reporting burden borne by Australian alcohol importers and manufacturers. DSICA welcomes the opportunity to work with representatives from The Treasury, Customs and other government departments and agencies to further develop and implement its recommended reforms.

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“Free the Spirit”

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