

**Submission: Excise Equivalent Goods Administration Legislation and Policy Better Regulation Partnership**

*Supplementary submission following consultation for the review of the legal and administrative framework for excise equivalent goods*

**Executive summary**

- As the peak industry body representing over 80 per cent of Australia’s distilled spirits importers and manufacturers, the Distilled Spirits Industry Council of Australia Inc (DSICA) and its members are well aware of the administrative complexities and burdens borne by alcohol manufacturers and importers in Australia.
- 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 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 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. Indeed, DSICA members are still required to deal with both the ATO and Customs in relation to a range of issues, rather than a single entity.
- While DSICA is strongly supportive of the single administration initiative, and the collaborative manner in which the reforms were developed and implemented, the full potential for compliance cost reduction from the initiative is yet to be realised. To this end, DSICA’s earlier submission to the *Excise Equivalent Goods Administration: Legislation and Policy Better Regulation Ministerial Partnership* Consultation Paper canvassed a number of opportunities to further streamline alcohol taxation administration into a single body, and to further reduce the administration burden borne by businesses.
- DSICA has welcomed the opportunity to participate in the ongoing consultation process regarding the administration of excisable goods and EEGs, and strongly supports the recent proposal to develop a new Administration Act canvassing all administrative matters pertaining to excisable goods and EEGs.
- This supplementary submission affirms DSICA’s support for this reform proposal and outlines key recommendations relating to suggested responsibilities of the ATO, Customs and the Treasurer under a harmonised, simplified administrative regime for excisable goods and EEGs.

## 1 Who is DSICA?

- 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.

## 2 What is DSICA's vision for excise duty and excise equivalent customs duty administration?

- 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. As such, while the administrative burden borne by DSICA's members has reduced following the single administration reforms, additional progress is required to further minimise the regulatory and compliance issues faced by Australian alcohol manufacturers and importers.

### 3 Which reform option does DSICA support?

- DSICA is strongly supportive of the collaborative manner in which the Legislation and Policy Better Regulation Ministerial Partnership (the Ministerial Partnership) has identified and canvassed potential reform opportunities. DSICA has been an active participant in the reform process, and looks forward to its continuing engagement with the Treasury regarding EEG administration reform matters.
- DSICA notes that the November 2012 consultation day with Treasury and other key stakeholders identified five potential reform options relating to the administration of EEGs:
  - **reform option one:** development of a new Act which covers all administrative matters relating to excisable goods and EEGs;
  - **reform option two:** transferring EEGs into the excise system, although the manner in which this reform proposal may be undertaken is unclear;
  - **reform option three:** undertaking legislative reform to ensure both the *Excise Tariff Act 1921* (Cth) and the *Customs Tariff Act 1995* (Cth) are aligned in respect of EEGs and excisable goods;
  - **reform option four:** undertaking administrative changes wherever possible within existing legislative frameworks to further streamline and harmonise the administration processes relating to excisable goods and EEGs, with no legislative reforms occurring; and
  - **reform option five:** leave existing administrative arrangements pertaining to excisable goods and EEGs unchanged (i.e. maintain the status quo).
- DSICA is strongly supportive of reform option one, and understands that under this reform option:
  - a new Act relating to administration matters concerning excisable and EEGs would be developed; while
  - Imposition Acts concerning excise duty and customs duty would remain separate, maintaining the separation between excise duty and customs duty mandated under the Constitution.<sup>1</sup>
- DSICA strongly supports this reform option and notes that it is aligned to a number of the recommendations proposed in its earlier submission to the *Excise Equivalent Goods Administration: Legislation and Policy Better Regulation Ministerial Partnership Consultation Paper*.
- In implementing this reform option, DSICA recommends that all revenue-related matters should be the sole responsibility of the ATO, while border protection issues should be the responsibility of Customs. In practice, this would result in:
  - the ATO assuming full and sole 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 (potentially) the relevant 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 Integrated Cargo Support (ICS) transaction related inquiries with **no Customs interaction required for the administration of duties**. It is not envisaged that ATO representatives would be required at any border points, such as airports or cargo/shipping areas.

<sup>1</sup> Australian Constitution s 55.

- DSICA notes that a regime of this nature helps to further enable the observed evolution of the roles of each agency, whereby:
  - the ATO is the Government's principal revenue collection agency;<sup>2</sup> and
  - Customs manages the security and integrity of Australia's borders.<sup>3</sup>
- DSICA also recommends that should this option be implemented, portfolio responsibility for the new Administration Act should rest with the Treasurer. This enables the ATO, being the Act's primary administrator, to provide input and guidance on the legislation as required.
- This reform option is strongly supported by DSICA as it will:
  - enable alcohol importers and manufacturers to deal with one single agency (i.e. the ATO) for all revenue matters, and one single agency (i.e. Customs) for all border protection issues. This greatly simplifies the volume of administrative transactions required and reduces the number of agency representatives that a company with interests in both domestic and imported goods is required to deal with;
  - result in significant compliance cost savings to the Australian alcohol industry;<sup>4</sup> and
  - enable harmonisation and simplification of the differing administration requirements pertaining to excisable goods and EEGs through the development of a single, unified regime for all products.
- DSICA understands and acknowledges that:
  - the cost of undertaking any proposed reforms are key factors to be considered by the Government;
  - consolidation of the varying regimes and administrative matters pertaining to excisable goods and EEGs into a single Act may take some time to complete; and
  - undertaking reform option require more resources than any other reform option canvassed.
- Notwithstanding these considerations, DSICA contends that undertaking reform option one will be a worthwhile investment of time and resources that will:
  - maximise the benefit derived from the single administration initiative through substantial simplification and harmonisation of existing administration requirements;
  - enhance business and government efficiency;
  - ensure appropriate use of government resources;
  - ensure consistency in treatment of both excisable goods and EEGs;
  - deliver the greatest cost reduction benefits to the Australian alcohol industry over the medium to long-term; and
  - significantly reduce the regulatory and administrative burden placed on alcohol importers and manufacturers.
- In light of these potential benefits, DSICA contends that while this may appear to be a long-term reform objective, it is not an unachievable one. In this regard, DSICA welcomes the opportunity to work with representatives from The Treasury, Customs, the Ministerial Partnership and other government departments and agencies to further development and implement reform option one.

<sup>2</sup> 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](http://www.ato.gov.au/corporate/pathway.aspx?sid=42&pc=001/001/002&mfp=001&mnu=39504#001_001_002).

<sup>3</sup> Australian Customs and Border Protection Service, *About Customs and Border Protection* (5 September 2012)  
<http://www.customs.gov.au/site/page4222.asp>.

<sup>4</sup> Note that the savings expected to accrue under this reform option have not yet been quantified by the Australian distilled spirits industry.

#### 4 Additional reform opportunities

- DSICA acknowledges that, to date, reform options canvassed have related only to administrative arrangements pertaining to EEGs and excisable goods. Of this, the payment of excise equivalent customs duty on EEGs to Customs is a key area for reform.
- Notwithstanding this, DSICA notes that current reform options under consideration do not relate to payment and administration of the five per cent ad valorem customs duty applied to spirits and RTDs imported from countries other than countries with which Australia has a preferential trade agreement. The payment and administration of this protective customs duty is currently overseen by Customs.
- DSICA members incur significant administration burden in accounting and paying for this low-value customs duty as importers are required to:
  - track the original shipment or clearance, as opposed to reporting at the product level;
  - maintain a complicated bond register at a warehouse level to record the inventory at a Nature 20 level;
  - include additional functionalities in their inventory systems (e.g. sequential number reporting);
  - ensure payments of customs duty and lodgement of ex-warehouse declarations (Nature 30 entries) to reference the original Nature 20 entry; and
  - use 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.

- DSICA contends that the current environment presents opportunities to streamline administrative processes relating to these duty payments and remove the requirement for taxpayers to maintain ongoing interaction with Customs on duty-related issues.
- To this end, 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.

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

- DSICA notes that immediate removal of the five per cent ad valorem customs duty (reform option one) is supported by the World Trade Organization (WTO), the Henry Review and the Productivity Commission as it will reduce a trade and investment barrier which inhibits free trade and competition, and will remove structural complexity from the current Australian alcohol taxation system.<sup>5</sup>
- Further, removal of the five per cent ad valorem customs duty is strongly supported due to:
  - its discriminatory effect;
  - its disproportionate impact on products of European origin;
  - the fact that there is no significant domestic spirits production in Australia which justifies protection from overseas competition; and
  - the fact that it results in increased retail prices for consumers.

<sup>5</sup> World Trade Organization, *Doha Ministerial Declaration (The Doha Mandate)* (World Trade Organization, 2001) [16], [31]; Ken Henry et.al., *Australia's future tax system: Report to the Treasurer (Part Two – Detailed Analysis)* (Australian Government, 2009) 442; Productivity Commission, *Productivity Commission Research Report: Bilateral and Regional Trade Agreements* (Productivity Commission, 2010) 213.

- DSICA acknowledges that this reform proposal is expected to result in revenue losses in the vicinity of \$80 million over the period 2012-13 to 2015-16,<sup>6</sup> however, revenue-positive cider taxation reform proposals developed by DSICA may be used to offset this revenue loss.<sup>7</sup>

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

- Should reform option one 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:
  - 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 be subject to excise duty (which is payable when the goods are entered for home consumption).
- DSICA contends that 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.

## 5 What does DSICA recommend?

Given the above, DSICA recommends that:

- 1 The Government make the commitment to implement reform option one through the development and implementation of a new Act which covers all administrative matters relating to excisable goods and EEGs.
- 2 In implementing reform option one, that:
  - the ATO assume sole responsibility for all revenue collection matters, licensing and warehouse matters, movement permissions, returns and settlement permissions, disposal supervisions and compliance and/or audit functions for both EEGs and excisable goods;
  - Customs continues to assume sole responsibility for all border protection issues; and
  - portfolio responsibility for the new Administration Act rest with the Treasurer, with the ATO providing input and guidance on the legislation as required.

<sup>6</sup> The Treasury, *Costing Minute: AFTA Proposal – Alcohol Tax Reform* (The Treasury, 2010).

<sup>7</sup> Details of this taxation reform proposal are available in DSICA's 2012-13 Pre-Budget Submission (Chapter 3).

**3** That the Government commit to:

- immediate removal of the five per cent customs duty applied to imported spirits and RTDs; or
- at the very least, 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.

**6 Next steps**

- DSICA welcomes the opportunity to discuss the proposed reform option one in greater detail and looks forward to remaining engaged with The Treasury, Customs and other government departments and agencies to further develop and implement this reform option.
- DSICA welcomes the opportunity to meet with The Treasury and Customs representatives to discuss potential reforms which:
  - remove the five per cent ad valorem customs duty applied to imported spirits and RTDs; and/or
  - enable payment of the five per cent ad valorem customs duty to be split

to maximise the impact and effectiveness of the EEG administration reform process.

**12 December 2012**