
EXCISE LAWS AMENDMENT (COLLECTING TOBACCO DUTIES AT
MANUFACTURE) BILL 2018
EXCISE TARIFF AMENDMENT (COLLECTING TOBACCO DUTIES AT
MANUFACTURE) BILL 2018

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Bills	Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018 and Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018
Commissioner	Commissioner of Taxation
Excise Act	<i>Excise Act 1901</i>
Excise Acts	<i>Excise Act 1901</i> and the <i>Excise Tariff Act 1921</i>
Excise Tariff Act	<i>Excise Tariff Act 1921</i>
TAA 1953	<i>Taxation Administration Act 1953</i>

Chapter 1

Taxing tobacco at the time of manufacture

Outline of chapter

1.1 The Bills amend the Excise Acts to establish a framework to make excise duty on tobacco due and payable at the time of manufacture.

Context of amendments

Excise on tobacco

1.2 Excise is a tax on certain goods produced in Australia. Imported goods comparable to those subject to excise, known as excise equivalent goods, attract customs duty that includes a component imposed at the same rate as the excise applied to locally produced goods. This component is commonly referred to as excise-equivalent customs duty.

1.3 Under the Excise Acts, duties of excise are imposed on entities that manufacture tobacco under licence (for this purpose, tobacco means products covered by subitems 5.1 and 5.5 in the table in the Schedule to the Excise Tariff Act). Significant criminal and other penalties apply to the manufacture of tobacco without a licence.

1.4 Broadly, excise must generally be paid before the Commissioner (also referred to in the Excise Act as the CEO) or a delegate of the Commissioner (jointly referred to with the Commissioner in the Excise Act as the Collector) permits goods to be entered for home consumption.

1.5 Entities may apply for a periodic settlement permission that allows goods to be delivered without formal entry. If goods are delivered under a periodic settlement permission, payment must be made at the time and in the manner set out in the permission (generally this will involve weekly payments of duty) (see sections 54 and 61C of the Excise Act).

1.6 Until tobacco is entered for home consumption it is subject to the control of the Commissioner (see section 61 of the Excise Act). Significant penalties apply to entities that deal with goods under the control of the Commissioner in a way that is not permitted by the Excise Act or that manufacture tobacco without a licence (see for example sections 25 and 60 of the Excise Act).

1.7 Tobacco seed, plant and unprocessed leaf are not subject to excise, but are subject to strict controls. They also generally cannot be

held or produced without a licence (see for example sections 26 to 31, 33 and 44 of the Excise Act).

1.8 Currently, no entities in Australia are licenced to manufacture or produce tobacco.

Combating illicit tobacco

1.9 Illicit tobacco represents a major risk to Australia's tobacco excise tax base by undermining collection of duty on tobacco and reducing tax revenues collected for the benefit of all Australian taxpayers.

1.10 One of the main sources of illicit tobacco in Australia is leakage of legally imported tobacco held in licenced customs warehouses. As tobacco held in these warehouses has not yet been entered for home consumption, customs duty has not been collected on such leaked goods.

1.11 To address these concerns, the Government announced in the 2018-19 Budget that from 1 July 2019 importers of tobacco will be required to pay all duty and tax liabilities upon importation. As a result existing warehousing and weekly settlement arrangements would no longer apply.

1.12 The Government also announced that the taxing point for any future domestic manufacture of tobacco would be changed to be broadly consistent with the new taxing point for tobacco imports.

1.13 The 2018-19 Budget also included related measures to target the other principal sources of illicit tobacco — smuggling and unlicensed domestic manufacture. All of the measures build upon the enhanced penalty regime set out in the Treasury Laws Amendment (Illicit Tobacco Offences) Bill 2018 and the Customs Amendment (Illicit Tobacco Offences) Bill 2018, which are currently before Parliament.

Summary of new law

1.14 The Bills amend the Excise Acts so that an entity manufacturing tobacco goods under licence is liable for excise at the time of manufacture and the goods are taken to be entered and delivered for home consumption at that time.

1.15 A manufacturer must pay any excise duty payable on tobacco goods it has manufactured in a seven day period — the ***tobacco excise period*** — on the first business day after the end of the period. To the extent any liabilities are not paid at this time, general interest charge under the TAA 1953 will apply.

1.16 Manufacturers must also provide the Commissioner with a tobacco excise return in the approved form for each tobacco excise period at the same time as any payment for that period would be due.

1.17 The Bills also amend the Excise Acts to clarify the obligations of manufacturers of tobacco goods to provide security and how excise duty applies to goods manufactured from components that were subject to excise or customs duty.

1.18 The amount of excise duty payable on goods manufactured from tobacco that has previously been subject to tobacco excise or excise-equivalent customs duty is reduced by the amount of excise or customs duty that has previously been paid.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Excise on tobacco goods is payable at the rate applying at the time of manufacture, and the goods are taken to be entered and delivered for home consumption at that time.</p> <p>The duty must be paid on the first business day after the end of the seven day period specified by the Commissioner for the manufacturer (the tobacco excise period).</p> <p>A licensed manufacturer must provide the Commissioner with a tobacco excise return for each tobacco excise period at the same time as excise duty for the period would be payable.</p>	<p>Excise on tobacco goods is due and payable upon, broadly, entry for home consumption on the rate of excise applying at that time.</p>
<p>The Commissioner may require an entity to provide a security for compliance with the Excise Acts and the protection of the revenue generally.</p> <p>If an entity fails to provide security, the Commissioner may refuse to permit goods to be entered or delivered for home consumption.</p> <p>Additionally, if the entity has applied for or holds a license to manufacture tobacco goods, the Commissioner may not grant the entity a license or</p>	<p>The Commissioner may require an entity to provide a security for compliance with the Excise Acts and the protection of the revenue generally.</p> <p>If an entity fails to provide security, the Commissioner may refuse to permit goods to be entered or delivered for home consumption.</p>

<i>New law</i>	<i>Current law</i>
must suspend the license.	
Tobacco goods are taken to be entered and delivered for home consumption upon manufacture. The amount of excise payable on tobacco goods manufactured using other tobacco goods is reduced to account for any excise or excise equivalent customs duty previously paid.	Tobacco goods may be held in licensed premises prior to entry for home consumption and the payment of excise or excise equivalent customs duty. Such goods may be used in the manufacture of excisable goods.

Detailed explanation of new law

Excise on tobacco goods

1.19 The Bills amend the Excise Acts to make tobacco goods subject to excise at the time of manufacture rather than deferring liability until the time goods are entered or delivered for home consumption. *[Schedule #, item 7 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, section 66 of the Excise Act]*

Tobacco goods

1.20 ***Tobacco goods*** are goods subject to excise under subitem 5.1, 5.5 or 5.8 of the table in the Schedule to the *Excise Tariff Act 1921* or which are blended tobacco goods – see paragraphs 1.29 to 1.33. *[Schedule #, item 1 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, the definition of ‘tobacco goods’ in subsection 4(1) of the Excise Act]*

1.21 This includes cigarettes, cigars, loose leaf tobacco and snuff.

1.22 It does not include unprocessed tobacco leaf, tobacco plants or tobacco seed. No change is made to the existing legislative regime applying to these goods under the Excise Act.

Payment of excise on tobacco goods

1.23 Tobacco goods are taken to be entered and delivered for home consumption at the time of manufacture. As a result they are immediately subject to excise at the rate specified in the Schedule to the Excise Tariff Act for that time. *[Schedule #, item 7 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, subsection 66(7) of the Excise Act]*

1.24 Manufacturers must pay all excise on tobacco goods they have manufactured in a tobacco excise period on the first business day after the end of the period. Late payments are subject to the general interest charge. *[Schedule #, item 7 of the Excise Laws Amendment (Collecting Tobacco Duties at*

Manufacture) Bill 2018, subsection 66(6), subparagraph 66(5)(b)(i) and section 67 of the Excise Act]

1.25 The tobacco excise period for a licenced manufacturer is a recurring seven day period determined by the Collector (ie. the Commissioner or a delegate) at the time an entity is issued with a licence under the Excise Act that permits the manufacture of tobacco, and runs for seven days. The tobacco excise period for an entity must be stated in their licence. *[Schedule #, item 7 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, subsections 66(1) and (3) of the Excise Act]*

1.26 Special rules apply to periods in which an entity is granted a licence or ceases to hold a licence; the first period begins on the day the entity is granted the licence and payment for the last period must be provided on the first business day after the entity ceases to hold a licence. *[Schedule #, item 7 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018 subsection 66(2) and subparagraph 66(5)(b)(ii) of the Excise Act]*

Tobacco excise return

1.27 A licenced manufacturer must also provide the Collector with a tobacco excise return for each tobacco excise period on the same day payment is due. *[Schedule #, item 7 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, subsections 66(4) and (5) of the Excise Act]*

1.28 This return must be in the approved form and detail the quantity of tobacco goods manufactured during the period and the amount of excise duty payable on those goods. *[Schedule #, item 7 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, subsections 66(4) and (5) of the Excise Act]*

Reduction in excise duty for previously paid duty

1.29 As a result of the amendments, it is not possible to defer the time at which duty is payable on tobacco goods, even where the goods may be intended for later use as a component of other tobacco goods (for example, if looseleaf tobacco is manufactured and used in the manufacture of cigarettes).

1.30 To prevent double taxation, the excise duty payable on tobacco goods is reduced (but not below zero) to take account of excise that has previously been paid on tobacco used in the manufacture of the goods. *[Schedule #, item 2 and 5 of the Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, subsection 6AAC(1) of the Excise Tariff Act and subitem 5.8 of the table in the Schedule to the Excise Tariff Act]*

1.31 Tobacco goods made from other tobacco goods are referred to as **blended tobacco goods**. *[Schedule #, item 1 of the Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, the definition of 'blended tobacco goods' in subsection 3(1) of the Excise Tariff Act]*

1.32 The excise duty payable on tobacco goods is also reduced (but not below zero) to take account of customs duty paid on imported tobacco that is used in the manufacture of the goods. However, the amount of the reduction cannot exceed the amount of excise that would have been payable on the imported goods had they been manufactured in Australia at the time of import. *[Schedule #, item 2 of the Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, subsection 6AAC(2) of the Excise Tariff Act]*

Securities for tobacco goods

1.33 Under section 16 of the Excise Act, the Collector may require an entity to provide security to ensure compliance with the Excise Acts and for the protection of the revenue generally.

1.34 If an entity fails to provide security, the Commissioner may refuse to permit goods to be entered or delivered for home consumption.

1.35 Following the changes to the treatment of tobacco goods, this consequence would no longer be relevant as the goods would automatically be taken to be entered and delivered on manufacture. Given the high value of tobacco goods and the ongoing issues around illicit tobacco, the inability to enforce the requirement to provide a security would result in significant risks to revenue.

1.36 The amendments address this gap by providing that if at any time a licenced manufacturer of tobacco goods does not provide a security when required under the Excise Act, their licence may be suspended and potentially cancelled. Similarly, the Commissioner may refuse to grant a licence for the manufacture of tobacco goods unless the entity applying for the licence has provided the Commissioner with an appropriate security when required. *[Schedule #, items 2 and 4 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, paragraphs 39A(2)(m) and 39G(1)(ma) of the Excise Act]*

1.37 On suspension an entity may no longer manufacture excisable goods and the Collector may exercise a range of power in relation to goods held on their premises.

1.38 This change ensures that the Commissioner is able to prevent manufacturers of tobacco goods from being able to manufacture and sell goods after refusing to provide a security where this is required under the Excise Act.

Consequential amendments

1.39 The Bills also amend the Excise Acts and the TAA 1953 to address and clarify the consequences of the principal changes set out above, including by adding guide material such as notes. *[Schedule #, item 3*

of the Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, and items 3, 5, 8, and 9, of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, the note to subsection 39D(3), subsection 54(4) and paragraph 59(a) of the Excise Act, the heading to section 6G in the Excise Tariff Act and item 3B of the table in subsection 8AAB(4) in Schedule 1 to the TAA 1953]

1.40 The consequential amendments include an amendment to section 61C to make clear that periodic settlement permissions issued under that section do not apply to tobacco goods. *[Schedule #, item 6 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, subsection 61C(1) of the Excise Act].*

1.41 They also include an amendment to subitem 5.5 of the table in the Schedule to the Excise Tariff Act to make clear that this item does not apply to items that are classified to the new item for blended tobacco goods. *[Schedule #, item 4 of the Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018, subitem 5.5 of the table in in the Schedule to the Excise Tariff Act]*

1.42 Further amendments will be made to the *Excise Regulations 2015* to clarify the operation of those regulations in relation to tobacco goods.

Application and transitional provisions

1.43 The amendments apply to tobacco manufactured on or after 1 July 2019. *[Schedule #, item 6 of the Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018 and item 10 of the Excise Laws Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018]*

1.44 As there is currently no licenced manufacture of tobacco in Australia, there is no tobacco held under the control of the CEO currently awaiting entry for home consumption.

1.45 However, for avoidance of doubt, a transitional rule may be included to provide any such tobacco is taken to be entered for home consumption on 1 July 2019 and the full amount of excise payable on this tobacco is due and payable at this time.