Creating a more dynamic and resilient economy inquiry

Questionnaire response 32

Name: Diageo Australia

Submission date: 6/06/2025

1. Support business investment through corporate tax reform

1. What features of the Australian business environment have encouraged or restrained investment over the past 10 years?

The participant did not respond to this question.

2. What elements of the corporate tax system encourage and/or discourage investment and risk-taking?

The participant did not respond to this question.

3. Which parts of the corporate tax system do you find the hardest, or most time or cost-intensive to comply with? How could the compliance burden of the business/company tax system be reduced?

The participant did not respond to this question.

2. Reduce the impact of regulation on business dynamism

1. What areas of regulation do you see as enhancing business dynamism and resilience? What are the reasons for your answer?

In the March 2022–23 Budget, the former Coalition government announced a package of measures to streamline the administration of alcohol (and fuel) excise. The Streamlining excise administration for fuel and alcohol package was the culmination of the work of the Deregulation Taskforce, which undertook a comprehensive consultation process with the spirits (and other) industries.

The firms involved in the consultation (through their respective industry associations) included both local spirits manufacturers (such as Bundaberg Rum) as well as the importers of major spirits brands (such as Diageo, whose global brands include Johnnie Walker, Tanqueray, Baileys, Smirnoff, Gordon’s etc).

The work of the Taskforce identified a range of priorities for amending or removing archaic regulations in the sector to reduce compliance costs and thus enhance business dynamism and resilience.

The Deregulation Package was intended to deliver $1.6bn in savings over 4 years, with annual savings of $20m in compliance costs for around 1,200 alcohol and fuel businesses. The package was expected to lift productivity and produce other economic benefits. Sadly, the most significant measure in the package has not been implemented, ‘at this time’. See further discussion under Question 5.

Several measures of the Package were legislated in the Treasury Laws Amendment (Refining and Improving our Tax System) Act 2023 with a 1 July 2023 start. These measures included aligning excise and customs reporting with other indirect taxes.

There were a range of other technical amendments and repeal of regulations enacted subsequently in the Excise and Customs Legislation Amendment (Streamlining Administration) Act 2024 with a 1 July 2024 commencement. These deregulation measures will enhance the business dynamism and resilience of many firms in the downstream supply chains of local spirits producers and spirits importers.

The Government is to be commended for implementing the majority of the recommendations of the Deregulation Taskforce and for proceeding with these technical regulatory amendments.

2. How has your regulatory burden changed over time?

The growing regulatory burden of dealing with 2 Government regulators, the Australian Border Force (ABF) and the Australian Taxation Office (ATO), in relation to imported spirits has been causing
increasing compliance and regulatory challenges for spirits importers for many years. Australia's Constitution requires that excises payable on locally produced goods, such as spirits, collected by the ATO, cannot be applied to imported goods. Consequently, Australia imposes customs duty on imported spirits, collected by the ABF, at equivalent rates as the excise that applies to the similar products when locally produced. These customs duties are referred to as "excise-equivalent duties".

The spirits industry has been alarmed with the accelerating levels of parallel imported branded spirits products whose retail selling prices are well below similarly branded legitimately imported spirits products which are paying their legal duties. A parallel imported bottle of Johnnie Walker scotch whisky may have been purchased in another market (eg in the EU) and then transported to Australia and imported by a competitor of Diageo, which has the distribution rights in Australia for Johnnie Walker. This is not an illegal practice. However, when the retail price of the parallel imported bottle is lower than could be possible if the correct excise-equivalent duty had been paid on importation, this is clearly a case of duty evasion.

It is clear that these parallel imported branded spirits products may be evading excise-equivalent customs duty on importation.

All of the warehousing, distribution, transport and retail businesses in the legitimate downstream supply chains of the major spirits importers are being disadvantaged by the existence of competitor firms dealing with products which are not paying their legal taxation liabilities. This unfair competition prevents legitimate businesses from developing the dynamism characteristics of a 'frontier firm' in the sector and also impedes the development of truly resilient legitimate firms.

The Deregulation Package specifically referred to its aim of "removing overlapping administration at the border". See the Minister's press release of 31 March 2022.

The recommendations of the Deregulation Taskforce also included, arguably, the most significant recommendation, which is referred to as the "Uniform Business Experience" or 'the single administration'. This referred to the proposed transfer from the ABF to the ATO of the legal and administrative responsibility for the excise-equivalent duty regime. This was a significant future regulatory reform which had the potential to reduce the increasing regulatory burden on spirits importers and their downstream supply chain firms. It would have created a single administrator (ie the ATO) in place of the current 2 administrators.

The spirits industry strongly welcomed the potential reform at the time. In particular, the move to a ‘single administration’ for imported spirits would create increased leverage for the ATO, as the primary regulator of the spirits industry, to take concerted action against parallel importers of branded spirits who were not paying the legal amounts of excise-equivalent duty on the parallel imports.

The spirits industry believes that the “Uniform Business Experience” reforms, as announced, still have the potential to address this issue of unfair competition in pricing of competitor spirits products.

However, in the 2023–24 MYEFO the government announced the Uniform Business Experience component of the Deregulation Package would no longer proceed due to design complexities identified during implementation of that component and that “ … the original policy intent cannot be achieved at this time.” (Emphasis added)

Diageo strongly recommends it is now time for the Uniform Business Experience (ie the single administration) for imported spirits to be re-examined. This reform has the potential to allow legitimate businesses in the downstream supply chains to compete fairly and to be allowed to develop their dynamism and resilience capabilities.

3. What regulations do you find time-consuming, overly complex or otherwise constraining business dynamism and resilience? What are the reasons for your answer?

Distilleries make an important contribution to local economies across Australia. However, alcohol
beverage production can be operationally complex, with onerous licensing requirements, capital costs and on-going cashflow implications of regular excise duty payment obligations. Despite this, legitimate distilleries and their downstream distribution supply chains employ thousands of Australians and support countless jobs, from suppliers in Australia’s agricultural sector to the burgeoning regional hospitality sector.

Jurisdictions around the world have enacted various measures to reduce the excise duty burden on small-scale domestic producers. The Australian Government (via the ATO) administers the Excise Remission Scheme for Alcohol Manufacturers (“the Remission Scheme”). From July 2021, the Remission Scheme:

“provides eligible alcohol manufacturers with a full (100%) automatic remission of excise duty, up to a maximum of $350,000 per financial year, on alcoholic beverages they manufacture and enter into the Australian domestic market for home consumption."

Targeting the first $350,000 of excise payable, the policy intent of the Remission Scheme has been to support legitimate small-scale distilleries and breweries – acknowledging the economic benefits and jobs they provide for the Australian community.

The Government has announced that the maximum ceiling for automatic remission will be increased to $400,000 from 1 July 2026. A similar increase will apply to the wine producer rebate, for small wineries, under the separate Wine Equalisation Tax (WET).

Unfortunately, the regulation changes since 2021 have had the unintended consequence of incentivising commercial arrangements to ‘game’ the Remission Scheme. By aggregating supply of alcohol from multiple Remission Scheme recipients, large on-trade retailers (with significant sales of ‘generic’ spirits for mixed drinks) are able to cascade the benefit of multiple $350,000 excise remissions.

This issue was highlighted in a recent submission to the Federal parliamentary Inquiry into Food and Beverage Manufacturing in Australia by Adam Carpenter from Prohibition Liquor Co. in South Australia:

"… spirit(s) makers are walking into venues all over Australia, with drums of gins or vodkas, selling to bars at $25-$35 per litre, a product which should cost more than $43/L in excise value alone. This completely renders distilleries which pay excise, employ staff, generate exports and build the economy, unable to compete on price in such a price-sensitive market."

On face value these business models may, to all intents and purposes, meet the Remission Scheme's literal independence and ‘small ownership’ requirements. However, it is evident that their overwhelming purpose can be to produce spirits for a large single entity which, when aggregated, can easily lead to avoiding the payment of millions of dollars of excise and undercutting legitimate distillers.

The overall impact of the current administrative interpretations of the Remission Scheme legislation and Excise regulations is to constrain the business dynamism and resilience of legitimate distilleries and the firms in their downstream supply chains.

Diageo recommends that the Remission Scheme be urgently reviewed and, at least, that the Excise Regulations be amended to:

1. Strengthen the definition of an eligible ‘alcohol manufacturer’, to require the selling of excisable beverages (whether wholesale or retail) on which excise has been paid, directly from the manufacturing premises – reintroducing a condition of the original Microbreweries Rebate that was removed in later expansion of the scheme.
2. Strengthen the definition of ‘legally and economically independent’ to explicitly clarify that a manufacturer cannot be deemed independent if its sole or primary purpose is to supply a third party that aggregates/pools purchases from multiple suppliers that are eligible for the Remission Scheme.
3. Introduce a packaging and branding requirement, for eligible products to be sold in recognisable retail units (e.g. 700ml/1 litre bottles, or not bulk over 5 litres) and be clearly branded with the eligible manufacturer's registered trademark (akin to WET Rebate requirements).

4. Can you share any specific examples of where you think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses and why?

The former Department of Industry, Energy and Resources (DISER) did a good job in understanding how blockchain technology could reduce the regulatory burden on businesses in the spirits sector and enhance the business dynamism of those firms. DISER released the National Blockchain Roadmap in 2020. It quickly became a catalyst for a national conversation about Australia's blockchain strategy, helping to highlight the enormous opportunities for the technology across the economy.

Blockchain technology has a significant potential to be used to turbocharge business dynamism and resilience in the spirits sector.

DISER commissioned a report on how blockchain could be used to improve the controls and administrative efficiency of excise duty on spirits. A Pilot was funded by the Blockchain Pilot Grants Program established as a result of the Roadmap.

The Pilot's objectives were to demonstrate the potential for blockchain to reduce the regulatory compliance burden for spirits businesses, develop blockchain solutions for government and showcase to industry the viability of the regulatory efficiencies.

Convergence.Tech, a global technology company and leading blockchain solution provider, led the Pilot, working closely with the regulator (the ATO) and the spirits industry.

The Pilot assessed key administrative and compliance burdens impacting the regulator and industry. Convergence.Tech addressed these challenges through the design and development of the Blockchain Excise Platform.

In the platform, the Selecting and Engaging Procedures (SEP) connects industry (i e. distillers/producers and distributors/wholesalers) and the regulator via a private permissioned blockchain. The blockchain provides a real-time ledger, digitising and tracking the excisable commodity (alcohol) as it is produced, matured and distributed across the supply chain.

Whilst the Pilot focused on spirits, the capability can be extended and applied to other excisable commodities (e.g beer, fuel, tobacco) and supply chains (e.g hydrogen) delivering significant benefits for regulators, industry and taxpayers.

The application of blockchain technology to the spirits sector had the potential to recover at least $45m annually in lost tax revenue, based on KPMG analysis. Convergence.Tech's revolutionary platform also enables a Global and Domestic Trusted Distiller Program to be introduced that could lead to privileged trading benefits and a significant reduction in the excise tax administrative burden.

Lost excise revenue was estimated to cost the Federal Government an estimated $582m annually at that time. The industry agreed that significant change was required. Burdened with administrative oversight, cashflow impediments and fighting a market burdened with illicit activity, local producers also wished to be released from the current excise and production constraints.

The Pilot concluded in 2022 and was widely recognised as a success by government and industry, with significant interest from overseas regulators.

Unfortunately, the opportunity to further develop the blockchain insights from the Pilot have not been pursued.

Diageo recommends that the findings of the Spirits Sector Blockchain Pilot should form the basis of a renewed investigation of the potential for blockchain technology to assist transform firms in the spirits sector to be more dynamic and resilient.