



## Full Federal Court to rule on 'legality' of RTD tax collection

The Federal Government's right to collect taxes for up to 12 months despite the legislation being rejected by the Australian Senate will be tested in a case before the full Federal Court of Australia on Monday 4 May 2009.

The Court's three judges will be asked to rule on whether the continuing collection of more than \$1 million a day in additional excise on spirits-based ready-to-drink (RTD) alcohol products after the Senate rejected the excise bill on 18 March has usurped the constitutional role of the Parliament.

Lawyers for Suntory (Aust) Pty Ltd, on behalf of other members of the Distilled Spirits Industry Council of Australia (DSICA), will argue the ongoing collection of the 70% RTD tax hike is 'unlawful' and amounts to the acquisition of property on something other than 'just terms'.

"This action involves a fundamental legal principle that goes to the heart of our system of parliamentary democracy," said Stephen Riden, Information and Research Manager for DSICA.

"The Commonwealth is trying to argue that it can force taxpayers to pay excise duties, like the tax increase on RTDs, even after the tax being rejected by the Parliament. This situation can last for up to a year," he said.

"Our legal opinion is that the mechanics now being used by the Government to collect additional excise on RTD sales is unlawful. The role of the Senate in approving or rejecting proposals from the Executive branch of government has been eroded through the ongoing collection of the tax."

Mr Riden noted the issues before the Full Federal Court extend beyond whether the collection of additional RTD excise duties between 18 March (after the Senate rejected the excise bill) and 13 May (12 months from the proposal entering the Parliament) is legal.

"Given the Government has announced it will reintroduce the RTD tax hike to the Parliament for a second year and thereby continue to collect additional revenue after 13 May, we are at risk of creating a precedent for a Minister to 'roll-over' excise tariff proposals every 12 months indefinitely, without Parliament ever approving them," he said.

The case was initially heard on 15 April by a single Federal Court judge who stayed proceedings until midnight on 13 May 2009. Her Honour's decision to do this was based on Section 114 of the Excise Act which prevents a taxpayer initiating legal proceedings against the Commonwealth for up to 12 months after a change in an excise tariff rate is proposed to Parliament.

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