



Australian Government

Australian Taxation Office

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## Legislative Instrument

### Excise concessional spirit approvals guidelines 2016 (No. 2)

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I, Deborah Jenkins, Acting Deputy Commissioner of Taxation, make this determination under the following provision:

- Subsection 77FF(5) of the *Excise Act 1901* (Excise Act)

#### **Deborah Jenkins**

Acting Deputy Commissioner of Taxation

Dated: 13/9/2016

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#### **1. Name of instrument**

This determination is the *Excise Concessional spirit approvals guidelines 2016 (No. 2)*.

#### **2. Legislative Instrument**

This determination is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

#### **3. Commencement**

This determination commences on the day after it is registered. On commencement it replaces and repeals *Excise concessional spirit approvals guidelines 2006 (No. 1)* (which expires on 1 October 2016).

#### **4. Application**

This determination applies to applications for approval to use spirit free of duty that is delivered under subitem 3.7 of the Schedule to the *Excise Tariff Act 1921*.

It applies to applications received on or after the date of commencement.

#### **5. Revoking of previous instrument**

*Excise concessional spirit approvals guidelines 2006 (No. 1)* is revoked on commencement of this determination.

The new instrument is a restatement of the previous determination which is scheduled to be repealed on 1 October 2016 under the sunset provisions as prescribed in Part 4 of Chapter 3 of the Legislation Act.

## 6. Determination

For the purposes of subsection 77FF(5) of the Excise Act, the following are guidelines the CEO will follow when considering whether to grant a person an approval<sup>1</sup> to use spirit for a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose.

Approval may be given to persons to use spirit for appropriate and specific industrial, manufacturing, scientific, medical, veterinary or educational purposes.

Appropriate purposes do not include using spirit in any of the following ways:

- as a beverage or in the production of a beverage (other than as an incidental input);
- in any product (including products that are not beverages) that may be consumed for an intoxicating effect.
- as a fuel (or a component of fuel)
- on-supply to another person (unless expressly permitted by the CEO in an approval granted under subsection 77FF(1) of the Excise Act.

An approval may be given to use a once-off specified amount of spirit, or to use a specified amount of spirit in a calendar month or a calendar year.

An approval may specify an end date after which approval to use the spirit expires, or may be given as an ongoing approval (valid until revoked).

The CEO must be satisfied that the spirit will be used for the specified purpose, and that it is unlikely that the spirit will be used for another purpose, having regard to;

- The quantity of spirit specified in the approval
- The conditions (if any) to which the approval may be subject
- Other matters the CEO considers to be relevant in order to reduce risk to the revenue or ensure compliance with the Excise legislation.

When making a decision the CEO may take into account any matters relevant to determine any risks to revenue or the likelihood of compliance with the Excise legislation. For example, this may include:

- whether an applicant is fit and proper for being entrusted with the spirit (an entity's prior tax compliance history and financial resources may be relevant)
- whether the spirit will be used in the course or furtherance of an enterprise that the applicant carries on<sup>2</sup>
- arrangements for the storage and handling of the spirit
- the applicant's ability to keep appropriate records, and provide access to those records when required
- the likelihood of the spirit being used for a purpose other than the approved purpose.

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<sup>1</sup> Under subsection 77FF(1) Excise Act

<sup>2</sup> The expression 'in the course or furtherance of carrying on an enterprise' is used in the *A New Tax System (Australian Business Number) Act 1999* and has the same meaning in this instrument as in that Act.

Applications for approval should be made in writing and should provide information necessary to enable the CEO to make a decision. This includes the applicant's identifying details, particulars about the quantity, type and strength of spirit to be used and any other information the CEO considers relevant in making a decision.

A person who receives spirit free of duty under an approval may be required to account for its use. If the person fails to account to the satisfaction of the CEO, they may become liable to pay an amount equal to the duty that would have been payable on the spirit if there had been no approval<sup>3</sup>.

A decision to refuse an application for approval, or to impose conditions on an approval, is a reviewable decision (see subsection 162C(1) of the Excise Act).

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<sup>3</sup> Subsection 77FH(3) of the Excise Act.