



Explanatory Statement

Excise Act 1901

Excise (Class of persons—government institutions) Determination 2006 (No. 2)

General outline

1. This Explanatory Statement is provided in accordance with section 26 of the *Legislative Instruments Act 2003*.
2. *Excise (Class of persons—government institutions) Determination 2006 (No. 2)* is required due to amendments to the Excise legislation effected by Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006, Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006 and Excise Amendment Regulations 2006 (No. 3).
3. The amendments are the result of the Review of the Schedule to the *Excise Tariff Act 1921* (the Review) initiated by Treasury on 2 June 2005 with the release of an industry discussion paper and a targeted consultation process. The principal objects of the Review were to streamline the Schedule to the *Excise Tariff Act 1921* (the Excise tariff) and make it more user-friendly, make excise law clearer and less complex, and improve the integrity of the excise system.
4. Up to 30 June 2006 undenatured or denatured spirit has been delivered duty-free with or without a permit under Divisions 2 to 4 of Part VI, and Part VIII of the Excise Regulations 1925 and Parts IV to IV of the Spirits Regulations 1926. These provisions are outdated and unnecessarily complex.
5. In addition, administrative practice has developed to allow certain categories of persons having a professional use for undenatured spirit and representing a low compliance risk to access limited quantities of duty-free spirit for those purposes without a permit. This administrative arrangement has reduced the burden on both clients and the Tax Office by doing away with the need for a large number of concessional spirits permits where there is no significant risk to the revenue. Section 77FE formalises this administrative practice and enables its scope to be extended to broader classes of clients where there is no significant risk to the revenue.
6. Under section 77FE, the CEO (Commissioner of Taxation) may determine, by legislative instrument, a class of persons for the purposes of subitem 3.6 of the Excise tariff and nominate a maximum quantity of spirit for persons of that class. A member of a determined class of persons may access spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose free of duty under subitem 3.6 without requiring a permit issued by the Tax Office.
7. The expression ‘an industrial, manufacturing, scientific, medical, veterinary or educational purpose’ brings together the categories of use for which concessional spirit has been accessed up to 30 June 2006 under the relevant regulations.

8. In the Commissioner's view, such use:
- would ordinarily be in the course or furtherance of carrying on an enterprise (within the meaning of that expression in the *A New Tax System (Australian Business Number) Act 1999*); and
 - excludes the on-supply of the spirit (which is not 'use') or use for an excisable purpose (i.e. in an alcoholic beverage or as fuel).
9. In determining a class of persons, the CEO will be satisfied that:
- persons in that class have a legitimate use for duty-free spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose;
 - up to the specified quantity limit, access to spirit duty-free by those persons without a permit presents no significant risk to the revenue; and
 - the persons can verify by documentary evidence presented to a supplier of spirit that they are members of the class.
10. Paragraphs 1.36, 2.56 and 2.62 of the Explanatory Memorandum to the amending Bills provide commentary on the intended operation of section 77FE.
11. The instrument determines that government institutions are a class of persons and provides for a maximum quantity of spirit that may be delivered to members of this class.
12. The instrument is made under section 77FE of the *Excise Act 1901* (Excise Act).

Date of effect

13. The instrument commences on 1 July 2006.

Purpose and operation of the instrument

14. Government institutions may access spirit under subitem 3.6 of the Excise tariff for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.

15. A government institution is defined as having the same meaning as 'government related entity' in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The relevant definition states:

government related entity is:

- (a) a *government entity; or
- (b) an entity that would be a government entity but for subparagraph (e)(i) of the definition of **government entity** in the *A New Tax System (Australian Business Number) Act 1999*; or
- (c) a local governing body established by or under a *State law or *Territory law.

16. In the GST Act 'government entity' has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*. That definition states:

government entity means:

- (a) a Department of State of the Commonwealth; or
- (b) a Department of the Parliament; or

- (c) an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*; or
- (d) a Department of State of a State or Territory; or
- (e) an organisation that:
 - (i) is not an entity; and
 - (ii) is either established by the Commonwealth, a State or a Territory (whether under a law or not) to carry on an enterprise or established for a public purpose by an *Australian law; and
 - (iii) can be separately identified by reference to the nature of the activities carried on through the organisation or the location of the organisation;whether or not the organisation is part of a Department or branch described in paragraph (a), (b), (c) or (d) or of another organisation of the kind described in this paragraph.

17. Government institution therefore includes all Commonwealth, State and Territory government departments and agencies, statutory authorities and local government councils.

18. Aligning the class of persons with the GST Act definition increases certainty for members of the class, as they can ascertain their eligibility on the basis of their GST status.

19. The supplier of spirit to a person under the determination must be satisfied of the bona fides of the recipient.

20. Government institutions using spirit containing more than 1000 litres of alcohol a year are required to apply for approval to receive the spirit under subitem 3.7 of the Excise tariff. Guidelines for the granting of an approval are contained in the legislative instrument *Excise concessional spirit approvals guidelines 2006 (No. 1)*.

21. It is possible that a government institution may qualify as a member of more than one class of persons determined by the CEO under section 77FE. In such a case, without a permit the institution may access only up to the maximum quantity of spirit nominated for one of those classes of persons. The maximum quantity for a class of persons cannot be aggregated with the maximum quantity for another class of persons.

22. Section 77FH provides a mechanism for the Tax Office to ensure that duty-free spirit accessed under the determination is used for a proper purpose. Persons receiving spirit under subitem 3.6 may be required to account for their use of the spirit, showing that it has been used for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. If the person fails to account to the satisfaction of the Tax Office, a written demand may be made giving rise to a liability to pay an amount equal to the duty that would have been payable if the determination had not been made. A demand is a reviewable decision.

Impact of the instrument

23. A government institution which uses spirit in its activities is currently required to apply to the Tax Office for a permit in order to gain access to duty-free spirit. Based on the history of compliance and the requirements of good administrative practice, the Tax Office has decided that these institutions should not be required to hold a permit in order to access spirit up to 1000 litres a year, as this presents no significant risk to the revenue.

24. The instrument simplifies administration for the Tax Office and lessens the compliance burden for this group of clients.

Consultation

25. On 1 June 2006 the Tax Office initiated a 2-week public consultation process on the legislative instruments arising from the Review, with the Assistant Treasurer approving the consultation prior to the related legislation being passed by Parliament.

26. The instruments and explanatory statements were published on the ATO website www.ato.gov.au in the form of drafts for consultation. The instrument, together with this explanatory statement, was included in that process.

27. Selected parties in the alcohol industry were contacted and invited to comment on the content, form and language of the determination and explanatory statement.

Commissioner of Taxation

[30 June 2006]

Previous draft:

1 June 2006

Related Rulings/Determinations:

Excise (Class of persons—educational institutions) Determination 2006 (No. 1)

Excise (Class of persons—medical institutions) Determination 2006 (No. 3)

Excise (Class of persons—health care practitioners) Determination 2006 (No. 4)

Excise (Class of persons—veterinary practitioners) Determination 2006 (No. 5)

Excise concessional spirit approvals guidelines 2006 (No. 1)

Subject references:

Excise

Excise Tariff

concessional spirit

concessional spirit specific approvals

Legislative references:

A New Tax System (Australian Business Number) Act 1999

A New Tax System (Goods and Services Tax) Act 1999 section 195-1

Excise Act 1901 section 77FF

Excise Act 1901 section 77FH

Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006

Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Act 2006

Excise Regulations 1925 Divisions 2 to 4 of Part VI, Part VIII

Excise Amendment Regulations 2006 (No. 3)

Spirits Regulations 1926, Parts IV to IV

Other references:

Review of the Schedule to the Excise Tariff Act: industry discussion paper, Treasury, 2 June 2005

Explanatory Memorandum to the Excise Laws Amendment (Fuel Tax Reform and Other Measures)
Bill 2006, Excise Tariff Amendment (Fuel Tax Reform and Other Measures) Bill 2006

ATO references

NO:
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