

EXC 2006/4 - Explanatory statement -



Explanatory Statement

Excise Act 1901

Excise (Blending exemptions) Determination 2006 (No. 1)

General outline

1. This Explanatory Statement is provided in accordance with section 26 of the *Legislative Instruments Act 2003*.
2. *Excise (Blending exemptions) Determination 2006 (No. 1)* 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. The instrument is made under section 77H of the *Excise Act 1901* (Excise Act) as substituted with effect from 1 July 2006. In addition to providing circumstances in which fuel blends are exempt, this section gives power to the CEO (i.e. the Commissioner of Taxation) to specify by legislative instrument other circumstances in which fuel blends are excluded from the Excise tariff and therefore not subject to duty.
5. Exempt blends have been provided for under section 77J of the Excise Act and subregulation 176(2) of the Excise Regulations 1925 (the Regulations). Those provisions are being repealed.
6. The legislative instrument sets out circumstances covered by subregulation 176(2) that remain relevant to the blending of fuel under item 10 of the Excise tariff. It also provides a circumstance not formerly provided for in the law.
7. Reasons that a subregulation 176(2) blend may not be covered by the instrument include:
 - it is now covered by paragraph 77H(1)(a) of the Excise Act;
 - it is now covered by paragraph 77H(1)(b) of the Excise Act (blends covered by a determination under section 95-5 of the *Fuel Tax Act 2006*);
 - it relates to lubricants etc., which are not item 10 goods;
 - it is no longer used (leaded petrol);

- it is redundant under the new fuel tax arrangements.

Date of effect

8. The determination commences on 1 July 2006.

Effect of the instrument

9. The determination specifies circumstances in which blends of excisable fuels, with or without other substances, are taken not to be excisable goods. Excise duty is therefore payable on the components of these blends (where applicable), but not on the blends themselves.

10. Item 7(a) provides an exemption for two-stroke petrol, formerly provided by paragraph 176(2)(f) of the Regulations.

11. Item 7(b) exempts incidental blending within a storage tank or a vehicle's fuel tank. This is a new exempt blending circumstance. This exemption applies where there is no intention to benefit from the blend as such and practical considerations prevent the complete emptying of a tank of a relatively small quantity of product before filling it with another product. It is a matter of fact and degree whether the contents of a tank should be regarded as 'remnants' and whether the blend should be regarded as an 'incidental' blend.

12. Item 7(c) provides an exemption formerly provided by paragraph 176(2)(o) of the Regulations. Stabilised crude petroleum oil used in an oil refinery in refining (not in an internal combustion engine) is excluded from the Excise tariff under item 10 paragraph (a) and is therefore not dutiable. A blend of such stabilised crude petroleum oil and diesel or biodiesel is appropriately excluded from item 10 paragraph (g) and duty is therefore payable only on the diesel or biodiesel component.

13. Item 7(d) provides an exemption formerly provided by paragraph 176(2)(g) of the Regulations

14. Item 7(e) provides an exemption formerly provided by paragraph 176(2)(h) of the Regulations.

15. Item 7(f) provides an exemption formerly provided by paragraph 176(2)(y) of the Regulations.

16. These last two items relate to the addition of certain kinds of performance enhancing or engine maintenance additives to fuel.

17. The formulation of blending circumstances may differ from their equivalents in subregulation 176(2) due to the simplification of the Excise tariff and the removal of differential rates for fuel.

18. Paragraphs 2.19 to 2.23 of the Explanatory Memorandum to the amending Excise Bills provide additional commentary on the operation and intent of substituted section 77H of the Excise Act.

Impact of the instrument

19. Together with provision for blends already made in subsection 77H(1), the determination ensures that former exemptions are maintained as required and that provision is made in the law for incidental blending in a tank, providing greater certainty in relation to excise obligations around the blending of fuels.

Consultation

14. 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.

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

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

17. On 15 June 2006, Tax Office staff met with representatives from the solvent manufacturing sector in Melbourne to consult on the instruments relevant to fuel blending.

Commissioner of Taxation

[30 June 2006]

Previous draft:

1 June 2006

Related Rulings/Determinations:

Fuel Tax (Fuel Blends) Determination 2006 (No. 1)

Subject references:

Excise

Excise tariff

Fuel blending

Exempt blends

Legislative references:

Excise Act 1901 section 77H (as at 1 July 2006)

Excise Act 1901 paragraph 77H(1)(a)

Excise Act 1901 paragraph 77H(1)(b)

Excise Act 1901 section 77J (as at 30 June 2006)

Excise Amendment Regulations 2006 (No. 3)

Excise Regulations 1925 subregulation 176(2)

Excise Regulations 1925 paragraph 176(2)(f)

Excise Regulations 1925 paragraph 176(2)(g)

Excise Regulations 1925 paragraph 176(2)(h)

Excise Regulations 1925 paragraph 176(2)(o)

Excise Regulations 1925 paragraph 176(2)(y)

Fuel Tax Act 2006 section 95-5

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

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