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## Explanatory Statement

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

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#### Revoking of previous instrument

1. This Explanatory Statement is provided in accordance with subsection 15G(4) and section 15J of the *Legislation Act 2003* ('*Legislation Act*').
2. Excise concessional spirit approvals guidelines 2006 (No. 1) ('previous instrument') was registered on 30 June 2006 and is scheduled to be repealed on 1 October 2016 under the sunset provisions prescribed in Part 4 of Chapter 3 of the *Legislation Act*.
3. Excise concessional spirit approvals guidelines 2016 (No. 2) ('determination') revokes and replaces the previous instrument.
4. The determination is made under subsection 77FF(5) of the *Excise Act 1901* (Excise Act) and is intended to be a restatement of the previous instrument.

#### Date of Effect

5. The determination commences on 1 October 2016.

#### Effect of the determination

6. Under subsection 77FF(1) of the *Excise Act 1901* (Excise Act), the CEO (i.e. the Commissioner of Taxation) may grant an approval to a person to use spirit that has been entered at a rate of duty of free for a specific industrial, manufacturing, scientific, medical, veterinary or educational purpose. Spirit delivered under an approval is classified to subitem 3.7 of the Schedule to the *Excise Tariff Act 1921* (the Schedule) and requires the recipient to hold the approval.
7. Subsection 77FF(5) of the Excise Act requires the CEO to develop guidelines to which regard must be had in granting an approval. This determination provides guidelines as to what information the CEO must have regard to when deciding whether to grant approval to a person under subsection 77FF(1) of the Excise Act.
8. The overarching principle is protecting the revenue – which means appropriately managing the risk of duty not being paid at the correct rate.
9. The instrument details factors to take into account when considering requests to use spirit for an industrial, manufacturing, scientific, medical or veterinary purpose.
10. The effect is a clear and transparent guide for applicants and decision makers, detailing the overriding policy principles under which a person may qualify for approval under section 77FF of the Excise Act.

## The guidelines

11. Under section 77FF of the Excise Act the CEO may, for the purposes of subitem 3.7 of the Schedule, grant a person written approval to use spirit free of duty for a specific industrial, manufacturing, scientific, medical, veterinary or educational purpose. This enables a licensed entity to deliver spirit at a rate of duty of free to that approval holder (under subitem 3.7 of the Schedule).
12. Spirit means goods described in item 3 of the *Excise Tariff Act 1921*<sup>1</sup>. This includes all excisable beverages exceeding 10% by volume of alcohol. An approval must specify exactly what spirit or alcohol is allowed to be used, and what it is allowed to be used for.
13. Uses that may be approved under section 77FF(1) are:
  - **industrial** (e.g. as a refrigerant, solvent, cleaning agent);
  - **manufacturing** (e.g. in manufacturing particular foods<sup>2</sup> or medicines, mouthwashes, toiletries etc.);
  - **scientific** (e.g. as a reagent, solvent, preservative);
  - **medical** (e.g. as a solvent, sterilising agent, cleaning agent);
  - **veterinary** (e.g. as a solvent, sterilising agent, cleaning agent); or
  - **educational** (e.g. laboratory use).
14. The following uses will not be approved:
  - **use as a beverage or in the production of a beverage, other than as an incidental input**

An example of an incidental input is a spirit-based flavouring or essence used for flavouring that does not measurably increase the alcohol content of the product. A spirit-based essence used as a base for an alcoholic beverage is not an incidental input.
  - **Use for an intoxicating purpose in products (whether or not beverages)**

Non-beverage products such as alcoholic jellies or iceblocks are excluded. Non-beverage products such as medicines and mouthwashes are not affected by this exclusion, as these products are not a source of alcoholic consumption as such.
  - **Use as a fuel or a component in fuel**

When used as a fuel or a component in fuel, alcohol (ethanol) is classified to an appropriate subitem of item 10 of the Schedule. This applies whether or not it is used in an internal combustion engine or as a burner fuel.
  - **On-supply of spirit to another person, except as expressly allowed by the approval**

On-supply does not fall within the intended scope of 'use' in subsection 77FF(1). However, where the on-supply is made by a user of the spirit and is merely a step towards the use of the spirit for an eligible

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<sup>1</sup> See section 4 Excise Act.

<sup>2</sup> Food has the meaning given under the *A New Tax System (Goods and Services Tax) Act 1999*.

purpose by a subsidiary or affiliated entity, the CEO may expressly allow it in the interests of good administration.

15. Proposed uses that are not eligible for concessional spirit are likely to mean that an excise licence is required, or that excise duty needs to be paid to receive the spirit.
16. Applications for approval should include information to enable the CEO to make an informed decision. This may include:
  - details of the applicant (including ABN where applicable);
  - quantity, type and alcoholic strength of spirit to be used;
  - the specific purpose the spirit will be used for (and details of how this is an appropriate industrial, manufacturing, scientific, medical, veterinary or educational purpose)
  - address (or addresses) at which spirit is to be stored and/or used;
  - details of the proposed (licensed) supplier(s);
  - any other information that the CEO considers relevant to the application.
17. An approval when granted may specify details of the type of spirit that may be used (for example 96% neutral spirit, grape spirit, brandy, rum etc.).
18. An approval must state the quantity (in litres of pure alcohol or litres of product of a specified strength) that may be used in either:
  - a once off specified period; or
  - a calendar month; or
  - a calendar year.
19. Approvals to use an amount per calendar month or calendar year may be granted on an ongoing basis, or an expiry date may be specified. In making a decision on the duration of the approval the CEO will consider the needs of the client and any revenue risks posed by giving ongoing approval.
20. In deciding whether to give approval the CEO may take into account whether or not the spirit is being used in the course or furtherance of an enterprise that the applicant carries on. The licensing provisions of the Excise Act are normally directed towards controlling commercial operations.<sup>3</sup> While section 77FF isn't strictly a licensing provision, an approval to use spirit free of duty involves similar considerations and has the same focus of protecting excise revenue.
21. The licensing provisions in Part IV of the Excise Act provide a range of considerations that are relevant in managing excise risks, and that may be taken into account in making decisions on whether to grant approval under section 77FF. These includes considering whether persons are fit and proper to be entrusted with goods and their ability to manage the goods appropriately (including keeping appropriate records, storing appropriately etc.)

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<sup>3</sup> See paragraphs 2.26 to 2.36 of the Explanatory Memorandum to the *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006*, especially paragraph 2.28 which refers to home growing tobacco, home distillation of spirit and biodiesel production for personal use.

22. Overriding concerns are that the revenue base is not eroded and that there are appropriate controls to ensure the correct amount of duty is paid<sup>4</sup>. All applications need to be carefully considered to ensure that the spirit will be put to an appropriate use, that accurate records will be kept, that there is appropriate storage and handling and that we have the ability to monitor the client.
23. Before giving an approval the CEO must be satisfied that the spirit will be used for the stated or specified purpose, and that unapproved use is unlikely. The CEO will generally be satisfied unless there are reasons for doubt based on information available.
24. The CEO may take into account any relevant matter in assessing the likelihood of improper use. This includes considering whether the amount of spirit intended to be used is reasonable, taking into account the size and nature of the enterprise and the specified period for which the quantity is nominated.
25. Conditions may be imposed to lessen the likelihood or risk of spirit being unaccounted for, or used for a purpose other than the specified purpose. These may include:
- conditions regarding record-keeping and/or reporting or accounting for the goods;
  - specifying locations and/or security arrangements for the storage of spirit;
  - specifying suppliers from whom spirit may be obtained
  - requiring the addition of another substance to spirit to lessen the risk of diversion to improper use;
  - restricting package sizes and marketing methods for spirit-based products;
  - requiring provision of a security (usually in the form of a cash deposit or a bank or financial institution guarantee);
26. If an entity that holds an approval to use spirit cannot show, when requested, that they have used the spirit in the way specified in the approval, they may be required to pay an amount equal to the duty that would have been payable on the spirit if there had been no approval and at the tariff rate in force on the day of the demand.

## Consultation

27. In 2016, prior to publishing the updated instrument, we sought feedback from entities that deliver significant quantities of product under subitem 3.7 of the *Excise Tariff Act 1921*.

**Compliance Cost Impact:** Minor – there will be only minor impact on implementation or ongoing compliance costs. The legislative instrument is minor or machinery in nature.

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<sup>4</sup> See paragraphs 2.26 to 2.36 of the Explanatory Memorandum to the *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006*.

***Legislative references:***

*Excise Act 1901 section 77FF*

*Excise Tariff Act 1921, the Schedule, subitem 3.7*

*Excise Tariff Act 1921, the Schedule, item 10*

*Legislation Act 2003*

## **Statement of Compatibility with Human Rights**

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

This instrument sets out guidelines for specific approvals that allow spirit to be delivered into home consumption free of duty under subitem 3.7 of the Excise tariff.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms. It is considered to be minor or machinery in nature and continues the current approach.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.