

EXC 2006/11 - Explanatory statement -



Explanatory Statement

Excise Act 1901

Excise (Class of persons—educational institutions) 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 (Class of persons—educational institutions) 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. 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 These provisions are outdated and unnecessarily complex.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 educational 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. Educational institutions may access spirit under subitem 3.6 of the Excise tariff for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.

15. An educational institution is defined as an institution that conducts an 'education course' within the meaning of section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*. That definition states:

education course means:

- (a) a *pre-school course; or
- (b) a *primary course; or
- (c) a *secondary course; or
- (d) a *tertiary course; or
- (e) a *Masters or Doctoral course; or
- (f) a *special education course; or
- (g) an *adult and community education course; or
- (h) an *English language course for overseas students; or

- (i) a *first aid or life saving course; or
- (j) a *professional or trade course; or
- (k) a *tertiary residential college course.

16. The asterisked terms are further defined in section 195-1.

17. By defining educational institution in this way, all mainstream education bodies are included. By aligning the definition with the GST, an educational institution can more easily ascertain its status in relation to the determination.

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

19. For the purposes of presenting evidence of eligibility to a supplier of spirit, the institution may produce a certificate of registration or accreditation as an educational body.

20. Educational 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 an educational 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 of the Excise Act 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. Up to 30 June 2006, under the administrative arrangement referred to in paragraph 5 above an educational institution could access duty-free spirit up to 5 litres a year for use in its activities. The instrument provides a legislative basis for this treatment and increases the permitted quantity of spirit.

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—government institutions) Determination 2006 (No. 2)

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 section 41

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:

ISSN: