

**EXPLANATORY STATEMENT**

**EXCISE REGULATIONS (AMENDMENT)**

**STATUTORY RULES 1989 NO.307**

**ISSUED BY THE AUTHORITY OF THE MINISTER OF STATE FOR  
INDUSTRY, TECHNOLOGY AND COMMERCE**

Section 164 of the Excise Act 1901 (the Act) provides in part that "(1) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act..."

This Statutory Rules amends the Excise Regulations with effect from 1 March 1988 to provide the facility for a refund of Excise duty to be made where a product has been withdrawn from sale for health or safety reasons at the request of a Minister of State.

By way of background, last year Carlton Wines and Spirits (Australia) Pty Ltd marketed a range of mixed drinks, named "Kix".

The "Kix" range were spirituous beverages, classified to Excise Tariff item 2H, and attracted substantial rates of duty when entered for home consumption.

The drinks were voluntarily withdrawn from the market upon the request of Government Ministers who expressed concern about the attraction to the drinks by young people.

The amendments are retrospective to 1 March 1988, and will enable Carlton Wines and Spirits (Australia) Pty Ltd to claim a refund of the Excise duty paid on the "Kix" drink which was withdrawn from the market at the Government's request. In addition, it will provide a facility for a refund to be made should similar circumstances occur in future in relation to any product which a Minister of State requests to be withdrawn for health or safety reasons.

Details of the amendments are as follows:

Regulation 1 provides that the amendments commence on 1 March 1988.

This date has been chosen to ensure that Carlton Wines and Spirits (Australia) Pty Ltd are eligible to claim a refund of Excise duty on the "Kix" range of beverages withdrawn from sale at the Government's request.

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Although the amendment has retrospective operation, it does not prejudice the rights of any person other than the Commonwealth, and for this reason it is considered that it does not offend paragraph 48(2)(c) of the Acts Interpretation Act 1901.

Regulation 2 amends regulation 50 of the Regulations to prescribe a new refund circumstance for a refund of Excise duty.

paragraph (a) inserts a new paragraph 50(1)(db) into the Regulations to provide that a refund of Excise duty is payable where:

- a. Excise duty has been paid on a product;
- b. a Minister of State has requested withdrawal of the product on the grounds of public health or safety;
- c. the product is withdrawn in accordance with that request.
- . new regulation 54A (as to which see regulation 3 (below)) provides that a refund is not payable in accordance with this provision unless the goods are destroyed or otherwise rendered incapable of resale.

paragraph (b) inserts a new subregulation 50(2A) to provide that goods are taken to have been returned for the purposes of the new paragraph 50(1)(db) if they are returned to a person authorised by the manufacturer to receive the goods on his or her behalf.

Regulation 3 inserts a new regulation 54A to provide that a refund is not to be allowed unless the applicant establishes to the satisfaction of the Comptroller that the goods have been destroyed or have been otherwise rendered incapable of being resold.

S.R. 325/89

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