

Excise Regulations (Amendment) 1997 No. 388

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 388

Issued by the authority of the Minister for Customs and Consumer Affairs

Excise Act 1901

Excise Regulations (Amendment)

Section 164 of the *Excise Act 1901* ("the Act") provides the Governor-General with the head of power to make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to the Excise.

Subsection 78(1) of the *Excise Act 1901* ("the Act") provides that:

"Remissions, rebates and refunds of excise duty may be allowed:

- (a) in respect of excisable goods generally or in respect of the goods included in a class of excisable goods,- and
- (b) in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances, and conditions and restrictions, that relate to excisable Goods generally or to the goods included in a class of excisable goods."

Sections 6B, 6C and 6D of the *Excise Tariff Act 1921* ("the Tariff Act") provide the methods for calculating the excise duty on stabilised crude petroleum oil ("crude oil"). They Govern the calculation of excise duty on "old oil", "new oil" and "intermediate oil" respectively.

Subregulation 50(1) of the Excise Regulations ("the Regulations") prescribes the circumstances for the purposes of section 78 of the Act.

Prior to the amendments, the Regulations only provided for the remissions, rebates and refunds of excise duty paid in relation to crude oil in the two circumstances prescribed in paragraphs 50(1)(s) and (t) where there has been an error in the measurement or calculation of the volume of crude oil and where a determination of a final Volware price has been amended. Paragraphs 50(1)(s) and (t) were adequate when production of crude oil was high and payments of duty were being received on a regular basis.

However, with the decline in the production of crude oil, the payments of excise duty became irregular giving rise to new circumstances for the remission, rebate and refund of excise duty paid in relation to crude oil entered for home consumption. The new circumstances are as follows:

- (a) where a Collector is satisfied that the quantity of crude oil that is likely to be entered by a person for home consumption for the financial year will be less than the dutiable quantity.
- (b) where the total duty paid is more than the total duty payable on the total quantity of crude oil entered for home consumption during the financial year
- (c) where a credited adjustment amount is applied to the calculation of excise duty under subsection 6B(3), 6C(3) and 6D(3) of the Tariff Act and the amount ascertained is a negative amount.

Currently, there is a crude oil producer who has paid excess excise duty because of the decline in production of crude oil. Customs is unable to refund the excess duty collected because there is no provision in the Regulations to cover the circumstances mentioned above. Consequently, it became necessary to amend the Regulations to provide for these new circumstances.

The purpose of the regulations was, therefore, to prescribe new circumstances of remission, rebate and refund relating to excise duty paid for crude oil entered for home consumption and to effect consequential amendments to the Regulations.

The amendments are explained in greater detail in the Attachment.

The regulations commenced on gazettal.

ATTACHMENT

Regulation 1 provided that the Excise Regulations are amended as set out in the Regulations.

Regulation 2 (Circumstances under which remissions, rebates and refunds are made)

Regulation 2.1 redrafted paragraph 50(1)(s) of the Regulations and deleted the references to liquefied petroleum gas ("LPG") in the paragraph as LPG has been removed from the application of the *Excise Tariff Act 1921* (*Excise Tariff Amendment Act* (No. 2) 1997 refers).

Regulation 2.2 introduced new paragraphs 50(1)(sa), (sb) and (sc) to provide for the new circumstances for refunds of excise duty paid in relation to crude oil entered for home consumption.

New paragraph 50(1)(sa) provides for the refund of excise duty paid for crude oil where a Collector is satisfied that the quantity of crude oil that is likely to be entered by a person for home consumption for the financial year will be less than the dutiable quantity.

This means that a producer may apply for a refund of excise duty paid for a particular period at any time before the end of the financial year when the producer could demonstrate to the satisfaction of the Collector that it is likely that the quantity of crude oil that will be entered for home consumption for the financial year will be less than a dutiable quantity. This refund circumstance will remove the need for crude oil producers to wait until the end of the financial year to claim any refund on the duty paid. In this case, all

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the duty paid will be refunded (new subregulation 52B(3) refers).

New paragraph 50(1)(sb) provides for the refund of excise duty paid for crude oil where the total duty paid is more than the total duty payable on the total quantity of crude oil entered for home consumption during the financial year.

What usually gives rise to the discrepancy in duty paid and duty payable is the uneven quantities of crude oil entered during particular periods of the financial year. For example, high productions in the earlier period of the financial year may give rise to duty paid at the higher rate but due to a drastic decline in production in the later periods of the financial year, the final duty payable, if any, for the entire financial year may be lower than the duty actually paid.

There are two primary situations where paragraph 50(1)(sb) will be relevant:

(a) where the overall or total quantity of crude oil entered for the financial year does not exceed the dutiable quantity for the financial year. In this case, all the duty paid for the financial year

will be refunded since the total quantity of crude oil entered does not exceed the dutiable quantity (new subregulation 52B(4) refers).

(b) where the total quantity of crude oil entered for the financial year exceeds the dutiable quantity for the financial year but the total duty paid in respect of the various quantities of crude oil entered during the financial year is more than the total duty payable based on the total quantity of crude oil entered for the financial year. In this case, the amount of duty to be refunded is the difference between the duty paid (which is the total of each payment of duty for each period) and the duty ascertained to be payable based on the total quantity of crude oil entered for the entire financial year.

New paragraph 50(1)(sc) provides for the refund of excise duty paid to which a credited adjustment amount subsequently applies under section 6B, 6C or 6D of the *Excise Tariff Act 1921*. A refund circumstance is established when the credited adjustment amount is applied to the formulae set out in subsection 6B(3), 6C(3) and 6D(3) of that Act and the amount ascertained is a negative amount. This means that there is no duty against which the excise duty may be set off.

Regulation 2 introduced new subregulations 50(4AA) and (4AB) to define the meaning of particular terms used in the new paragraphs 50(1)(sa) and (sc).

New subregulation 50(4AA) defines "dutiable quantity" mentioned in paragraph 50(1)(sa)(iii) to mean the quantity worked out using the formula appearing in subparagraphs 50(4AA)(a) to (c). The formula established the limit of the quantity of oil at which duty becomes payable.

The letter "A" in the formula is defined to mean the number of days in the financial year concerned. This refers to either 365 or 366 days (where it is a leap year) of the financial year so that when considering a refund application under paragraph 50(1)(sa), a Collector is considering, at some point in the financial year, the projected quantity of crude oil that is likely to be entered for the 365 or 366 days of the financial year concerned.

The letter "B" has the same meaning as it has in the sections 6B, 6C and 6D of the *Excise Tariff Act 1921*.

New subregulation 50(4AB) defines the terms "credited adjustment amount", "Intermediate oil", "new oil" and "relevant oil" mentioned in new paragraph 50(1)(sc) as having the same meanings as in the relevant sections of the *Excise Tariff Act 1921*.

Regulation 3 (Rate, or amount, of rebate, refund, etc. of excise duty - stabilise crude petroleum oil)

Regulation 3.1 inserted new subregulations 52B(2), (3), (4) and (5) to clarify the amounts of remission, rebate or refund which may be allowed in the circumstances mentioned in paragraphs 50(1)(s), (sa), (sb) and (sc) respectively.

New subregulation 52B(2) provides that the amount of remission, rebate or refund of duty allowed in the circumstance mentioned in paragraph 50(1)(s) is the amount of the difference between the amount of duty paid and the correct amount of duty payable.

New subregulation 52B(3) provides that the amount of remission, rebate or refund of duty allowed in the circumstance mentioned in paragraph 50(1)(sa) is the whole of the duty paid.

New subregulation 52B(4) provides that the amount of remission, rebate or refund of duty allowed in the circumstance mentioned in paragraph 50(1)(sb) is the amount of the difference between the amount of duty paid and the amount of the duty ascertained at the end of the financial year concerned under section 6B, 6C or 6D, as applicable, of the *Excise Tariff Act 1921*.

New subregulation 52B(5) provides that the amount of remission, rebate or refund of duty allowed in the circumstance mentioned in paragraph 50(1)(sc) is an amount equal to the negative amount mentioned in that paragraph.

Regulation 4 - Regulation 53 (Period for making of application)

Regulation 4.1 effected a minor technical amendment to subregulation 53(1) to reflect a change in the drafting style.

Regulation 4.2 inserted new subregulations 53(3A) and (3B) to specify the period within which an application for refund may be made.

New subregulation 53(3A) provides that a refund of excise duty must not be allowed in the circumstance specified in paragraph 50(1)(sa) or (sb) unless an application for a refund under regulation 52 is given to a Collector within 12 months after the end of the financial year in which the excise duty was paid where the circumstances occur after 1 July 1997. Where the circumstances occurred before 1 July 1997, the application must be given to a Collector before 1 July 1998. New subregulation 53(3B) provides that a refund of excise duty must not be allowed in the circumstance mentioned in paragraph 50(1)(sc) unless an application for a refund under regulation 52 is given to a Collector within 12 months after the day on which the final VOLWARE price for the month from which the credited adjustment amount mentioned in that paragraph is derived is determined under subsection 7(3) of the *Petroleum Excise (Prices) Act 1987*. Where the final VOLWARE price was determined before 1 July 1997, the application must be given to a Collector before 1 July 1998.