

Excise Amendment Regulations 1998 (No. 3) 1998 No. 277

EXPLANATORY STATEMENT

STATUTORY RULES 1998 NO. 277

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

Excise Act 1901

Excise Amendment Regulations 1998

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

Section 78 of the Act provides that remissions, rebates and refunds of excise duty may be allowed in respect of excisable goods in such circumstances and subject to such conditions and restrictions as are prescribed. Regulation 50 of the *Excise Regulations 1925* ("the Excise Regulations") prescribes the circumstances in which remissions, rebates and refunds of excise duty may be allowed for the purposes of section 78.

Section 77J of the Act provides, in part, that for the purposes of Part VIIB of the Act, a blended petroleum product is an exempt blended petroleum product if it is declared by the regulations to be an exempt blended petroleum product. Regulation 176 of the Excise Regulations sets out the exempt blended petroleum products for the purposes of section 77J.

Purpose of the Regulations

The purpose of the Regulations is to amend the Excise Regulations by:

- a) inserting a new refund circumstance for excise duty paid on a clean fuel which has been packaged into containers of not more than 2 10 litres capacity and which has been sold, so packaged. for use as a solvent (regulation).
- b) revising the terms of paragraph 176(2)(h) to first, exclude fuel type octane enhancers from the exemption from the blending legislation and secondly, replace the term "gasoline" with the broader term "petroleum product" (regulation 5); and
- c) revising the terms of paragraph 176(2)(i) to introduce a restriction on the size of the packaging of the prepared additives that may be used to produce an exempt blend (regulation 5); and
- d) effecting technical amendments by removing outdated references to i) a repealed provision, subregulation 78A(9) (regulation 6) and ii) the term "Collector of Customs ... ", and replacing this with a reference to the new term "Regional Director" (regulation 7) and iii) the term "Comptroller", and replacing this with references to the new term "CEO" (regulation 8).

Background

a) The new refund circumstance

Under the fuel substitution legislation, all concessional fuels are required to contain a chemical marker. However, in some cases, unmarked bulk solvents are required where the marker could have an adverse effect on the performance of the marked product or have other undesirable outcomes in certain specialised applications.

Paragraph 50(1)(zh) of the Excise Regulations permits the refund of duty where a product has actually been used as a solvent. These Regulations allow for refunds of duty where duty has been paid on a product prior to its actual use as a solvent provided that it has been packaged and sold for use as a solvent in accordance with new paragraph 50(1)(zo).

b) The revised exemptions

Paragraph 176(2)(h) of the Excise Regulations previously provided that a blended petroleum product that was a blend of gasoline with a product used to enhance its octane rating was an exempt blended petroleum product for the purposes of section 77J of the Act. These regulations revise this exemption by excluding fuel type octane enhancers from paragraph 176(2)(h) (regulation 5) . This narrowing of the provision was considered necessary given that fuel type octane enhancers, such as toluene, are fully dutiable where they are for use as a fuel. Therefore, where they are for use in a blend and that blend is also for use as a fuel, they should be fully dutiable.

In addition, paragraph 176(2)(h) previously provided an exemption for a blend of "gasoline" with a product used to enhance its octane rating. The scope of this provision did not extend to the addition of an octane enhancer to petroleum condensate which is then used to produce a gasoline product. It is considered equitable that the same conditions and restrictions should apply to this activity as apply to the addition of octane enhancers to gasoline. Therefore, the reference to "gasoline" has been removed and replaced with the broader term "petroleum product".

Paragraph 176(2)(i) previously provided that a blended petroleum product that was a blend of a petroleum product with prepared additives that either enhance engine performance or assist in its maintenance was an exempt blended petroleum product. These regulations revised this exemption by introducing a restriction on the size of the packages into which these prepared additives are packaged. This is to ensure that fuel type prepared additives that are packaged in larger packages will be dutiable at the appropriate fuel rate when used in blending.

c) Technical amendments

The amendments made by regulations 7 and 8 of these Regulations formally give effect to changes made by the *Customs, Excise and Bounty Legislation Amendment Act 1995* (Act No. 85 of 1995) in relation to the replacement of references to the terms "Comptroller" and "Collector of Customs for a State or Territory" (however described) with references to the "CEO" and "Regional Director".

In addition, the reference in regulation 248 of the Excise Regulations to subregulation 78A(9) was an obsolete reference, as subregulation 78A(9) was repealed by Statutory Rules 1990 No. 7. These Regulations removed this reference (regulation 6).

The Regulations are explained in greater detail in the Attachment.

The Regulations commenced on gazettal.

ATTACHMENT

Regulation 1 - Name of regulations

This regulation provides for these regulations to be named the *Excise Amendment Regulations 1998*.

Regulation 2 - Commencement

This regulation provides that these regulations commenced on gazettal.

Regulation 3 - Amendment

This regulation provides that the *Excise Regulations 1925* are amended as set out in these regulations.

Regulation 4 - Regulation 50 (Circumstances under which refunds, rebates and remissions are made)

Subregulation 4.1 amended subregulation 50(1) by inserting new paragraph (zo).

New paragraph 50(1)(zo) inserted a new refund circumstance where duty has been paid on a petroleum product that:

- a) is a clean fuel (which has the meaning given to it by subsection 4(1) of the Act); and
- b) is classified to item 11 or 12 of the Schedule to the Excise Tariff Act 1921 (these classifications relate to all petroleum products and blended petroleum products); and
- c) has been packaged, after delivery into home consumption, into a package of not more than 210 litres capacity; and
- d) has been sold, so packaged, for use as a solvent.

The intention of this new refund circumstance is to allow the persons carrying out the packaging to claim the refund.

In early 1998, the Government's fuel substitution legislation, a package of 9 Acts implementing the Government's Budget decision to combat revenue loss through the minimisation of fuel substitution practices, commenced. These practices involve the substitution of fuel entered at concessional rates of duty (generally for nonautomotive use) for fuel used in automotive engines. These practices cause significant revenue leakage in respect of the duty avoided on the substituted fuel.

The legislation package addresses these practices by providing for the introduction of a chemical marker into concessionally entered fuel, and imposing document keeping and retention obligations, audit powers and sanctions in relation to the acquisition, storage and disposal of fuel. Penalty surcharges are also imposed on certain activities in relation to products containing the chemical marker.

Under the new structure of items 11 and 12 of the Schedule to the *Excise Tariff Act 1921* ("the Excise Tariff") and subheadings in headings 2701, 2707 and 2710 of Schedule 3 to the *Customs Tariff Act 1995* ("the Customs Tariff"), petroleum products that are intended for non-

fuel use are dutiable at the rate of "Free". This means that under the fuel substitution legislation these petroleum products must contain the chemical marker.

However, in some cases, unmarked bulk solvents are required where the marker could have an adverse effect on the performance of the marked product or other undesirable outcomes in certain specialised applications. For example, some of the non-fuel applications of petroleum products include their use as solvents in the production of foodstuffs such as margarine and in the manufacture of paints. Where a petroleum product is used as a solvent in these circumstances, it is considered inappropriate, on health and efficiency grounds, for the petroleum product to contain the chemical marker.

Paragraph 50(1)(zh) of the Excise Regulations permits the refund of duty where a product has actually been used as a solvent. These Regulations allow for refunds of duty where duty has been paid on a product prior to its actual use as a solvent provided that it has been packaged and sold for use as a solvent in accordance with new paragraph 50(1)(zo.).

Regulation 5 - Regulation 176 (Exempt blended petroleum products)

Item 12 of the Schedule to the Excise Tariff ("item 12") imposes excise duty on excisable blended petroleum products and section 6G of the Excise Tariff governs the rate of duty that applies to such blends. The provisions of section 77G of the Act ("section 77G") determine what is an excisable blended petroleum product for the purposes of item 12.

Under the new regime to minimise fuel substitution practices, the blending of petroleum products which contain the chemical marker (concessional fuels) with petroleum products which do not contain the chemical marker (fully duty paid fuels) is subject to the imposition of a penalty surcharge under the *Fuel Blending (Penalty Surcharge) Act 1997*. Item 12 and section 77G still allow the blending under licence of products which are not required to contain a chemical marker under the new legislation. The rate of excise duty that applies to these blends is currently either the full duty rate that applies to leaded petrol (45.242 cents per litre) or diesel (43.054 cents per litre), depending on the components of the blend.

Section 77J of the Act provides that the regulations may specify that an excisable blended petroleum product is an exempt blended petroleum product and therefore not excisable under item 12. Such blends are included in regulation 176 of the Excise Regulations.

Paragraph 176(2)(h) of the Excise Regulations previously provided such an exemption for "a blend of gasoline with a product used to enhance its octane rating where duty has been paid on the gasoline at the rate specified in subparagraph 11(H)(2)(b) or (c) of the Schedule to the *Excise Tariff Act 1921*".

The terms of this paragraph have now been revised to exclude fuel type octane enhancers from the exemption from the blending legislation. This narrowing of the provision was necessary given that octane enhancers such as toluene and similar products are fully dutiable where they are for use as a fuel. Therefore, where they are for use in a blend and that blend is also for use as a fuel, they should be fully dutiable.

Toluene and similar products are aromatic hydrocarbon equivalents of components of gasoline, which predominantly are paraffinic hydrocarbons. Toluene and benzene, in particular, can be used as fuel in internal combustion engines. Benzene is the product used in place of lead to provide the required octane rating for unleaded gasoline and toluene can be used for the same purpose.

In addition, paragraph 176(2)(h) previously provided an exemption for a blend of "gasoline" with a product used to enhance its octane rating. The scope of this provision did not extend to the addition of an octane enhancer to petroleum condensate which was then used to produce a gasoline product. It is considered equitable that the same conditions and restrictions should apply to this activity as apply to the addition of octane enhancers to gasoline. Therefore, the reference to "gasoline" has been removed and replaced with the broader term "petroleum product".

Subregulation 5.1 amended subregulation 176(2) by omitting the previous paragraph 176(2)(h) and substituting a new paragraph 176(2)(h). This new paragraph inserted a revised exempt blended petroleum product being a blend of a petroleum product on which duty has been paid at the rate specified in subparagraph 11(H)(2)(b) or (c) of the Schedule to the Excise Tariff and a petroleum product used to enhance its octane rating provided that this octane enhancing product does not fall within a classification in item 11 or 12 of the Schedule to the Excise Tariff, if it is locally produced, or to heading 2707, 2709, 2710 or 2902 of Schedule 3 to the Customs Tariff, if it is imported.

Subregulation 5.2 amended subregulation 176(2) by inserting the words "packaged into a package of not more than 10 litres capacity" after the words "prepared additives" in paragraph 176(2)(i).

Paragraph 176(2)(i) provided that a blended petroleum product that was a blend of a petroleum product with prepared additives that either enhance engine performance or assist in its maintenance was an exempt blended petroleum product. These regulations revised this exemption by introducing a restriction on the size of the packages into which these prepared additives are packaged. The prepared additives must be packaged into packages of not more than 10 litres capacity to fall within the terms of the exemption.

Any blend created by using prepared additives that are packaged in larger packages than this, or are in bulk, will be dutiable at the appropriate rate.

Regulation 6 - Regulation 248 (Statement to accompany notice of decision)

Subregulation 6.1 amended subregulation 248(1) by omitting the reference to subregulation 78A(9). This was an outdated reference as subregulation 78A(9) was repealed by Statutory Rules 1990 No. 7.

Regulation 7 - Schedule 1

Subregulations 7.1 and 7.2 amend Form 37 by omitting the references to the outdated term "Collector of Customs", and the reference in the heading to "by the Collector" and replacing them with the term "Regional Director".

These technical amendments were required as a result of the changes made by the *Customs, Excise and Bounty Legislation Amendment Act 1995* (Act No. 85 of 1995) ("the CEBLA Act"). The CEBLA Act provided in subsection 19(1) that a reference to the Collector of Customs for a State or Territory (however described) is taken on or after 1 July 1995 (the date of Royal Assent of the CEBLA Act) to be a reference to the Regional Director for that State or Territory.

Regulation 8 - Replacement of references to the Comptroller-General of Customs by references to the Chief Executive Officer

Subregulation 8.1 amended regulations 29, 50, 78, 78A, 142, 146, 186.192, 247 and 248 by omitting the reference to "Comptroller" wherever this occurs and substituting a reference to "CEO" instead.

These technical amendments were required as a result of the CEBLA Act which provided in subsection 18(1) that a reference to the Comptroller-General of Customs, the ComptrollerGeneral or the Comptroller is taken on and after 1 July 1995 (the date of Royal Assent of the CEBLA Act) to be a reference to the Chief Executive Officer of Customs ("the CEO", see section 4 of the Act).