

Excise Amendment Regulations 1999 (No. 2) 1999 No. 265

EXPLANATORY STATEMENT

STATUTORY RULES 1999 NO. 265

Issued by the Authority of the Assistant Treasurer

Excise Act 1901

Excise Amendment Regulations 1999 (No. 2)

Section 164 of the *Excise Act 1901* ("the Act") provides that the Governor-General may make regulations prescribing matters required to give 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.

Purpose of the Regulations

The purpose of the Regulations is to amend the Excise Regulations by adding new remission and refund provisions to:

- a) allow those with a legitimate need to access diesel for use other than as a fuel (eg where diesel is used as bitumen cutter) to access product duty free after item 11 of the Schedule to the *Excise Tariff Act 1921* is amended;
- b) allow those with a legitimate need to access low flash petroleum and shale spirit (eg hexane) for use other than as a fuel (eg for use as a solvent) to access product duty free after item 11 of the Schedule to the *Excise Tariff Act 1921* is amended;
- c) allow those with a legitimate need to access unmarked non-fuel recycled petroleum products (eg recycled lubricants, hydraulic oils and transformer oils) being re-used for their original purpose, to access product duty free after item 11 of the Schedule to the *Excise Tariff Act 1921* is amended; and,
- d) allow those with a need to access AVTUR for business marine use to access product on a duty free basis.

The Regulations also amend the Excise Regulations by deleting the existing refund provision 50(1)(zo) which provides that a refund may be claimed where duty has been paid on a clean fuel

which has been subsequently drummed and sold for use as a solvent and has become redundant.

Background

In January 1998 the Government introduced legislation to deter and detect fuel substitution activities. While the introduction of the legislation initially had a pronounced effect on these practices, there are indications that fuel substitution has been increasing again in recent months. Current fuel substitution activities are primarily occurring through opportunistic use of certain tariff arrangements in Item 11 of the Schedule to the *Excise Tariff Act 1921*. Consequently, technical amendments to Item 11 of the Schedule to the *Excise Tariff Act 1921* commence on 15 November 1999 to restrict the opportunity for these activities and better deliver the Government's commitment to addressing fuel substitution.

The changes to Item 11 of the Schedule to the *Excise Tariff Act 1921* commencing on 15 November 1999 will also include technical amendments- to more clearly deliver the Government's decision to make certain recycled products subject to excise

Access to certain products on a duty free basis

The principal change will be to remove the access to diesel and gasoline and other petroleum or shale spirit with a flash point of less than 0 degrees Celsius with a duty rate of less than \$0.43485 per litre.

Diesel and gasoline (commonly known as petrol) are overwhelmingly used in an internal combustion engine as a transport fuel. However, the current tariff arrangements allow diesel and gasoline for use other than as a fuel to be duty free. The quantity of product currently falling to these arrangements is far above any reasonable explanation and constitutes the main form of fuel substitution activity currently occurring.

However, consequential amendments to the Regulations are required to ensure that those with a legitimate need to access product normally used as a fuel in an internal combustion engine for use other than as a fuel can continue to do so on a duty free basis after 15 November 1999.

The Regulations will allow access to duty free diesel and low flash solvents in a number of circumstances when its use other than a fuel is known, as well in any circumstance where the use of the product other than as a fuel can be demonstrated.

Excise Status of Recycled Product

The new tariff only allows unmarked recycled gasoline and diesel to be duty free. To provide parity across the oil recycling industry, consequential amendments to the excise regulations are necessary to allow access to other unmarked recycled product (ie recycled lubricants, hydraulic oils and transformer oils), at a free rate of duty when the product is reused for its original purpose.

Use of Kerosene in Marine Applications

There is a potentially significant new use for turbine engines in marine applications. These engines run on AVTUR (kerosene principally used in jet turbines for aviation). As the excise levied on AVTUR is not a general revenue raising measure, but is used to collect levies for the aviation industry, it is appropriate that AVTUR for marine business use be allowed on a duty free basis.

Commencement

The Regulations commenced on 15 November 1999.