

Excise Amendment Regulations 2000 (No. 8) 2000 No. 366

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 366

Issued by the Authority of the Assistant Treasurer

Excise Act 1901

Excise Amendment Regulations 2000 (No. 8)

Section 164 of the *Excise Act 1901* (the Act) provides in part 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.

Section 61D of the Act provides for the licensing of warehouses as outwards duty free shops. Section 61 D of the Act provides in part that.

(2) Subject to the Regulations (if any), a Collector may give permission, in accordance with subsection (3), for excisable goods that are specified in the permission, are subject to the control of the Customs and are sold to a relevant traveller in an outwards duty free shop that is specified in the permission to be:

(a) delivered to the relevant traveller personally for exportation by him or her when making the international flight or voyage in relation to which he or she is a relevant traveller; and

(b) exported by the relevant traveller when making that flight or voyage without the goods having been entered for exportation;

and, subject to subsection (13), the permission is authority for such goods to be so delivered and so exported.

Subsection 61 D(5) provides in part that the Regulations may prescribe conditions to which a permission given under subsection (2) is to be subject. Subsection 61D(7) provides in part that the conditions:

* may apply to the proprietor of the duty free shop or to the relevant traveller; and

* may include a condition that the permission only applies to sales to relevant travellers who comply with a prescribed requirement or requirements, such as a requirement to produce a ticket or other travel document.

Subsections 61E(2), 61E(4) and 61E(6) make similar provision in relation to inwards duty free shops.

Regulations 79 and 81 of the Excise Regulations 1925 (the Regulations) prescribe the conditions under which a permission to sell duty free excisable goods in a warehouse may be granted.

The purpose of the new Regulations is to amend the Regulations to facilitate the sale of duty free goods using the telephone, facsimile and the internet. The amendments will enable duty free shop proprietors and travellers to enter into agreements to sell duty free goods using these forms of communication. At present, the traveller is required to be physically in the shop to purchase the goods.

The new Regulations provide that a proprietor may not enter into an agreement to sell duty free goods to a person unless the person provides the proprietor with details of the intended exportation of the goods - including details such as flight number and date of departure. The

person must also show the proprietor the ticket or other travel document to confirm the information previously provided before the person obtains delivery of the goods.

The new Regulations are explained in more detail in the attachment.

The new Regulations commenced on gazettal.

ATTACHMENT

Excise Amendment Regulations 2000 (No. 8)

Regulation 1 - Name of Regulations

Regulation 1 provides that the Regulations are the Excise Amendment Regulations 2000 (No. R').

Regulation 2 - Commencement

Regulation 2 provides that the Regulations commence on gazettal.

Regulation 3 - Amendment of Excise Regulations 1925

Regulation 3 provides that Schedule 1 amends the Excise Regulations 1925 (the Regulations).

Schedule 1 - Amendment

Item 1 - Paragraph 79 (7) (a)

Item 1 amends paragraph 79(7)(a) and inserts two new paragraphs 79(7)(b) and (ba).

New paragraph 79(7)(a) concerns the usual situation where the traveller is physically in the duty free shop to purchase goods. The structure of the paragraph has been amended but the content of the condition remains the same. The paragraph imposes a condition on the permission to sell duty free goods which requires that the proprietor must only sell goods to a relevant traveller who has shown the necessary ticket or other approved document that shows that the person is entitled to make the international flight or voyage.

New paragraph 79(7)(b) addresses the situation where the traveller is not physically in the shop but wishes to purchase the goods using the telephone or over the internet (or by some other form of electronic communication). The Act requires that the actual sale of goods take place in the shop; however, the amendments permit the traveller and the duty free shop proprietor to enter into an agreement to sell the goods by phone or using the internet. An agreement to sell is a contract under which the transfer of property in the goods takes place at a future time or subject to some condition thereafter to be fulfilled. An agreement to sell becomes a sale when the time elapses or the conditions are satisfied. The agreement to sell must provide for the sale to take place in the shop.

New paragraph 79(7)(b) provides that the proprietor must not enter into an agreement to sell goods to a person unless 3 criteria are met. First, the person must be a relevant traveller. Second, the person must have given the proprietor details of the intended exportation of the goods, that is; the flight or voyage details, including the date of departure, airport or wharf of departure, the flight number, name of the ship and number or other designation of the voyage and the ticket number. The details which must be provided by the traveller are those required for the proprietor to fill out the necessary invoice which is attached to the goods (under subparagraph 79(7)(e)(ii) of the Regulations). These details may be provided orally (over the telephone) or in writing, for example, by email or facsimile.

Finally, it is a condition that the actual sale of the goods takes place in the shop.

New paragraph 79(7)(ba) ensures that where agreements to sell duty free goods are entered into, the traveller does not obtain possession of the goods unless the flight or voyage details that he or she provided to the proprietor are confirmed. The paragraph requires that the proprietor must not deliver the goods to the traveller unless the traveller has shown his or her ticket or other document that confirms the details the traveller previously provided.

Item 2 - Paragraph 79 (7) (c)

Item 2 is a consequential amendment. Paragraph 79(7)(c) currently provides that the goods must not be delivered to a traveller more than 30 days before the day on which, according to the ticket or other document, the flight or voyage is to depart. Item 2 amends the paragraph to include a reference to the situation where the details of the flight or voyage are provided by the traveller orally or in writing.

Item 3 - Sub-subparagraph 79(7)(n)(ii)(C)

Item 3 corrects a typographical error in the Regulations and removes an unnecessary bracket in the subsubparagraph.

Item 4 - Paragraph 79(8)(a)

Subregulation 79(8) imposes conditions in relation to permissions granted for on-airport duty free shops. Item 4 amends paragraph 79(8)(a) and inserts two new paragraphs 79(8)(aa) and (ab).

As with item 1 above, new paragraph 79(8)(a) concerns the usual situation where the traveller is physically in the on-airport duty free shop to purchase goods. The structure of the paragraph has been amended but the content of the condition remains the same. The paragraph imposes a condition on the permission that requires that the proprietor must only sell goods to a relevant traveller who has shown the necessary ticket or other approved document that shows that the person is entitled to make the international flight or voyage.

New paragraph 79(8)(aa) addresses the situation where the traveller is not physically in the shop but wishes to purchase goods using the telephone or over the internet (or by some other form of electronic communication). As with item 1, the amendments permit the duty free shop proprietor and the traveller to enter into an agreement to sell duty free goods.

New paragraph 79(8)(aa) provides that the proprietor must not enter into an agreement to sell goods unless 3 criteria are met. First, the person must be a relevant traveller. Second, the person must have given the proprietor details of the intended exportation of the goods, that is the flight or voyage details, including the date of departure, airport or wharf of departure, the flight number and the ticket number. These details are those required for the proprietor to fill out the necessary invoice which is delivered with the goods (under subparagraphs 79(8)(b)(ii) and 79(8)(c)(i)). These details may be provided orally (over the telephone) or in writing, for example, by email or facsimile.

Finally, it is a condition that the actual sale of the goods takes place in the shop.

New paragraph 79(8)(ab) ensures that where agreements to sell duty free goods are entered into, the traveller does not obtain possession of the goods unless the flight or voyage details that he or she provided to the proprietor are confirmed. The paragraph requires that the proprietor must not deliver the goods to the traveller unless the traveller has shown his or her ticket or other document which confirms the details the traveller previously provided.

Item 5 - Subparagraph 79 (8) (d) (i)

Item 5 substitutes a new subparagraph 79(8)(d)(i). Subparagraph (i) currently requires that the proprietor deliver one copy of the invoice to the traveller with the goods. The amendment provides for the proprietor to place one copy with the goods that are to be delivered to the traveller. This amendment reflects the fact that when a sale takes place to a traveller who is not in the store, the delivery of the goods will occur at some later date.

Item 6 - Subparagraph 79(8)(d)(ii)

Item 6 amends subparagraph 79(8)(d)(ii) by omitting the words " subject to paragraph (f)". Paragraph (f) was repealed by Statutory Rule No. 446 of 1992. The cross-reference to this paragraph in subparagraph 79(8)(d)(ii) was overlooked when this amendment was made.

Item 7 - Subregulation 79(14)

Item 7 substitutes a new subregulation 79(14). Existing subregulation 79(14) provides that at the time of buying duty free goods at an outwards duty free shop, a relevant traveller must sign a recognition, in an approved form, of the traveller's obligations concerning the export of the goods.

New subregulation 79(14) provides that the traveller must sign the recognition at or before delivery of the goods. This amendment is required because where the traveller is not in the shop, he or she obviously cannot sign the recognition at the time of buying the goods.

Item 8 - Paragraph 81 (7) (a)

Subregulation 81(7) imposes conditions in relation to permissions granted for inwards duty free shops. Item 8 amends paragraph 81(7)(a) and inserts two new paragraphs 81(7)(aa) and (ab).

As with items 1 and 4 above, new paragraph 81(7)(a) concerns the usual situation where the traveller is physically in the inwards duty free shop to purchase goods. The structure of the paragraph has been amended but the content of the condition remains the same. The paragraph imposes a condition on the permission which requires that the proprietor must only sell goods to a relevant traveller who has shown the necessary ticket or other approved document that shows that the person has arrived on an international flight or voyage.

New paragraph 81(7)(aa) address the situation where the traveller is not physically in the shop but wishes to order goods by telephone or over the internet (or by some other form of electronic communication). As with items 1 and 4, this amendment permits the duty free shop proprietor and the traveller to enter into an agreement to sell duty free goods.

New paragraph 81(7)(aa) will provide that the proprietor must not enter into an agreement to sell goods unless 4 criteria are met. First, the person must be or intend to be a relevant traveller. Second, the person must have given the proprietor details of the intended exportation of the goods, that is the flight or voyage details, including the date of departure, airport or wharf of departure, the flight number and the ticket number. These details are those required for the proprietor to fill out the necessary invoice that is attached to the goods. These details may be provided orally (over the telephone) or in writing, for example, by email or facsimile.

Third, the proprietor must inform the person of the concessional limits which apply to the entry of alcohol and tobacco products and any conditions with which the traveller is to comply. At present, travellers are permitted to import 1125 ml of alcoholic liquor and 250 cigarettes or 250 grams of cigars or tobacco products duty free.

Existing paragraph 81(7)(c) of the Regulations requires the proprietor of an inwards duty free shop to display signs advising travellers of the concessional limits and any conditions imposed by the Customs Act concerning the purchase of goods at the shop. As the Regulations now involve situations where the traveller is not physically in the shop, this paragraph will require that the traveller must be informed of these matters by the proprietor.

Finally, it is a condition that the actual sale of the goods takes place in the shop.

New paragraph 81(7)(ab) ensures that where agreements to sell duty free goods are entered into, the traveller does not obtain possession of the goods unless the flight or voyage details that he or she provided to the proprietor are confirmed. The paragraph requires that the proprietor must not deliver the goods to the traveller unless the traveller has shown his or her ticket or other document which confirms the details the traveller previously provided.

