

Taxation Laws Amendment (Excise Arrangements) Regulations 2001 (No. 1) 2001 No. 83

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 83

Issued by authority of the Assistant Treasurer

Subject - *Excise Act 1901*

Distillation Act 1901

Spirits Act 1906

Coal Excise Act 1949

Taxation Laws Amendment (Excise Arrangements) Regulations 2001 (No. 1)

The Governor-General may make regulations under section 164 of the *Excise Act 1901* (Excise Act), section 83 of the *Distillation Act 1901* (Distillation Act), section 26 of the *Spirits Act 1906* (Spirits Act) and section 28 of the *Coal Excise Act 1949* (Coal Excise Act).

The *Taxation Laws Amendment (Excise Arrangements) Act 2001* (the Amendment Act) amends the excise and related legislation to transfer the administration of excise laws (including the Distillation Act, the Spirits Act and the Coal Excise Act) from the Chief Executive Officer (CEO) of Customs to the Commissioner of Taxation (Commissioner). The amendments give statutory effect to the Government's Administrative Arrangements Order of 21 October 1998.

The Amendment Act.

- repeals or amends Customs-related terms and references in the excise legislation, for example, the definition of CEO is changed from Chief Executive Officer of Customs to Commissioner of Taxation;
- incorporates provisions into the Excise Act concerning dealings with forfeited goods;
- repeals certain redundant provisions in the Distillation Act and Spirits Act; and
- replaces penalties in maximum dollar amounts for offences by the 'penalty unit' standard specified in the *Crimes Act 1914* and adopts gender neutral language.

As the excise legislation now falls within the meaning of 'taxation law' as defined in the *Taxation Administration Act 1953* (TAA 1953), certain provisions of the TAA 1953 apply to the administration of the excise legislation, including the processes for the review of appeals against decisions on excise matters.

The purpose of the regulations is to make consequential or consistent changes to the Excise Regulations, the Distillation Regulations, the Spirits Regulations and the Coal Excise Regulations as a result of the Amendment Act amendments.

In addition, the regulations delete or amend regulations that are redundant, no longer applicable to modern industry practice or impose unnecessary restriction on industry. In some cases the provisions are now more appropriately covered by other legislation, standards or codes; for example, the Foods Standards Code (item 8 of Schedule 2). The changes have been made as a consequence of consultation with the relevant industry groups.

There are also minor technical drafting changes to dates and wording.

The regulations are explained in detail in the Attachment.

The regulations commenced on 4 May 2001.

ATTACHMENT

Regulation 1 - Name of regulations

This regulation provides for the regulations to be named the Taxation Laws Amendment (Excise Arrangements) Regulations 2001 (No. 1).

Regulation 2 - Commencement

This regulation provides that these regulations commence on 4 May 2001.

Regulation 3 - Amendment of Excise Regulations 1925

This regulation provides that Schedule 1 amends the Excise Regulations 1925.

Regulation 4 - Amendment of Distillation Regulations

This regulation provides that Schedule 2 amends the Distillation Regulations.

Regulation 5 - Amendment of Spirits Regulations

This regulation provides that Schedule 3 amends the Spirits Regulations.

Regulation 6 - Amendment of Coal Excise Regulations

This regulation provides that Schedule 4 amends the Coal Excise Regulations.

Schedule 1 - Amendment of Excise Regulations 1925

Item 1 of Schedule 1 amends paragraph 53(1)(a) to delete a reference to 'Departmental' from Departmental by-law. This is an inappropriate reference to administration by the Commissioner of Taxation.

Items 2 to 4 of Schedule 1 amend paragraph 81(4)(d), subparagraph 81(7)(c)(i) and Regulation 149 to delete Customs related references.

Item 5 of Schedule 1 amends Regulation 153 to give the CEO discretion to approve alcohol concentrations lower than 94% by volume of alcohol where spirits are to be used for industrial or scientific purposes or in educational institutions. There are some recognised uses for products at lower strengths in current industry practice.

Items 6 to 10 of Schedule 1 amend Regulations 171, 178, Subregulations 179(1) and 180(1) and Regulation 181 for clarity and gender neutrality.

Item 11 of Schedule 1 deletes Part XV - Penalties and forfeitures - consisting of Regulations 190 and 192 to 196.

Regulation 190 referred to an authority by the Collector (of Customs) to prosecute under the Excise Act in accordance with Form 37. This regulation was superseded by section 134 of the Excise Act, which provides for the CEO to institute excise prosecutions.

Regulation 192 limited the discretion of the CEO, which is conferred under section 107FM of the Amendment Act, to destroy forfeited goods that may be considered to have some commercial value. The nature of some forfeited goods makes it inappropriate to return them to the market, for example, tobacco leaf, plant or seeds, illicitly manufactured cut tobacco or excisable goods manufactured by an unlicensed person.

Regulation 193 was a redundant provision, referring to a defendant exercising an election, in certain circumstances, to have a case tried in the High Court of Australia or the Supreme Court of a State. The regulation was dependent on section 135 of the Excise Act, which was repealed in 1985. Regulations 194 to 196 were contingent on Regulation 193.

Item 12 of Schedule 1 makes a technical drafting amendment to Regulation 205 to delete redundant references to types of vessels already covered in the existing reference to 'ship'.

Item 13 of Schedule 1 amends Regulation 205 to delete a Customs related reference, substitute a penalty unit for the maximum dollar penalty and use gender neutral terms.

Item 14 of Schedule 1 amends Regulation 205C to delete an obsolete Customs related reference to loading and discharge of excisable goods only on the working days and in working hours prescribed for the purposes of section 28 of the Customs Act.

Item 15 of Schedule 1 amends the heading of Part XVII to replace the reference to 'Deposits by subscribers to Customs Securities' with Deposits by subscribers to securities taken for compliance with Excise Acts'.

Item 16 of Schedule 1 amends the heading to Regulation 210 by deleting the reference to 'Customs' from 'Deposit of Customs security'.

Item 17 of Schedule 1 is a technical drafting amendment for gender neutrality.

Item 18 amends Regulation 247 and 248. Regulation 247 provided that a person dissatisfied with a decision referred to in that regulation may apply to the Administrative Appeals Tribunal (AAT) for a review. The amendment provides for a person dissatisfied with a decision referred to in Regulation 247 to object against the decision in the manner set out in Part IVC of the TAA 1953. This amendment is a consequence of the Amendment Act adopting the provisions of the TAA 1953 relating to processes for the review of appeals.

Regulation 248 provided that the notice, advising the person in relation to whom the decision referred to in Regulation 247 was made, must include a statement to the effect that an application may be made for a review of the decision to the AAT. The amendment redrafts Regulation 248 for clarity and provides that the notice must include a statement to the effect that the person in relation to whom the decision was made may object, in the manner set out in Part IVC of the TAA 1953, against that decision.

Items 19 to 23 of Schedule 1 make minor drafting changes to Schedule 1, Forms 2, 6, 19 and 24 to replace outdated forms of expression and Customs related references or to use gender neutral terms.

Item 24 of Schedule 1 deletes Schedule 1, Forms 26 and 37. These forms refer to Regulations 193 and 190 respectively, which are deleted by item 11 of Schedule 1.

Items 25 to 29 of Schedule 1 make a number of minor drafting amendments mainly in relation to Customs terms, dates and gender.

Schedule 2 - Amendment of Distillation Regulations

Item 1 of Schedule 2 is a technical drafting amendment to the name of the Regulations.

Item 2 of Schedule 2 deletes Regulations 5, 12 and 25 to 29, which were obsolete, not consistent with, or placed undue restrictions on, modern industry practice.

Regulation 5 required distilleries licensed under a spirit maker's licence to comply with particular physical and functional characteristics.

Regulation 12 required complete production of spirits liable to one rate of duty before using material to produce spirits that may be liable to another rate of duty.

Regulation 25 required conveyance of wash either from the wash charger or the back to the still.

Regulation 26 required that runs of all low wines, feints and spirits from the worm must run through the safe end of the worm.

Regulation 27 required that low wines must be conveyed directly from the safe to the receiver, the charger and then the still for re-distillation.

Regulation 28 required that spirits must be conveyed directly from the safe to the feints or spirits receiver.

Regulation 29 required that the conveyance of spirits for re-distillation be from the feints receiver, to the low wines, feints, wash, or intermediate still charger, then to the still unless the Collector gave permission for the feints receiver to discharge direct to the still.

Item 3 of Schedule 2 deletes Regulations 38 to 40, 44 and 45, which were no longer appropriate or placed undue restriction on current industry practice.

Regulation 38 required that wash and produce from wine or beer were to be kept separate and unmarked.

Regulation 39 provided that feints from a previous distillation might be mixed with feints or low wines production from a subsequent distillation provided the mixed feints produced the same kind of material.

Regulation 40 provided that the Collector might permit a distiller to remove low wine, feints or spirits from a receiver.

Regulation 44 provided that the Collector might permit a distiller to de-distil spirits.

Regulation 45 required that distillery material when not being used must be kept in the material store.

Item 4 of Schedule 2 deletes Regulation 49, which required particular physical construction of a spirit store, as the provision placed undue restrictions on modern industry practice.

Item 5 of Schedule 2 deletes Regulations 51 to 53, which placed undue restrictions on modern industry practice.

Regulation 51 required particular physical and functional characteristics of vats.

Regulation 52 provided that the spirit store shall only be open during hours as directed by the Collector.

Regulation 53 provided that casks can only be in the spirit store for immediate filling and cannot remain for more than 24 hours without authority.

Item 6 of Schedule 2 deletes Regulation 6 1 A, which allowed for the removal of, and approval of the use of, fortified Australian wine for flavouring on application to the Collector. This provision was no longer relevant to current industry practice.

Item 7 of Schedule 2 deletes Regulation 66, which required that a distiller, unless there is approval of the Collector, shall only bottle spirits if he has given not less than 24 hours notice of that intention. This provision placed undue restrictions on modern industry practice.

Item 8 of Schedule 2 deletes Regulation 69, which required that a distiller cannot fix a label on a bottle of spirits unless a like label has been given to the Collector. Labelling requirements are now covered by the Foods Standards Code. ,

Item 9 of Schedule 2 deletes Regulation 73, which required that filled cask and other vessels be conveyed to the spirit warehouse unless they are to be removed from the distillery. This provision placed undue restrictions on modern industry practice.

Item 10 of Schedule 2 deletes Regulations 77A and 78, which were no longer relevant and placed an undue restriction on modern industry practice.

Regulation 77A interpreted the meaning of cask in Regulations 78 to 92.

Regulation 78 required particular physical construction of the spirit warehouse.

Item 11 of Schedule 2 deletes Regulations 98 to 103, 106 to 108, 114 and 115, which placed undue restrictions on modern industry practice, were inappropriate, or no longer relevant.

Regulation 98 required particular physical construction of the spirit warehouse of a vigneron's spirit store.

Regulation 99 required that, for approval of construction, the building, and securing of windows and the door must be to the satisfaction of the Collector.

Regulation 100 required that a feints receiver of not less than 15 0 litres capacity and a spirit receiver of not less than 270 litres capacity be kept in the spirit store.

Regulation 101 required that connections of receivers must be in a manner that the Collector may direct.

Regulation 102 required that a vigneron shall keep equipment in good repair and a clean condition.

Regulation 103 required that every vigneron must give the Collector at least 3 days notice of the day and hour of distilling time.

Regulation 106 allowed for any officer to take samples and ascertain percentage of spirit by distillation. This provision is covered by the general regulatory power of section 63 of the Distillation Act.

Regulation 107 required that, if the quantity of spirits is less than it should have been, the vigneron pay duty on any deficiency or explain the deficiency to the satisfaction of the Collector, and operations cease until then. This provision is covered by the general regulatory power of section 50 of the Distillation Act.

Regulation 108 required that spirits distilled under a vigneron's licence be kept in storage vats or vessels approved by the Collector. This provision is covered by Distillation Regulation 50, which provides that only spirits in vats and vessels approved by the Collector shall be kept in the spirits store.

Regulation 114 allowed for the vigneron, by permission, to sell surplus or remove it to a place approved under section 5A of the Excise Act,

Regulation 115 allowed for 2 or more vignerons, with permission, to move or use a portable still situated on their premises.

Item 12 of Schedule 2 deletes Regulations 130, 131 and 133, which placed undue restrictions on modern industry practice, and were obsolete.

Regulation 130 required that all work at distilleries and vigneron's premises only occur during prescribed days and hours.

Regulation 131 allowed for a variation of the prescribed working days and hours if the Collector permits.

Regulation 133 prescribed the payment for services of officers.

Items 13 to 26 of Schedule 2 are minor amendments to Forms 1 to 6, 13, 14, 21, and other regulations relating to Customs references, dates, gender and updated references to legislation.

Schedule 3 - Amendment of Spirits Regulations

Item 1 of Schedule 3 amends Regulation 1 to update the reference to the name of the regulations, deletes Regulation 2, which was obsolete in describing the Parts into which the regulations are divided, and makes minor drafting changes to Regulation 3, including the substitution of Customs related references.

Item 2 of Schedule 3 amends a Customs related reference in Regulation 6 and deletes Regulations 7 to 9. These regulations, which related to the marking of descriptions of spirits on casks, vessels and bottles, were contingent on subsection 7(2) of the Spirits Act, which was repealed in the Amendment Act as being no longer applicable or relevant to current industry practice.

Regulation 7 allowed for marking of the description of spirits under Customs control.

Regulation 8 prescribed the stamp to be used when marking.

Regulation 9 required particular characteristics for the seal to be used when marking.

Item 3 of Schedule 3 amends Regulation 15 so that the term of a methylator's licence is restricted to an annual term in line with that of a Distiller's licence. Previously licences remained in force until cancelled by the Comptroller.

Item 4 of Schedule 3 deletes Regulation 25, which prescribed quantities of methylated spirits for the purpose of section 21 of the Spirits Act. Regulation 25 was redundant as the Amendment Act repealed section 21 of the Spirits Act as being no longer applicable or relevant to current industry practice.

Item 5 of Schedule 3 amends Regulation 27 to omit the obsolete requirement that manufacturers declare their book entries are true within 7 days of the end of the month before an officer, Justice of the Peace or officer with similar standing.

Item 6 of Schedule 3 deletes Regulation 29 to omit the obsolete requirement that methylated spirits shall not, unless by permission of the Comptroller, be used for manufacturing purposes in premises in which ordinary alcoholic beverages are made or sold.

Item 7 of Schedule 3 deletes Regulations 30D and 30E, which were obsolete.

Regulation 30D required that the Collector should be sent a receipt advising the quantity of methylated spirits received.

Regulation 30E prescribed that the quantity of methylated spirits that may be kept on premises at any one time shall not exceed 500 litres without permission.

Item 8 of Schedule 3 deletes Regulation 30G, which was an obsolete provision that the Collector may require a security not exceeding \$200 for compliance with regulations.

Item 9 of Schedule 3 deletes Regulation 35, which required that a responsible officer in a university or public institution should send a Collector a receipt advising the quantity of methylated spirits received. This provision was not relevant to current industry practice.

Item 10 of Schedule 3 deletes Regulation 3 8, which provided that any methylator desiring to make methylated spirits shall apply to the Collector in accordance with Form 6. The provisions of Regulation 3 8 have been incorporated into Regulation 5 1 in item 13 of Schedule 3 to improve the drafting of related provisions concerning the manufacture of methylated spirits.

Item 11 of Schedule 3 deletes Regulation 46, which was an obsolete provision requiring conspicuous and particular identification of vessels used for manufacturing methylated spirits.

Item 12 amends a Customs related reference in Regulation 49.

Item 13 of Schedule 3 amends Regulation 5 1, which required that methylation may occur by authority only in specified locations and under supervision. It provided also that the Collector may exempt the methylator from supervision where he is satisfied that certain requirements concerning record keeping are met, and methods adopted and precautions taken are such that supervision is unnecessary. Modern industry practice does not require supervision in all cases. The new Regulation amends Regulation 51 to incorporate the provisions of Regulation 3 8, requiring persons to apply for permission to methylate in accordance with Form 6, and to provide for supervision only where the Collector is satisfied that it is necessary for the protection of revenue. In making such a determination the Collector may take into account the records kept by the methylator, the methods adopted and the precautions taken.

Item 14 of Schedule 3 deletes Regulation 52, which required that methylated spirits delivered from Customs control shall not be in packages of less than 18 litres. This provision was no longer appropriate to current industry practice.

Item 15 of Schedule 3 deletes Regulation 55 which prescribed, for the purpose of section 21 of the Spirits Act, the quantities of industrial or mineralised spirits that a methylator may have or sell. Regulation 55 was redundant as the Amendment Act repealed section 21 of the Spirits Act as being no longer applicable or relevant to current industry practice.

Item 16 of Schedule 3 deletes Regulation 60, which required particular labelling of containers of liniment or medicine containing methylated spirits, and veterinary products. This provision is covered by State legislation.

Item 17 of Schedule 3 deletes Regulation 62, which required that inferior spirits are to be methylated as directed by the Comptroller in accordance with section 13 of the Spirits Act. The regulation was redundant as the Amendment Act repealed section 13 of the Spirits Act as being no longer applicable or relevant to current industry practice.

Item 18 amends Regulation 63 to replace a penalty expressed as a maximum dollar amount (20) with one penalty unit.

Items 19 to 33 amend Schedule 1, Forms 1 to 6, and item 34 of Schedule 3 amends a number of other regulations in relation to Customs related references, dates and gender references.

Schedule 4 - Amendment of Coal Excise Regulations

Item 1 of Schedule 4 is a technical drafting amendment to the name of the regulations.

Item 2 of Schedule 4 amends Subregulation 9(2) for gender neutrality.

Items 3 to 11 of Schedule 4 delete Customs related references and amend dates in Schedule 1, Forms 1, 2, 3 and 5.