



Excise (Concessional spirits – class of persons) Determination 2014 (No. 1)

Explanatory Statement

General Outline of Instrument

1. This instrument is made under:
 - Section 77FE of the *Excise Act 1901* (Excise Act).
2. The instrument determines a class of persons for the purposes of subitem 3.6 of the Schedule to the *Excise Tariff Act 1921*. Under sub-item 3.6 spirit will have a free rate of duty if it is for the use by a person included in this class of persons for a specified industrial, manufacturing, scientific, medical, veterinary or educational purpose. This instrument does not specify any limit as to the amount of spirit that may be used in a calendar month or calendar year.
3. The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Date of effect

4. The instrument commences on the day after registration.

What is this instrument about

5. The purpose of this instrument is to specify a class of persons for the purposes of sub-item 3.6 of the Schedule to the *Excise Tariff Act 1921* (the Schedule). Under sub-item 3.6, spirit will be subject to a free rate of duty if the spirit is for use by a person included in this class of persons for industrial, manufacturing, scientific, medical, veterinary or educational purposes.

What is the effect of this instrument

6. The effect of this instrument is that the following constitute a class of persons for the purposes of subitem 3.6 of the Schedule:
 - Health care practitioners
 - Veterinary practitioners
 - Medical institutions
 - Government institutions
 - Educational institutions
7. This ensures that these persons have reduced compliance costs.
8. Up to the date of commencement of this instrument, under the legislative instruments listed below the following classes of persons could access the following specified spirit at a duty rate of free for use in their enterprises:
 - Excise (Class of persons - educational institutions) Determination 2006 (No. 1) - F2006L02174 – up to 1000 litres a year
 - Excise (Class of persons - government institutions) Determination 2006 (No.2) - F2006L02175 – up to 1000 litres a year
 - Excise (Class of persons - medical institutions) Determination 2006 (No. 3) - F2006L02177– up to 1000 litres a year
 - Excise (Class of persons - health care practitioners) Determination 2006 (No. 4) - F2006L02179 – up to 200 litres a year
 - Excise (Class of persons - veterinary practitioners) Determination 2006 (No. 5) - F2006L02181 – up to 200 litres a year.

The instrument removes the maximum quantities specified so that persons in the above classes (which are amalgamated into one class of persons under this instrument) may access the amount of spirit required at a duty rate of free for specified industrial, manufacturing, scientific, medical, veterinary or educational purpose without the need for specific approval.

9. The instrument simplifies administration for the ATO and lessens the compliance burden for this group of clients and their suppliers.

Background

10. Sub item 3.6 of the Excise tariff provides that the rate of duty on spirit will be free if the spirit is for use by persons included in a class of persons determined under section 77FE of the Excise Act and the spirit is for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.
11. Under section 77FE, the CEO (Commissioner of Taxation, Commissioner) may determine, by legislative instrument, a class of persons for the purposes of sub item 3.6. The Commissioner may also specify a quantity of spirit that a person included in the class may use in a calendar month or a calendar year.
12. The Commissioner has determined that the following are a class of persons for the purposes of sub-item 3.6 of the Schedule:
 - Health care practitioners
 - Veterinary practitioners
 - Medical institutions
 - Government institutions
 - Educational institutions
13. The instrument does not impose any limit on the quantity of spirit that a person may use in a calendar month or calendar year. Therefore, whereas the previous instruments imposed limits, and specific approval had to be sought under section 77FF of the Excise Act by persons who sought to exceed those limits, the absence of limits in this instrument will ensure this is no longer required.
14. The Commissioner is satisfied that persons included in the class of persons determined in this instrument are likely to have a legitimate need for spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose, and that where this is the case it is appropriate that the spirit should be subject to a rate of duty of free.
15. The Commissioner accepts that access to spirit subject to a free rate of duty by these classes of persons (without a specific approval) presents no significant risk to the revenue.
16. In the Commissioner's view, such use would ordinarily be in the course or furtherance of an enterprise that the persons carry on (within the meaning of that expression in the *A New Tax System (Australian Business Number) Act 1999*).
17. It is also the Commissioner's view that such use would exclude the on-supply of the spirit (because this is not 'use') and also excludes use for an excisable purpose (for example in the manufacture of an alcoholic beverage or as fuel).
18. Most significantly, under section 77FH of the Excise Act persons who obtain spirit under the instrument must be able to account to the ATO for their appropriate use of the spirit.
19. If a person cannot satisfactorily account that the spirit has been used for an industrial, manufacturing, scientific, medical, veterinary or educational purpose then they must pay, on demand made by the Commissioner, an amount equal to the duty that would have been payable on the spirit if the instrument didn't apply and the spirit had been entered for home consumption on the day of the demand.

20. Suppliers of spirit will need to satisfy themselves that a person seeking to acquire spirit under sub-item 3.6 is in the class of persons specified under section 77FE. To this end, the supplier may require you to present documentary evidence.
21. The following explains the various classes of persons and some of the supporting information that may establish whether a person is a member of that particular class:

Health care practitioners

22. Health care practitioners are defined as persons registered as health care practitioners under the law of a State or Territory, that is, under the statutory board that regulates health care practitioners.
23. To establish that they are a member of the class of persons a health care practitioner may provide information such as:
- a copy of his or her registration certificate;
 - his or her registration number with the relevant statutory board;
 - information showing exemption from the operation of Part 3-3 of the *Therapeutic Goods Act 1989*.
24. For example, a certificate may be issued by practitioner associations. If a practitioner's association does not issue certificates, alternative information may be provided or a practitioner may apply for a specific approval from the ATO.

Veterinary practitioners

25. Veterinary practitioners are defined in the instrument as persons registered as veterinary practitioners under the law of a State or Territory, that is, under the statutory board that regulates veterinary practice.
26. Before a supplier allows access to spirit free of duty under the instrument they should satisfy themselves that the recipient is a member of the class of persons covered by the instrument.
27. To establish that they are a member of the class of persons a veterinary practitioner may provide:
- a copy of their certificate of registration; or
 - their registration number.

Medical institutions

28. Medical institutions are defined in the instrument as hospitals, health facilities and institutes of medical research.
29. A hospital is defined in the instrument as an institution primarily engaged in the provision of medical and surgical services on an inpatient basis under the supervision of qualified doctors and a 24-hour nursing service.
30. A health facility is defined in the instrument as a health, aged care or other facility that employs at least one health care practitioner (within the definition given above) in their capacity as a health care practitioner.

31. An institute of medical research is defined in the instrument as a body that carries on medical research and may be established under statute, accredited by the National Health and Medical Research Council (NHMRC) or affiliated with an Australian university or hospital.
32. Medical institutions will need to be able to verify by documentary evidence (presented to a supplier of spirit) that they are members of the class of persons (that is, a medical institution). For example, this may be by orders placed on letterheads, providing details of health care practitioners employed and their roles or other relevant information.

Government institutions

33. A government institution is defined in the instrument as having the same meaning as 'government related entity' in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). The relevant definition states:

government related entity is:

- (a) a *government entity; or
- (b) an entity that would be a government entity but for subparagraph (e)(i) of the definition of **government entity** in the *A New Tax System (Australian Business Number) Act 1999*; or
- (c) a local governing body established by or under a *State law or *Territory law.

34. In the GST Act 'government entity' has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*. That definition states:

government entity means:

- (a) a Department of State of the Commonwealth; or
- (b) a Department of the Parliament; or
- (c) an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*; or
- (d) a Department of State of a State or Territory; or
- (e) an organisation that:
 - (i) is not an entity; and
 - (ii) is either established by the Commonwealth, a State or a Territory (whether under a law or not) to carry on an enterprise or established for a public purpose by an *Australian law; and
 - (iii) can be separately identified by reference to the nature of the activities carried on through the organisation or the location of the organisation;whether or not the organisation is part of a Department or branch described in paragraph (a), (b), (c) or (d) or of another organisation of the kind described in this paragraph.

35. Government institution therefore includes all Commonwealth, State and Territory government departments and agencies, statutory authorities and local government councils.

36. Aligning the class of persons with the GST Act definition increases certainty for members of the class, as they can ascertain their eligibility on the basis of their GST status.
37. Before a supplier allows access to spirit free of duty under the instrument they will need to satisfy themselves that the recipient is a member of the class of persons covered by the instrument (that is, that they are a government institution). This may include by ordering on official stationery, or providing similar information.

Educational institutions

38. An educational institution is defined in the instrument as an institution that conducts an 'education course' within the meaning of section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*. That definition states:

education course means:

- (a) a *pre-school course; or
 - (b) a *primary course; or
 - (c) a *secondary course; or
 - (d) a *tertiary course; or
 - (e) a *Masters or Doctoral course; or
 - (f) a *special education course; or
 - (g) an *adult and community education course; or
 - (h) an *English language course for overseas students; or
 - (i) a *first aid or life saving course; or
 - (j) a *professional or trade course; or
 - (k) a *tertiary residential college course.
39. The asterisked terms are further defined in section 195-1. By aligning the definition with the GST, an educational institution can more easily ascertain its status in relation to the instrument.
40. To establish that they are a member of the class of persons an educational institution may provide information such as a certificate of registration or accreditation as an educational body.

Accounting for spirit

41. Under section 77FH of the Excise Act persons receiving spirit under subitem 3.6 may be asked to account by the ATO for their use of the spirit, showing that it has been used for an industrial, manufacturing, scientific, medical, veterinary or educational purpose.
42. If the person fails to account to the satisfaction of the ATO, a written demand may be made giving rise to a liability to pay an amount equal to the duty that would have been payable if the instrument had not been made at the prevailing rate on the day of the demand. A demand is a reviewable decision.

Consultation:

- 43. This instrument has not been subject to a consultation process.
- 44. Prior consultation was not considered necessary because the instrument preserves (and enhances) a prior benefit conferred to these classes of persons. This further reduces the administrative burden for suppliers and recipients of concessional spirit.
- 45. Consultation was undertaken with the Revenue Analysis Branch (RAB) and no monetary, financial or revenue impacts resulting from or associated with this instrument were identified.

James O'Halloran
Deputy Commissioner of Taxation
[26 November 2014]

Legislative references:

Excise Act 1901 section 77FE

Excise Act 1901 subsection 4(1)

A New Tax System (Goods and Services Tax) Act 1999 section 195-1

Statement of compatibility with Human Rights

This Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This legislative instrument specifies the classes of persons who do not require specific approval to obtain spirit duty-free for certain uses.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. It is considered to be minor or machinery in nature. It extends the benefit of previous legislative instruments that specified persons entitled to access spirit duty-free for certain uses, and removes the quantity restrictions.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.