

## **EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Customs Act 1901*

*Customs Amendment (Collecting Tobacco Duties) Regulations 2019*

The *Customs Act 1901* (the Customs Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and from Australia.

Subsection 270(1) of the Customs 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 or as may be necessary or convenient to be prescribed for giving effect to the Act.

Subsection 163(1) of the Customs Act specifies that refunds, rebates and remissions of duty may be made:

- in respect of goods generally or goods included in a class; and
- in such circumstances, and subject to any conditions and restrictions, as are prescribed, including circumstances, conditions and restrictions that relate to goods generally, or that class of goods.

Subsection 163(1A) of the Customs Act provides that the regulations may prescribe the amount, or the means of determining the amount, of any refund, rebate or remission of duty that may be made for the purposes of subsection (1).

Regulation 102 of the *Customs Regulation 2015* (the Customs Regulation) specifies that for paragraph 163(1)(b) of the Customs Act, clause 1 of Schedule 6 of the Customs Regulation prescribes circumstances in which a refund, rebate or remission of duty may be made by a Collector.

Schedule 6 of the Customs Regulation includes a table at Clause 1 which lists the circumstances in which a refund, rebate or remission of duty may be made under section 102 of the Customs Regulation.

The purpose of the *Customs Amendment (Collecting Tobacco Duties) Regulations 2019* (the Amendment Regulations) is to amend the Customs Regulation to insert two new refund circumstances in relation to the sale of tobacco products to duty free operators by tobacco importers. This measure complements measures in the *Customs Amendment (Collecting Tobacco Duties at the Border) Act 2018* (the Amendment Act) which commences on 1 July 2019.

The Amendment Regulations are part of a broader Commonwealth Government initiative to address recommendations of the October 2017 Black Economy Taskforce Final Report (the Report) contains a number of measures to combat illicit tobacco trade in Australia. In response to this recommendation, the Government announced in the 2018-19 Budget a range of measures aimed at targeting the main sources of illicit tobacco in Australia (Budget Paper

No. 2 of 2018-19), including smuggling and the leakage of tobacco products from licensed warehouses.

The Amendment Act implements a number of these changes, including the requirement that, from 1 July 2019, tobacco importers will be required to pay all duty and tax liabilities on imported tobacco products upon arrival of the tobacco products into Australia. From this date, the option to enter imported tobacco products into a licensed warehouse to delay paying duties and taxes will no longer be available.

Duty free shops and aircraft and ship's stores providers (collectively 'duty free operators') are warehouses, and as such will no longer be able to stock tobacco products on which duties and taxes have not been paid. Therefore, these business operations will be affected by the above measure. Amendments to the Customs Regulation are required to give full effect to the Report's proposal that duty free operators should retain the ability to sell tobacco products at a price that is free of duty and taxes (duty free tobacco).

This will be achieved by inserting a refund circumstance whereby importers of tobacco would be entitled to a refund of the duty paid on tobacco products that are on-sold to duty free operators. This new refund mechanism will allow tobacco importers to continue to supply imported tobacco products to duty free operators at the effective duty free price.

The Amendment Regulations will ensure that duty free operators can continue to replenish tobacco stocks and offer the sale of duty free tobacco after 1 July 2019, allowing these operators to continue their business operations unaffected.

In developing the Amendment Regulations consultation was undertaken with the Treasury and the Australian Taxation Office. Additionally, public consultation was also undertaken as part of the Exposure Draft process for the *Customs Amendment (Collecting Tobacco Duties at the Border) Act 2018* (the Amendment Act). The Amendment Act is part of a broader Commonwealth Government initiative to address recommendations of the October 2017 Black Economy Taskforce Final Report which contains a number of measures to combat illicit tobacco trade in Australia.

The Amendment Regulations were also released as an Exposure Draft to provide the opportunity for stakeholders, including duty free operators, to comment on the proposed refund circumstances. These consultations indicated general support for the overall scheme, including the refund circumstances, with the majority of submissions expressing support for the measure.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on 1 July 2019.

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**Details of the *Customs Amendment (Collecting Tobacco Duties) Regulations 2019***

**Section 1 – Name of Regulation**

1. This section provides that the title of the Regulations is the *Customs Amendment (Collecting Tobacco Duties) Regulations 2019* (the Amendment Regulations).

**Section 2 – Commencement**

2. This section sets out, in a table, the date on which each of the provisions contained in the Amendment Regulations commence.
3. Table item 1 provides for the whole of this instrument to commence on 1 July 2019.

**Section 3 – Authority**

4. This section sets out the authority under which the Amendment Regulations are made, which is the *Customs Act 1901* (the Customs Act).

**Section 4 - Schedules**

5. This section is the formal enabling provision for the Schedule to the Amendment Regulations, and provides that, each instrument that is specified in a Schedule to the Amendment Regulations, is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to this instrument has effect according to its terms.
6. The instrument being amended is the *Customs Regulation 2015*.

## Schedule 1 - Amendments

### *Customs Regulation 2015*

#### **Item 1            Subsection 109(2) (after table item 5)**

7. Regulation 109 of the *Customs Regulation 2015* (the Customs Regulation) sets out the period for making an application for refund, rebate or remission of duty in prescribed circumstances. Subregulation 109(2) provides that the application for a refund or rebate of a duty in a circumstance mentioned in an item of the table contained in the subregulation must be made within the period mentioned in the item.
8. Item 1 is consequential to item 2 which inserts two new refund circumstances for tobacco products in the table of refund circumstances in Schedule 6 of the Customs Regulation.
9. Item 1 inserts new table item 5A to provide that the period for making an application for a refund for the two new refund circumstances inserted by item 2 is within 4 years after the day on which the duty was paid.

#### **Item 2            Clause 1 of Schedule 6 (at the end of the table)**

10. Clause 1 of Schedule 6 of the Customs Regulation prescribes in a table the circumstances in which a refund, rebate, or remission of duty may be made by a Collector.
11. This item adds two new refund circumstances to this table in relation to tobacco products.
12. New table item 20 prescribes the following circumstances for the refund of duty paid on tobacco products imported into Australia and on-sold to duty free shops:

All of the following apply:

- (a) duty has been paid on tobacco products imported into Australia;
  - (b) the tobacco products have been sold by the person who paid the duty, to:
    - (i) the proprietor of an inwards duty free shop; or
    - (ii) the proprietor of an outwards duty free shop;
  - (c) the tobacco products have been received by the proprietor of the duty free shop;
  - (d) the tobacco products were sold to the proprietor of the duty free shop for the purposes of the proprietor selling the tobacco products to a relevant traveller (within the meaning of subsections 96A(1) and 96B(1) of the Act).
13. Duty free shops are licensed warehouses under the Customs Act that have been given permission to sell goods to relevant traveller at the retail level free from duty and taxes.
  14. Under subsection 96A(1) '*relevant traveller*' means a person:
    - (a) who intends to make an international flight, whether as a passenger on, or as a pilot or member of the crew of, an aircraft; or
    - (b) who intends to make an international voyage, whether as a passenger on, or as the master or a member of the crew of, a ship.
  15. Under subsection 96B(1) '*relevant traveller*' means a person who:

- (a) has arrived in Australia on an international flight, whether as a passenger on, or as the pilot or a member of the crew of, an aircraft; and
- (b) has not been questioned, for the purposes of this Act, by an officer of Customs in respect of goods carried on that flight.

16. Section 96A of the Customs Act defines ‘*Outwards duty free shops*’ and section 96B provides the definition of ‘*Inwards duty free shops*’. ‘*Proprietor*’ in relation to outwards and inwards duty free shops is defined in these sections to mean the holder of a warehouse licence that relates to the duty free shop.
17. The purpose of new table item 20 is to enable tobacco importers to apply for a refund of duty paid on imported tobacco products that are on-sold to the proprietors of inward or outward bound duty free shops for the purpose selling to a relevant traveller. As an integrity measure, it will also be a requirement of the new refund circumstance that the tobacco products have been received by the proprietor of the duty free shop. This new refund mechanism will allow tobacco importers to continue to supply imported tobacco products to the proprietors of duty free shops at the effective “duty free” price. This will ensure that the proprietors of inwards and outwards bound duty free shops can continue to replenish tobacco stocks and offer the sale of “duty free” tobacco after 1 July 2019.
18. New table item 21 prescribes the following circumstances for the refund of duty paid on tobacco products on-sold to the holders of warehouses licences for warehouses that supply aircraft’s stores or ship’s stores:
- All of the following apply:
- (a) duty has been paid on tobacco products imported into Australia;
  - (b) the tobacco products have been sold by the person who paid the duty, to the holder of a warehouse licence in respect of a warehouse that is licensed to warehouse either or both of the following:
    - (i) aircraft’s stores;
    - (ii) ship’s stores;
  - (c) the tobacco products have been received by the holder of the warehouse licence;
  - (d) the tobacco products were sold for the purposes of the operation of the warehouse as a seller of either or both of the following:
    - (i) aircraft’s stores;
    - (ii) ship’s stores.
19. Catering bonds and providores operate licensed warehouses that provide vessels and aircraft that engage in international voyages or flights with duty and tax free stores. These stores are defined as “*aircraft’s stores*” and “*ship’s stores*” at section 130C of the Customs Act.
20. The purpose of new table item 21 is to enable tobacco importers to apply for a refund of duty paid on imported tobacco products that are on-sold to providores and catering bonds for the purpose of supplying aircraft’s stores or ship’s stores. As an integrity measure, it will be a requirement of the new refund circumstance that the tobacco products have been received by the holder of the warehouse licence in respect of aircraft’s stores and ship’s stores. This new refund mechanism will allow tobacco importers to continue to supply

imported tobacco products to catering bonds and providores at the effective “duty free” price. This will ensure that providores and catering bonds can continue to replenish tobacco stocks for sale as aircraft’s stores and ship’s stores after 1 July 2019.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Customs Amendment (Collecting Tobacco Duties) Regulations 2019**

These Regulations are 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 Regulations**

The purpose of these Regulations is to amend the *Customs Regulation 2015* to insert two new refund circumstances in relation to the sale of tobacco products to duty free operators by tobacco importers. This will enable duty free stores and warehouses which are exclusively used to supply aircraft's stores or ship's stores to continue to sell tobacco at a duty free rate.

This measure complements the package of amendments put to the Parliament in the *Customs Amendment (Collecting Tobacco Duties at the Border) Act 2018* (the Customs Amendment Act) which will commence on 1 July 2019.

The Customs Amendment Act provides that from 1 July 2019, tobacco importers will be required to pay duty on tobacco products upon importing tobacco products into Australia. From that date, the option to enter imported tobacco products into a licensed warehouse without the payment of duties will no longer be available.

#### **Background**

The Black Economy Taskforce's Final Report (the Report), published in October 2017, made recommendations with respect to tackling illicit tobacco. In particular, the Report examined the current arrangements for the payment of duty on tobacco products, and concluded that the warehousing of tobacco creates a risk of tobacco being distributed from these warehouses without payment of duty. Currently, when imported tobacco products are entered into a warehouse, duty is not paid until the products leave the warehouse under an entry for home consumption. The risk would be diminished if duties on tobacco were paid as soon as the tobacco is imported into Australia.

The 2018 - 2019 Budget '*Black Economy Package - combatting illicit tobacco*' adopts a number of recommendations from the Report, in particular the recommendation that duties be paid on tobacco as soon as it is imported into Australia. The Customs Amendment Act amended the *Customs Act 1901* (the Customs Act) to provide a legislative basis for this recommendation. The amendments to the Customs Act were compatible with human rights as they did not raise any human rights issues.

### **Human rights implications**

These Regulations do not engage, impact on, or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This is consistent with the Customs Amendment Act.

### **Conclusion**

These Regulations are compatible with human rights as they do not raise any human rights issues.

**The Hon Peter Dutton MP, Minister for Home Affairs**