

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer**

*A New Tax System (Wine Equalisation Tax) Act 1999*

*A New Tax System (Wine Equalisation Tax) Regulations 2019*

Section 27-35 of the *A New Tax System (Wine Equalisation Tax) Act 1999* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *A New Tax System (Wine Equalisation Tax) Regulations 2019* (the New Regulations) is to remake and improve the operation of the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (the Sunsetting Regulations) before they sunset. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. Sunsetting legislative instruments generally cease to have effect after ten years. The Sunsetting Regulations are scheduled to sunset on 1 October 2019.

As with the Sunsetting Regulations, the New Regulations support the operation of the Wine Equalisation Tax by:

- permitting, under the Tourist Refund Scheme, refunds of the tax to travellers leaving the indirect tax zone; and
- clarifying the meaning of different wine categories for the purposes of the tax.

The New Regulations largely remake and improve the Sunsetting Regulations by simplifying language and clarifying concepts. The key change to the Sunsetting Regulations is the adoption of modern drafting practices and the clarification of the tourist refund scheme processes. The change is not intended to affect the meaning or substantive operation of the provisions.

Public consultation on an exposure draft of the New Regulations and the accompanying exposure draft explanatory statement occurred from 30 July 2019 to 13 August 2019. Only one substantive submission was received regarding a possible amendment to the wine equalisation tax regime. As this submission did not go towards the operation of the New Regulations, the issues raised in the submission will be considered separately to the remake of the Sunsetting Regulations.

Details of the New Regulations are set out in [Attachment A](#).

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

The New Regulations commence on 1 October 2019.

Prior to the making of the New Regulations and in accordance with the Office of Best Practice Regulation's Guidance Note on sunsetting instruments, the Department of the

Treasury self-assessed that the Sunsetting Regulations were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required. This assessment was informed by the public consultation on the exposure draft New Regulations.

A Statement of Compatibility with Human Rights is at Attachment B. The New Regulations are compatible with human rights as they do not raise any human rights issues.

**Details of the *A New Tax System (Wine Equalisation Tax) Regulations 2019***

This Attachment sets out further details of the *A New Tax System (Wine Equalisation Tax) Regulations 2019* (the New Regulations). All references are to the New Regulations unless otherwise stated.

The New Regulations remake the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (the Sunsetting Regulations) before they sunset on 1 October 2019. The New Regulations do not incorporate any changes to the underlying policy settings of the Wine Equalisation Tax or the operation of the associated Tourist Refund Scheme.

This Attachment outlines some of the changes made during the remake of the Sunsetting Regulations. Changes of a minor or technical nature, such as references to section rather than regulation in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the New Regulations make changes that require further explanation, these are identified and explained in this Attachment.

**Part 1—Preliminary**

**Section 1—Name of the New Regulations**

Section 1 provides that the name of the New Regulations is the *A New Tax System (Wine Equalisation Tax) Regulations 2019*.

**Section 2—Commencement**

Section 2 provides that the New Regulations commence on 1 October 2019.

**Section 3—Authority**

Section 3 provides that the New Regulations are made under the Act.

**Section 4—Schedules**

Section 4 provides that the instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule and that any other item in the Schedule to this instrument has effect according to its terms.

**Section 5—Definitions**

Section 5 provides a list of definitions used in the New Regulations.

**Part 5—Payments and refunds of wine tax**

Part 5 supports the Tourist Refund Scheme as it applies to the Wine Equalisation Tax. The Tourist Refund Scheme is a broader scheme for the purposes of the Goods and Services Tax (GST).

Sections 25-5.01 and 25-5.02 provide that eligibility for a refund of Wine Equalisation Tax is linked to a traveller's eligibility for a GST refund under the Tourist Refund Scheme.

Section 25-5.03 provides that the amount of Wine Equalisation Tax refunded is 29 per cent of half of the GST inclusive price of the wine. Under section 25-5.04, the refund is rounded to the nearest five cents if the refund is provided in cash.

Subdivision 25-D (sections 25-5.05, 25-5.06 and 25-5.07) provides for the period and manner of payment for refunds under the Tourist Refund Scheme.

The Sunsetting Regulations included an equivalent provision in section 25-5.04 that incorporated by reference the payment arrangements under the GST Tourist Refund Scheme. Subdivision 25-D replicates some of the provisions for the payment arrangements as appropriate rather than incorporating them in their entirety. There is no change to the substantive operation of the Tourist Refund Scheme for the Wine Equalisation Tax.

If the purchaser of wine presents a tax invoice to a Customs officer and the officer is satisfied the purchaser is entitled to a refund, the officer must give the purchaser a payment authority. A purchaser of wine may lodge the payment authority and nominate an available method of payment. The Comptroller-General of Customs is generally required to provide the refund within 60 days of the lodgment of a payment authority.

A decision of a Customs officer or the Comptroller-General not to issue a payment authority or not to make a payment is subject to judicial review. However, such a decision is not subject to merits review by the Administrative Appeals Tribunal because the typical value of refunds under the Tourist Refund Scheme does not justify the cost of this review mechanism.

### **Part 7—Interpreting the Act**

Part 7 remakes provisions in the Sunsetting Regulations that provide additional details for the definition of different categories of wine, including grape wine, fruit or vegetable wine, and mead. For example, the provisions specify the flavours and other substances that can be added to certain wine products, and the volume of ethyl alcohol required, to satisfy statutory definitions.

Changes to these provisions in the New Regulations clarify the relevant provisions of the Act. These changes under Part 7 do not change the meaning of the corresponding provisions in the Sunsetting Regulations.

### **Part 8—Application, saving and transitional provisions**

Section 35-1.01 ensures the Sunsetting Regulations continue to apply to the Tourist Refund Scheme and the wine purchased before the commencement of the New Regulations.

### **Schedule 1—Repeals**

Schedule 1 to the New Regulations repeals the Sunsetting Regulations.

**Statement of Compatibility with Human Rights**

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

**A New Tax System (Wine Equalisation Tax) Regulations 2019**

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**

The purpose of the *A New Tax System (Wine Equalisation Tax) Regulations 2019* (the New Regulations) is to remake and improve the operation of the *A New Tax System (Wine Equalisation Tax) Regulations 2000* (the Sunsetting Regulations) before they sunset.

The New Regulations largely remake and improve the Sunsetting Regulations by simplifying language and clarifying concepts. The New Regulations cover the procedure to facilitate the Tourist Refund Scheme for Wine Equalisation Tax and provide clarification of definitions used in the *A New Tax System (Wine Equalisation Tax) Act 1999*.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

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