

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Excise Act 1901

Excise Amendment (Alcohol Manufacturers Remissions) Regulations 2021

Section 164 of the *Excise Act 1901* (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 *Excise Amendment (Alcohol Manufacturers Remissions) Regulations 2021* (the Regulations) is to amend the *Excise Regulation 2015* to enable eligible alcohol manufacturers to receive an immediate remission of their excise duty liability up to a maximum of \$350,000 each financial year.

The Act provides a mechanism to allow remissions, rebates, and refunds of excise duty. Section 78 of the Act provides that regulations may prescribe circumstances in which remission of excise duty may be allowed.

The alcohol manufacturer's excise refund scheme (refund scheme) previously provided eligible alcohol manufacturers with a refund of 60 per cent of excise duty paid, up to a maximum of \$100,000 each financial year. Eligible alcohol manufacturers had 12 months from the day after the excise duty was paid to apply for a refund.

The Regulations remove the requirement for eligible alcohol manufacturers to have to pay the excise duty first before being eligible to apply for a 60 per cent refund of the excise duty paid. Instead, eligible alcohol manufacturers are entitled to an immediate 100 per cent remission of their excise duty liability, capped at \$350,000 each financial year. This aligns the benefit available under the scheme for eligible alcohol manufacturers with the Wine Equalisation Tax Producer Rebate available to wine producers. This ensures greater consistency of treatment for producers of alcoholic beverages.

The amendment also reduces the administrative overheads and cash flow concerns of eligible alcohol manufacturers that previously paid excise duty and then sought a refund. The Regulations apply to excise duty payable in relation to goods entered for home consumption on or after 1 July 2021.

The changes were publicly announced in the 2020-21 Mid-Year Economic and Fiscal Outlook (remission) and the 2021-22 Budget (\$350,000 threshold). The Australian Taxation Office was consulted as part of the development process for this instrument. No further consultation is required under section 17 of the *Legislation Act 2003* for this instrument as it is generally machinery in nature, increasing an existing threshold amount and providing this by way of a remission.

Details of the Regulations are set out in Attachment A.

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

The Regulations commenced on the day after registration on the Federal Register of Legislation.

A Regulation Impact Statement is not required (OBPR reference ID 43255) as this amendment does not alter the regulatory burden on eligible alcohol manufacturers.

The Regulations have the following revenue impact over the forward estimates period:

2020-21 MYEFO measure – Alcohol Taxation — automatic remission of excise duty for alcohol manufacturers

2020-21	2021-22	2022-23	2023-24
-	-\$1.2m

2021-22 Budget measure – Aligning the excise remission scheme for brewers and distillers with the producer rebate for wine producers

2020-21	2021-22	2022-23	2023-24	2024-25
-	-\$55m	-\$55.0m	-\$55.0m	-\$60.0m

A statement of Compatibility with Human Rights is at [Attachment B](#). The Legislative Instrument is compatible with human rights as it does not raise human rights issues.

Details of the *Excise Amendment (Alcohol Manufacturers Remissions) Regulations 2021*

Section 1 – Name

This section provides that the name of the Regulations is the *Excise Amendment (Alcohol Manufacturers Remissions) Regulations 2021* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commences on the day after the Regulations are registered.

Section 3 – Authority

The Regulations are made under the *Excise Act 1901* (the Act).

Section 4 – Schedule

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

Schedule 1 – Excise remission for alcohol manufacturers

The Regulations enable alcohol manufacturers that meet the eligibility criteria to get a full remission of their excise duty liability for goods entered for home consumption on or after 1 July 2021.

To be eligible, an alcohol manufacturer must be a licensed manufacturer, be legally and economically independent of any other entity that has received a remission or refund for the financial year under the scheme, and ferment or distil at least 70 per cent of the alcohol used in the products they produce. The still ownership test needs to be met if the alcoholic beverage is obtained from distillation.

A cap of \$350,000 each financial year (or a proportional amount for part years), applies to the excise remission for eligible alcohol manufacturers. This is increased from the \$100,000 cap that applied under the refund scheme.

Clause 2 of Schedule 1 to the *Excise Regulation 2015* provides for circumstances in which a remission of excise duty may be made without application. Item 9 of the Regulations sets out the eligibility criteria, for a remission of excise duty liability, in table item 10 in subclause 2(1) of Schedule 1 to the *Excise Regulation 2015*. This is consistent with the eligibility criteria that was previously provided in table item 21 in subclause 1(1) of Schedule 1 to the *Excise Regulation 2015*, which is repealed by item 5 to the Regulations. The only differences between the two table items are that prior payment of excise duty is no longer required to be eligible and the benefit cap is \$350,000.

Item 6 of the Regulations repeals subclauses 1(5) and 1(6) of Schedule 1, and item 10 includes these subclauses in clause 2 of Schedule 1 to the *Excise Regulation 2015*, which deals with remissions, renumbered as subclauses 2(3) and 2(4). Item 10 also amends referencing and terminology in these subclauses as required.

Subclause 2(3) specifies the formula to calculate the proportionate cap amount available to an alcohol manufacturer that becomes eligible for the remission during a financial year.

Subclause 2(4) requires an alcohol manufacturer, under table item 10(b) in subclause 2(1) of Schedule 1 to the *Excise Regulation 2015*, to be legally and economically independent, of any other alcohol manufacturer that has received a remission or a refund because of table item 10, for the full financial year. This economic independence test is consistent with how the refund scheme operated. If a remission is made before the end of the financial year the alcohol manufacturer must be independent from the start of the financial year to when remission is made, and have a reasonable expectation that these circumstances will exist for the remainder of the financial year. In addition, where an alcohol manufacturer has to meet the still ownership test under table item 10(e) in subclause 2(1) of Schedule 1 to the *Excise Regulation 2015*, and the remission is made at year end, they must have owned the still for the full financial year in which remission is made. If remission is made before the end of the financial year then the alcohol manufacturer must have owned the still from the start of the financial year until the remission is made, and have a reasonable expectation that these circumstances will exist for the remainder of the financial year.

Item 10 of the Regulations also includes subclause 2(2) of Schedule 1 to the *Excise Regulation 2015* to clarify the circumstances under which an eligible alcohol manufacturer may apply for a refund where excise duty is paid in error as they were eligible for a remission under table item 10. That is, the manufacturer paid excise duty in circumstances where they were entitled to a remission under table item 10. The manufacturer is then required to apply for a refund under table item 3 in subclause 1(1) of Schedule 1 to the *Excise Regulation 2015*, which provides for refunds where excise duty is paid due to a manifest error of fact or patent misconception of the law. Any refund obtained by an alcohol manufacturer, under subclause 2(2) for Schedule 1 to the *Excise Regulation 2015*, is included in that alcohol manufacturer's financial year remission entitlement calculation to ensure that the maximum benefit that can be obtained for a financial year for the remission entitlement is \$350,000.

Items 2 and 3 of the Regulations amend section 12 of the *Excise Regulation 2015* by repealing table item 5 and including a new table item 7 that provides for a full remission of the duty payable, and providing that the remission circumstance is located in subclause 2(1) of Schedule 1 to the *Excise Regulation 2015*. Table item 6 in section 11 of the *Excise Regulation 2015* is amended by item 1 of the Regulations to remove the reference to table item 21 in subclause 1(1) of Schedule 1 to the *Excise Regulation 2015* as the item is repealed for goods entered for home consumption on or after 1 July 2021.

Items 7 and 8 amend the numbering in clause 2 of Schedule 1 to the *Excise Regulation 2015* and remove references to rebates and refunds from the heading of the clause. This is consistent with the operation of clause 2 and makes it clear that clause 2 is only intended to deal with remission circumstances.

Item 4 of the Regulations inserts an application and transitional provision, section 62, into the *Excise Regulation 2015*. Subsection 62(1) provides that the amendments made by Schedule 1 to the *Excise Regulation 2015* apply to the remission of excise duty from 1 July 2021 for alcoholic beverages entered for home consumption on or after 1 July 2021.

Alcoholic beverages entered for home consumption prior to 1 July 2021 fall under the refund scheme requirements. That is, eligible alcohol manufacturers have to pay excise duty and apply for any applicable refund.

Subsection 62(2) is a transitional provision that ensures that where ‘this item’ is referred to in table item 10 of subclause 2(1) of Schedule 1 to the *Excise Regulation 2015*, it is treated as including any reference to table item 21 in subclause 1(1) of Schedule 1 to the *Excise Regulation 2015* as in force before the commencement of these Regulations. This ensures that the eligibility criteria used in previous financial years apply to transactions that occurred in those financial years, except where amended by any other provision in the Regulations. This is particularly relevant to the still ownership test, which provides a two-year grace period to acquire a still for alcohol manufacturers that use distillation in the production of alcoholic beverages.

Subsection 62(3) is a transitional provision that limits subsection 62(1) of the Regulations, so that an alcohol manufacturer must have paid excise duty before 1 July 2021 for goods entered prior to 1 June 2021 to be eligible to apply for a refund under table item 21 under subclause 1(1) of Schedule 1 to the Regulation. Alcohol manufacturers that do not pay excise duty on goods entered prior to 1 June 2021 until after 30 June 2021 are not eligible for a refund under table item 21 for the excise paid on or after 1 July 2021. This ensures that alcohol manufacturers that have paid excise duty in the 2020-21 financial year are able to apply for a refund but prevents alcohol manufacturers from delaying payment of excise duty to benefit from the \$100,000 threshold for the 2021-22 financial year to obtain additional refunds they may not otherwise be entitled to.

Subsection 62(4) is a transitional provision that enables eligible alcohol manufacturers that enter alcoholic beverages into home consumption between 1 June 2021 and 30 June 2021 and pay excise duty on or after 1 July 2021 to apply for a refund under table item 21, but with a reduced maximum cap of \$8,333, being one twelfth of the \$100,000 cap. This ensures that alcohol manufacturers that have a periodic settlement permission can still apply for a refund in respect to goods entered in June 2021 and duty paid on or after 1 July 2021.

If this transitional provision was not included, then an alcohol manufacturer would not be able to apply for a refund for goods entered in June 2021 but only paid in July 2021 or later. Under the refund scheme, an alcohol manufacturer has 12 months to apply for a refund from the day after the excise duty was paid, if they meet the eligibility requirements established in table item 21 of subclause (1) of Schedule 1 to the *Excise Regulation 2015*. The refund scheme no longer applies to goods where duty is paid on or after 1 July 2021 in respect of goods entered prior to 1 June 2021, therefore a payment of excise on or after 1 July 2021 is not available under the refund scheme. Under the remission scheme, an alcohol manufacturer receives immediate remission of their excise duty liability on the entry of alcoholic beverages into home consumption, if they meet the eligibility requirements set out in table item 10 of subclause 2(1) of Schedule 1 to the *Excise Regulation 2015*. The remission

scheme is in effect from 1 July 2021, therefore alcoholic beverages entered into home consumption prior to this date are not eligible for remission.

Statement of Compatibility with Human Rights

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

Excise Amendment (Alcohol Manufacturers Remissions) Regulations 2021

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 *Excise Amendment (Alcohol Manufacturers Remissions) Regulations 2021* (the Regulations) amend the *Excise Regulation 2015* to enable eligible alcohol manufacturers to get an immediate 100 per cent remission of their excise duty liability after 1 July 2021, for goods entered into home consumption on or after 1 July 2021. This reduces the administrative overheads and cash flow concerns of eligible alcohol manufacturers, which existed under the excise refund scheme. Previously alcohol manufacturers were required to pay excise duty prior to being eligible to apply for a 60 per cent refund on the excise duty paid.

The Regulations also increase the maximum amount that an eligible alcohol manufacturer is entitled to, from \$100,000 to \$350,000. This aligns the benefit available under the scheme for alcohol manufacturers with the Wine Equalisation Tax Producer Rebate available for wine producers. This ensures greater consistency of treatment for producers of alcoholic beverages.

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.