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## Explanatory Statement

### Excise (Concessional Spirits – Class of Persons) Determination 2024

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#### General outline of instrument

1. This instrument is made under section 77FE of the *Excise Act 1901* (Excise Act).
2. The instrument allows a person belonging to certain classes - namely health care practitioners, veterinary practitioners, medical institutions, government related entities and education institutions – to use up to a specified quantity of spirit in a calendar year free of duty, provided they use the spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. This instrument will reduce the compliance burden on such persons because they will not be required to individually apply for approval to use up to the specified quantity of spirit free of duty for the approved purposes.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. It replaces the *Excise (Concessional spirits – class of persons) Determination 2014 (No.1)*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Date of effect

5. This instrument commences on 1 January 2025.

#### Background

6. The arrangements for concessional spirits (that is, spirits that are free of duty because they will be used for certain purposes other than making excisable beverages or for use as fuel) was historically a complex arrangement contained in several Acts. It was streamlined in 2006 (including via the *Excise Laws Amendment (Fuel Tax Reform and Other Measures) Act 2006*) as part of reforms to clarify and simplify excise law to reduce compliance costs for excise manufacturers, importers and administering authorities. The amendments did not change the eligible uses of concessional spirit but did streamline the administration and clarify the circumstances in which spirits do not attract excise duty.
7. Section 77FE of the Excise Act, which was introduced as part of the 2006 reforms, authorises the CEO (who is the Commissioner of Taxation under that Act) to determine a class of persons for the purposes of subitem 3.6 of the Schedule to the *Excise Tariff Act 1921* (Tariff Act) and specify a quantity of spirit that a person included in the class may use in a calendar month or calendar year.
8. Subitem 3.6 of the Schedule to the Tariff Act provides that the rate of duty on a quantity of spirit is free, if that spirit:
  - (a) is used for an industrial, manufacturing, scientific, medical, veterinary, or educational purpose; and

- (b) does not exceed the specified quantity that a person of the determined class may use.

9. However, on-supply of this duty-free spirit is not permitted (because this is not 'use') and it cannot be used for an excisable purpose (such as for the manufacture of an alcoholic beverage or as fuel).

**Effect of this instrument**

10. This instrument, which is made under section 77FE, determines the following classes of persons for the purposes of subitem 3.6 of the Schedule to the Tariff Act:

- (a) Health care practitioners;
- (b) Veterinary practitioners;
- (c) Medical institutions;
- (d) Government related entities; and
- (e) Education institutions.

11. This instrument also specifies the maximum quantities of spirit that may be obtained and used duty-free per calendar year by an individual (such as a health care or veterinary practitioner) or another entity (such as a medical or education institution, or a government related entity) in the classes for industrial, manufacturing, scientific, medical, veterinary or educational purposes without the need to obtain specific approval:

Table 1: Maximum quantities of spirit per calendar year

<b>Class of persons</b>	<b>Maximum quantity of spirit</b>
Health care practitioners	Up to 200 litres per calendar year
Veterinary practitioners	Up to 200 litres per calendar year
Medical institutions	Up to 1,000 litres per calendar year
Government related entities	Up to 1,000 litres per calendar year
Education institutions	Up to 1,000 litres per calendar year

12. Limits on the quantity of spirit that can be obtained without specific approval have been introduced in this instrument to mitigate against the risk of concessional spirits being improperly used (such as in the manufacture of alcoholic beverages or as a fuel).

13. Where an individual, institution or other type of entity qualifies as a member of more than one class of persons, they may use only up to the maximum quantity of spirit for one of those classes without specific approval. Furthermore, the maximum quantity of spirit for a class of persons cannot be aggregated with the maximum quantity for another class of persons.

14. The maximum limits for medical or education institutions and government related entities apply at the institutional level, meaning that the aggregate quantity of spirit used by that institution or entity cannot exceed the maximum quantity for that class under the instrument.

15. For the purposes of the instrument, 'person' refers to an individual, when used to refer to a health care practitioner or veterinary practitioner, or an entity other than an individual (such as company, body corporate or body politic), when used to refer to a medical institution, education institution, or a government related entity.

16. Should a person require a quantity of spirit above what is allowed to be obtained without approval under this instrument, they can apply to the CEO for approval under section 77FF of the Excise Act to obtain further quantities of spirit duty-free. This allows the CEO to assess the risk to revenue of allowing these entities to access a higher quantity of spirit than is allowed under the

instrument. Such a risk is posed by, for example, entities on-selling the spirit or using it for the manufacture of an alcohol beverages, or as a fuel.

17. In accordance with 77FH of the Excise Act, a person who obtains spirit under the instrument must be able to account to the CEO, when requested, that the spirit has been used for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. If the person cannot provide a satisfactory account, they must pay (on demand made by the CEO) an amount equal to the duty that would have been payable on the spirit if the instrument did not apply and the spirit had been entered for home consumption on the day of the demand.

18. If suppliers of spirit need to satisfy themselves that a person seeking to acquire spirit under subitem 3.6 of the Schedule to the Tariff Act is in the class of persons specified under section 77FE of the Excise Act, they can request documentary evidence.

19. Some of the expressions defined in the instrument are discussed in more detail in the following paragraphs.

### ***Health care practitioners***

20. 'Health care practitioner' is defined in the instrument as having the same meaning as 'health practitioner' in section 3 of the *Therapeutic Goods Act 1989*. They include individuals who are registered or licensed under Australian laws to practice in any of the following health professions: Aboriginal and Torres Strait Islander health practice, dental (not including the professions of dental therapist, dental hygienist, dental prosthetist or oral health therapist), medical, medical radiation practice; nursing, midwifery, occupational therapy, optometry, pharmacy, physiotherapy, podiatry and psychology.

21. The definition of health care practitioner also includes certain persons that belong to a class of persons specified in column 2 of item 4 in Schedule 8 to the *Therapeutic Goods Regulations 1990*, which covers acupuncturists, herbalists, homeopaths, and naturopaths.

22. To confirm their credentials when requested, a health care practitioner may provide information such as a copy of their registration certificate, their registration number with the relevant statutory board, or a certificate issued by relevant practitioner associations.

### ***Veterinary practitioners***

23. 'Veterinary practitioner' in the instrument means a person registered under relevant Commonwealth, State or Territory laws to practice veterinary sciences or veterinary surgery.

24. To confirm their credentials when requested, a veterinary practitioner may provide information such as a copy of their certificate of registration or their registration number.

### ***Medical institutions***

25. 'Medical institution' in the instrument means hospitals, health facilities and institutes of medical research.

26. To confirm their credentials when requested, a medical institution may provide information such as orders placed on letterheads or official stationery, details of health care practitioners employed and their roles or other relevant information, or accreditation as a medical institution or research facility.

### ***Government institutions***

27. 'Government related entity' in the instrument has the meaning given section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). That definition covers most

Australian government agencies, authorities, bodies and departments (including at the Commonwealth, State, Territory and local government levels).

28. 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.

29. To confirm their credentials when requested, a government institution may provide an order on official stationery or letterhead or similar.

### ***Education institutions***

30. 'Education institution' in the instrument has the meaning given by section 195-1 of the GST Act. The definition includes a higher education institution, a technical and further education institution and a secondary school.

31. To confirm their credentials when requested, an education institution may provide information such as a certificate of registration or accreditation as an educational body.

### **Compliance cost assessment**

32. Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature OIA24-07945.

### **Consultation**

33. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before they make a legislative instrument.

34. Public consultation was undertaken for a period of 4 weeks from 21 August to 18 September 2024.

35. The draft instrument and draft explanatory statement were published to the ATO Legal database and advertised via the database's 'What's new' page. Major tax and superannuation publishers and associations commonly monitor these pages and include the details in the daily and weekly alerts and newsletters to their subscribers and members.

36. No submissions were received during the consultation period.

### ***Legislative references***

*A New Tax System (Goods and Services Tax) Act 1999*

*Acts Interpretation Act 1901*

*Excise Act 1901*

*Excise Tariff Act 1921*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Legislation Act 2003*

## **Statement of compatibility with human rights**

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

### **Excise (Concessional Spirits – Class of Persons) Determination 2024**

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 instrument allows a person belonging to certain classes of persons to use up to a specified quantity of spirit in a calendar year free of duty, provided they use the spirit for an industrial, manufacturing, scientific, medical, veterinary or educational purpose. This instrument will reduce the compliance burden on such persons because they will not be required to individually apply for approval to use spirit free of duty for the approved purposes.

#### **Human rights implications**

This legislative instrument does not engage any of the applicable rights or freedoms because it merely clarifies the classes of persons and specifies the amounts of spirits these persons can use for their specific class without having to make applications to the CEO to get the excise duty payable reduced to free.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.