EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Excise Act 1901

Customs Act 1901

Excise Regulation 2015

Customs Regulation 2015

Section 164 of the *Excise Act 1901* ("Excise Act") and section 270 of the *Customs Act 1901* ("Customs Act") provide that the Governor-General may make regulations prescribing matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to those Acts.

Section 78 of the Excise Act and section 163 of the Customs Act establish frameworks for remissions, rebates and refunds of excise and customs duty imposed under the *Excise Tariff Act 1921* ("Excise Tariff Act") and the *Customs Tariff Act 1995* ("Customs Tariff Act") respectively. These can be in respect of goods generally or classes of goods. Both sections provide that regulations may provide for matters in relation to such remissions, rebates and refunds, including the amount, or the means of determining the amount, of any remission, rebate or refund and the manner in which approvals may be granted.

The purpose of the *Excise Amendment Regulations 2024* (the "Excise Amending Regulations') and the *Customs Amendment Regulations 2024* (the "Customs Amending Regulations", together the "Amending Regulations") is to amend the *Excise Regulation 2015* ("Excise Regulation") and the *Customs Regulation 2015* ("Customs Regulation") respectively to:

- extend the time limit for those excise refund circumstances currently with a 12 month application time limit to 4 years and apply that 4 year time limit to certain refund circumstances that currently have no time limit;
- provide for the remission of duties otherwise payable in respect of "bunker" fuel used in domestic commercial shipping vessels;
- introduce a new refund circumstance for certain customs duties on petroleum-based oils to address double-taxation of these oils when used in further manufacture; and
- introduce a new refund circumstance with a standard formula for the refund of duty paid on fuels processed back into excisable fuel by vapour recovery units.

The Amending Regulations are in addition to amendments to the Excise Act and the Customs Act contained in the *Treasury Laws Amendment Bill 2024: Streamlining Excise Administration for Fuel and Alcohol* as part of a package of measures to streamline the administration of the excise and customs systems for the fuel and alcohol industries.

In 2021, Department of Prime Minister and Cabinet's Deregulation Taskforce ("the Taskforce") conducted a review into Australia's excise and excise-equivalent customs regulatory framework for fuel and alcohol. Amongst other things, the Taskforce identified several unnecessary regulatory burdens and double taxation in the fuel industry, and found

that refund timeframes between the excise and customs systems were misaligned and could lead to differential treatment for businesses in similar circumstances. On 29 March 2022 in the context of the March Budget 2022-23, the former Government announced a package of measures intended to provide deregulation benefits to fuel and alcohol producers, importers, and distributors through streamlining the administration of fuel and alcohol excise and excise-equivalent customs goods. Two other components of this package were delivered as Schedules 4 and 5 of the *Treasury Laws Amendment (Refining and Improving Our Tax System) Act 2023.*On 9 May 2023, the Government announced in the context of Budget 2023-24 that the start date of the remaining measures would be delayed from 1 July 2023 to 1 July 2024.

The Acts do not specify any conditions that need to be satisfied before the power to make the Amending Regulations may be exercised.

The Amending Regulations are legislative instruments for the purposes of the *Legislation Act 2003*.

The Amending Regulations will be automatically repealed under section 48A of the *Legislation Act 2003*.

Schedule 1 of both Amending Regulations commences on the day after they are registered.

Details of the Excise Amendment Regulations 2024 and the Customs Amendment Regulations 2024 are set out in Attachments A and Attachment B respectively.

ATTACHMENT A

Details of the *Excise Amendment Regulations 2024*

Section 1 – Name

This section provides that the name of the regulations is the *Excise Amendment Regulations 2024* ("Excise Amendment Regulations").

Section 2 – Commencement

The Excise Amendment Regulations commenced the day after the instrument was registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1 – Amendments

Extending certain refund time limits under the Excise Act

Item 1 in this Schedule repeals and inserts a new table in section 11 of the *Excise Regulation 2015* ("Excise Regulation") to change certain references in the column headed "Period for giving application" from 12 months to 4 years, with the effect of extending the time period within which a person must make an application for a refund or rebate of excise duty in certain circumstances mentioned in the column of that table headed "Circumstance".

A person dealing in duty-paid excisable or excise-equivalent goods may be eligible to claim refunds or rebates of duty in certain circumstances and subject to time limits. Consistent with section 78 of the Excise Act, for excise duty this framework is set out in Part 2 and Schedule 1 of the Excise Regulation. Section 10 and the table in subclause 1(1) of Schedule 1 (the "Excise Refund Circumstances Table") together provide that, in the various circumstances itemised in that table, an application for a remission, rebate or refund can be made to the CEO in the manner set out in section 10 (for example, it must be in the approved form). The CEO is the Commissioner of Taxation (see section 4 of the Excise Act). Section 11 of the Excise Regulation sets timeframes for some of those circumstances, by providing that an application for a refund or rebate of excise duty mentioned in a circumstance mentioned in the column headed "Circumstance" in the table in that section (referring to specific items in the Excise Refund Circumstances Table) must be given to the CEO in the period mentioned in the column headed "Period for giving application".

Currently, the circumstances mentioned in the table in section 11 are given a 12 month period for giving an application, although the start date for that 12 month period differs between circumstances. For example, a refund application for an item 6 circumstance in

the Excise Refund Circumstances Table, which relates to goods affected by a by-law made under Part XV of the Excise Act, has a period of 12 months after the day when the relevant by-law is made, whereas applications under item 9 or 10 of the Excise Refund Circumstances Table, which deal with stabilised crude petroleum oil and condensate produced in a financial year, are given a period of 12 months after the end of the financial year in which the excise is paid.

This 12 month period differs from the general time frame of 4 years applied in the *Customs Regulation 2015* ("Customs Regulation") in the respect of refunds, rebates and remissions of customs duty. This misalignment is an irritant to entities who operate in both systems as it leads to different outcomes in similar circumstances, sometimes in respect of the same kind of goods in the same warehouse. For example, under the Excise Regulation, where excise duty has been paid on goods other than gaseous fuel manufactured in Australia because of manifest error of fact or patent misconception of the law (item 3 of the Excise Refund Circumstances Table), an application must be given within 12 months after the day when the excise duty was paid (item 1 of the table in section 11). However, in similar circumstances where customs duty was paid because the goods were imported, the period for making an application is 4 years after the day when customs duty was paid (which is extended in certain circumstances).

In the table in section 11 as amended, the specific date for when a period starts remains the same. Using the first example above, an application under item 6 in the Excise Refund Circumstances Table (goods affected by by-laws) has a period of 4 years after the day when the relevant by-law is made in which an application must be given.

Tobacco goods are not in scope of these amendments. Accordingly, item 1 of this Schedule distinguishes the time limits applicable to refund applications that relate to tobacco goods from other excisable goods. Where the application is for a refund of excise duty related to goods that are tobacco products, the time limit is 12 months.

These amendments also do not apply to applications for rebates. An application for a rebate captured by any of the items referred to in the new table in section 11 will still have a time limit of 12 months. Currently, none of the circumstances referred to in that table are rebate circumstances.

<u>Applying new time limits to certain circumstances where no timeframe applies</u>

Eleven refund circumstances in the Excise Refund Circumstances Table are not referred to in the table under section 11. This means an application for a refund under those circumstances can be made at any time.

The new table inserted by item 1 of the Excise Amendment Regulations also applies the new application period of four years to three of these items, as per the table below. This has been done to those circumstances in respect of which the current general timeframe of 12 months was not appropriate, but where the new 4 year timeframe is more appropriate than no timeframe.

Item	*Circumstances (including as amended)*	*New application period under section 11*
Item 4	Excise duty has been paid on gaseous fuel because of manifest error of fact or patent misconception of the law, unless: • the excise duty was paid in circumstances in which excise duty was not payable; • the gaseous fuel was sold to a person for a price that included an amount for excise duty (the excise duty portion); • an amount equal to the excise duty portion has not been refunded or credited to the person.	4 years after the day when the excise duty was paid
Item 7	Excise duty has been paid on goods that: • have not been used; • are returned to premises for which a licence has been granted under section 39A of the Excise Act, or a person authorised by the manufacturer of the goods to receive goods on behalf of the manufacturer • are destroyed, or are subjected to further manufacture or production; and • item 7A does not apply to.	4 years after the day when the excise duty was paid, or 12 months after that day in relation to tobacco products
Item 18	Excise duty has been paid or is payable on a recycled product: • that is hydraulic oil, brake fluid, transmission oil, transformer oil or heat transfer oil classified to subitem 15.2 of the Schedule to the *Excise Tariff Act 1921* ("Excise Tariff Act"); • for which no benefit is payable under the *Product Stewardship (Oil) Regulations 2000*;	4 years after the day when the excise duty was paid

Item	*Circumstances (including as amended)*	*New application period under section 11*
	• that is for the same use it had before being recycled; and • for an application for remission of excise duty – that is delivered in accordance with a permission given under section 61C of the Excise Act.	

The remaining items in the Excise Refund Circumstances Table, not included in the table in section 11 as amended, continue to have no timeframe in which an application must be made. This is appropriate given the nature of the relevant circumstances.

Simplifying refunds for fuel recovered by vapour recovery units under the Excise Act

Items 2, 3, 5 and 6 of the Amendment Regulations together:

- create a new exclusive refund circumstance for diesel and gasoline goods returned to a licenced site and processed by a vapour recovery unit; and
- specify a formula for calculating the amount of refund for this circumstance.

<u>New refund circumstance for excisable fuel goods recovered using vapour recovery units</u>

Petrol ("gasoline" in the Schedule to the Excise Tariff Act) is volatile and gives off large amounts of vapour. When petrol is loaded from a fuel tanker into a storage tank at a service station, this vapour is captured and retained in the tanker to prevent leakage into the atmosphere. In practice, the vapour is collected in the empty barrel of the delivery tanker. Then, when the tanker returns to a fuel terminal licensed under the Excise Act, it will typically be captured for processing in a vapour recovery unit and the vapour converted back into liquid petrol.

This same practice occurs when the tanker transports diesel. However, since diesel gives off minimal vapour, in practice the vapour recovery unit recovers minimal excisable diesel.

Currently, to avoid double-taxation of the recovered fuel, a refund is claimed under item 7 of the Excise Refund Circumstances Table, on the basis that the excisable fuel has not been used, is returned to premises for which a licence has been granted under section 39A of the Excise Act, and is subject to further manufacture or production. However, determining the volume of liquid fuel recovered to meet these criteria currently requires bi-annual testing of each vapour recovery unit, which is both difficult and expensive, as well as the application of a formula with numerous variables, agreed between industry and the Australian Taxation Office in 2002. These administrative burdens and the frequent testing of individual vapour recovery units is costly relative to the amount of the refunds claimed.

Item 6 creates a new refund circumstance as new item 7A in the Excise Refund Circumstance Table in the Excise Regulation, where:

- excise duty has been paid on gasoline (other than for use as fuel in aircraft), blends of gasoline and ethanol, diesel, or blends of diesel and either biodiesel or ethanol;

- the goods have been entered or delivered for home consumption;
- a quantity of the goods returns to premises licensed under section 39A of the Excise Act; and
- that quantity is processed by a vapour recovery unit at those premises.

The goods listed in the first dot point are classified as subitems 10.5, 10.7, 10.10 and 10.12 of the Schedule to the Excise Tariff Act. Entry and delivery into home consumption take their equivalent meanings under the Excise Act.

"Vapour recovery unit" has its ordinary meaning.

Item 5 of the Amendment Regulations amends current item 7 in the Excise Refund Circumstance Table so it does not apply when the new item 7A applies. This is because refunds for fuel recovered used vapour recovery units are currently covered by this item 7. However, new item 7A and the formula introduced by item 3 of the Amending Regulations is intended to be the exclusive basis for refunds in these circumstances.

New method for determining the refund amount

Item 2 of the Excise Amendment Regulations inserts a new item 1A into the table under subsection 12(2) of the Excise Regulation. This has the effect that the amount of refund payable in the new circumstance created by item 7A in the Excise Refund Circumstance Table is the amount worked out using the method contained the new subsection 12(4).

This method specifies that the refund amount payable under this new circumstance is worked out, in effect, in two steps.

First, the following two amounts are added:

- the duty that was paid on the quantity of gasoline goods (gasoline, other than for use as fuel in aircraft, and blends of gasoline and ethanol, classified under subitems 10.5 and 10.7 of the Schedule to the Excise Tariff Act respectively); and
- the duty that was paid on so much of the diesel goods (diesel, or blends of diesel and either biodiesel or ethanol, classified under subitems 10.10 and 10.12 of the Schedule to the Excise Tariff Act) as does not exceed twice the quantity of gasoline goods above.

Then, the sum of the two amounts is multiplied by 0.0006442.

This single rate of 0.0006442 was determined by averaging returned vapour concentrations and vapour recovery unit efficiencies for 17 units across Australia. Using this single rate removes the current requirement of testing these units on a bi-annual basis and will considerably simplify the administration of associated refunds.

The limit imposed on the quantity of diesel goods of twice the quantity of gasoline goods, in the second dot point above, in effect limits the refund a person can claim to a ratio 2:1 diesel to gasoline, with diesel amounts exceeding twice gasoline amounts disregarded. This is required because, as noted above, diesel gives off minimal vapour when being loaded from the tanker. Current administrative practice ensures that refunds reflect this fact by measuring the loading pattern of gasoline to diesel into the vapour recovery unit during its testing period, and requiring the taxpayer to manually adjust their refund whenever the

diesel to petroleum loading pattern is 15 per cent higher or lower than that loading pattern. Since the new formula and 0.0006442 rate is based on an average, there is no 'true' petroleum to diesel loading pattern to measure against. The 2:1 diesel to gasoline refund limit therefore prevents taxpayers who deal in larger volumes of diesel being able to claim excise refunds that do not reflect the actual, minimal liquid diesel recovered.

Examples

If a taxpayer paid excise duty on 150,000 litres of diesel (subitem 10.10) and 100,000 litres of gasoline (subitem 10.5), and the elements of the new circumstance above are made out in respect of those litres, the refund amount will be the amount of duty that was paid on the 100,000 litres of gasoline plus the amount of duty paid on the 150,000 litres of diesel multiplied by 0.0006442.

Alternatively, if a taxpayer paid excise duty on 1,200,000 litres of diesel (subitem 10.10) and 120,000 litres of gasoline (subitem 10.5), the 2:1 limit is applied to the diesel quantities as the actual ratio of diesel to gasoline is 91:9. The taxpayer can therefore only claim a refund in respect of the duty paid on a diesel quantity twice that of the gasoline quantity on which excise was paid, or 240,000 litres. These two amounts are added to reflect the duty paid on 360,000 litres of fuel. The is then multiplied by 0.0006442.

New remission for "bunker" fuels

"Bunker fuel" or "ships' bunkers" is the oil carried as fuel on oil-burning ships or ships' fuel that is stored to power the ship or auxiliary equipment rather than as cargo to be unloaded and listed on the manifest. Currently, bunker fuel consumed during commercial shipping voyages is generally made duty-free, however this is achieved through different arrangements for different voyages:

- Where fuel is supplied directly from a licensed premises into a ship going on an international voyage, liability is removed entirely at the time of supply under provisions relating to ship's stores.

- Where fuel on which excise has been paid is supplied from an unlicensed site into a ship going on an international voyage and no fuel tax credit is available under the Fuel Tax Act, an excise refund is immediately available under item 5 in the Excise Refund Circumstances Table.
- Where fuel is supplied in any other circumstance, including to a ship going on a domestic voyage, duty must be paid but the ship operator or their agent is generally entitled to claim fuel tax credits on their Business Activity Statement (BAS), provided they meet the requirements of the *Fuel Tax Act 2006* ("Fuel Tax Act") and connected legislation.

Since the BAS is generally lodged and refunds paid on a monthly or quarterly cycle, this last requirement to pay and then claim a refund can have significant cash flow impacts for businesses who operate domestic voyages and imposes extra regulatory burdens in working out and claiming fuel tax credits. Given the proportion of shipping costs attributable to fuel, this puts operators that ordinarily or exclusively service Australia at a commercial disadvantage.

Item 7 in the Schedule amends the Excise Regulation to create a new automatic remission of duty that would otherwise be payable on bunker fuels in certain circumstances. A

remission of excise duty removes the liability for duty that was created at the point of manufacture, in prescribed circumstances. To remit duty, item 7 inserts a new item in the table in subclause 2(1) of Schedule 2 of the Excise Regulation. This table specifies circumstances when the remission of excise duty may be made by the CEO without application.

To ensure the remission is appropriately targeted, this new remission applies in respect of goods where all of the following are satisfied:

- excise duty is payable on the goods, classified under certain items in the Excise Tariff Act ("Fuel Classification Requirement");
- the goods are supplied as ship's stores to a ship other than an overseas ship ("Domestic Ship's Stores Requirement");
- the goods are supplied from a licensed premises ("Licensed Premises Requirement");
- the fuel is supplied to a person for use in carrying on an enterprise ("Enterprise Requirement"); and
- the ship meets a minimum tonnage requirement ("Minimum Tonnage Requirement").

Fuel Classification Requirement

Where the goods were manufactured or produced in Australia and are subject to the Excise Tariff Act, the goods must be classified under item 10 of the Schedule to that Act. Item 10 broadly captures fuels that are not specific petroleum-based oils and greases.

Domestic Ship's Stores Requirement

The goods must be stores for the use of passengers or crew, or for the service, of a ship that is not an "overseas ship".

Under section 4 of the Excise Act, an overseas ship has the same meaning as a "ship" in Part VII of the *Customs Act 1901* ("Customs Act"). This means a ship currently engaged in making international voyages and not about to make a voyage other than an international voyage. An "international voyage", in relation to a ship, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia. Both section 4 of the Excise Act and section 4 of the Customs Act otherwise define a "ship" as any vessel used in navigation, other than air navigation.

This means a ship for the purpose of this requirement is any ship, as defined above, that is not currently engaged in making a voyage between a place in Australia and a place outside Australia nor about to engage in such a voyage.

Licensed Premises Requirement

The goods must have been supplied from premises in respect of which a license has been granted under section 39A of the Excise Act. The premises from which the fuel is supplied should be specified in that licence.

Enterprise Requirement

The goods must have been supplied to a person for the purpose of carrying on an enterprise within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999.* The intention of this requirement is to ensure private or recreational purposes are excluded. This also reflects entitlement rules for fuel tax credits (specifically section 41-5 of the Fuel Tax Act).

Minimum Tonnage Requirement

A tonnage certificate must be in force for the ship stating that it has a gross tonnage of at least 400. Under this requirement, the meaning of both "tonnage certificate" and "gross tonnage" take their meanings from the *Shipping Reform (Tax Incentives) Act 2012.*

Application and transitional provisions

Item 4 of the Excise Amendment Regulations inserts a new section 63 into Part 8 of the Excise Regulation, which contains application and transitional matters for various amendments made to that Regulation over time.

Subsection 63(1) provides that the amendments made to section 11 above, extending the time frame for certain refund time limits and applying those timeframes to three circumstances, apply in relation to excise duty paid on or after 1 July 2024.

This means, for example, where excise duty has been paid on goods, other than gaseous fuel, because of manifest error of fact or patent misconception of the law as contemplated by item 3 of the Excise Refund Circumstances Table, where duty was paid on or after 1 July 2024 an application for a refund in this circumstance is able to be made until the end of the period starting 4 years from when the duty was paid. However, the current 12 month period will continue to apply where the duty was paid before 1 July 2024, even where the application is made (or sought to be made) after that date. This also means that an application for a refund under items 4, 7 and 8 in the Excise Refund Circumstances Table, where the relevant duty was paid before 1 July 2024, can continue to be made at any time, but where the relevant duty was paid on or after 1 July 2024 an application must be made within 4 years of when duty was paid.

Subsection 63(2) provides that the new item 7A circumstance in the Excise Refund Circumstances Table, concerning fuel recovered by vapour recovery units, applies in relation to refunds of excise duty made on or after 1 July 2024. As the current item 7 does not apply to circumstances when item 7A applies, this means the new method for determining a refund amount applies to all refunds captured by those circumstances made on or after 1 July 2024 to the exclusion of the current arrangements.

Subsection 63(3) provides that the new remission circumstance created in subclause 2(1) of Schedule 1, remitting without application duty in respect of "bunker" fuels, applies in relation to goods entered for home consumption on or after 1 July 2024. In the context of the Excise Act, entry into home consumption means entry as contemplated, and in any form required, by section 58 of the Excise Act.

ATTACHMENT B

Details of the *Customs Amendment Regulations 2024*

Section 1 – Name

This section provides that the name of the regulations is the *Customs Amendment Regulations 2024* ("Customs Amendment Regulations").

Section 2 – Commencement

The Regulations commenced the day after the instrument was registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedule

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

Schedule 1 – Amendments

New remission for "bunker" fuels

As noted under Attachment A, "bunker fuel" or "ships' bunkers" is the oil carried as fuel on oil-burning ships or ships' fuel that is stored to power the ship or auxiliary equipment rather than as cargo to be unloaded and listed on the manifest.

For more information about the duty treatment of bunker fuel, see the equivalent heading in Attachment A.

Item 4 of the Customs Amendment Regulations amends the *Customs Regulation 2015* ("Customs Regulation") to create a new automatic remission of duty that would otherwise be payable on bunker fuels in certain circumstances. To remit customs duty, item 4 of the Customs Amendment Regulations inserts a new item as item 22 in the table in clause 1 of Schedule 6 of the Customs Regulation, which contains circumstances in which refunds, rebates or remissions of customs duty can be made. Then, item 2 amends subsection 106(4) of the Customs Regulation so an application is not required.

To ensure the remission is appropriately targeted, this new remission applies in respect of goods where all of the following are satisfied:

- duty has been paid or is payable on goods classified under certain items appearing in the table in clause 1 of Schedule 1 of the Customs Regulation ("Fuel Classification Requirement");
- the goods are supplied as ships' stores to a ship that is not a "ship" as specifically defined in Part VII of the Customs Act ("Domestic Ship's Stores Requirement");

- the fuel is supplied to a person for use in carrying on an enterprise ("Enterprise Requirement"); and
- the ship meets a minimum tonnage requirement ("Minimum Tonnage Requirement").

Fuel Classification Requirement

The goods must be classified under one of the following items appearing in the table in clause 1 of Schedule 1 of the Customs Regulation:

- Item 39;
- Items 61 to 77;
- Items 80 to 92;
- Items 95 to 106;
- Items 109 to 118;
- Item 129; or
- Items 131 to 134.

The specification of these items is intended to mirror the general application of this remission to fuel products in item 10 of the Schedule to the Excise Tariff Act (see Attachment A). The table in clause 1 of Schedule 1 of the Customs Regulation specifies goods classified under Schedule 3 of the Customs Tariff Act which are excise-equivalent goods.

It is also a requirement that duty has either been paid on the goods, or is otherwise payable on the goods. If duty is payable but has not been paid, the duty is remitted without application. If duty has been paid, it is intended that a person can apply for a refund of duty under Subdivision B of Division 5 of Part 12 of the Customs Regulation.

Domestic Ship's Stores Requirement

The goods must be stores for the use of passengers or crew, or for the service, of a ship that is not an "ship" for the purposes of Part VII of the Customs Act. This Part creates a general exemption of duty for goods used as ship's stores for such ships. Specifically, under section 103C in that Part, a "ship" means a ship currently engaged in making international voyages and not about to make a voyage other than an international voyage. An "international voyage", in relation to such a ship, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia. Section 4 of the Customs Act defines a "ship" as any vessel used in navigation, other than air navigation.

This means a ship for the purpose of this requirement is any ship, as defined above, that is not currently engaged in making a voyage between a place in Australia and a place outside Australia nor about to engage in such a voyage.

Enterprise Requirement

The goods must have been supplied to a person for the purpose of carrying on an enterprise within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999.* The intention of this requirement is to ensure private or recreational purposes are excluded.

This also reflects entitlement rules for fuel tax credits (specifically section 41-5 of the *Fuel Tax Act 2006*).

Minimum Tonnage Requirement

A tonnage certificate must be in force for the ship stating that it has a gross tonnage of at least 400. Under this requirement, the meaning of both "tonnage certificate" and "gross tonnage" take their meanings from the *Shipping Reform (Tax Incentives) Act 2012.*

Amended refund circumstance to avoid double-taxation on petroleum-based lubricants

Item 1 of the Customs Amendment Regulations amends the definition of "petrol" in the Customs Regulation to enable a new refund for certain customs duty-paid ingredients used in manufacture of petroleum-based lubricants and greases.

Customs and excise duties are imposed on certain petroleum-based lubricants and greases to notionally fund the Product Stewardship for Oil scheme. This scheme pays grants to encourage the sustainable use and recycling of oils.

Manufacture of these lubricants frequently requires the use of ingredients, such as petroleum-based oils, on which duty has already been paid by another licensed entity. Where the ingredient was produced, manufactured or further manufactured in Australia and the duty paid was an excise duty, a refund is available under Item 7 of the Excise Refund Circumstances Table (discussed in Attachment A). However, where the goods were finished imported products and the duty paid was a customs duty, no equivalent refund is available in the Customs Regulation. This creates effective double-taxation on petroleum-based lubricants manufactured in Australia that use imported, duty-paid ingredients.

Item 1 amends the definition of petrol to include certain goods classified under the following subheadings under Schedule 3: 2710.19.92, 2710.91.91, 2710.91.92, 2710.99.91, 2710.99.92, 3403.11.10, 3403.11.90, 3403.19.10, 3403.19.90, 3403.91.10, 3403.91.90, 3403.99.10, 3403.99.90, 3811.21.10, and 3811.21.90. These goods are all "excise equivalent goods" listed in the table in clause 1 of Schedule 1 of the Customs Regulation.

Then, item 14 of the table in clause 1 of Schedule 6 of the Customs Regulation provides a refund circumstance where:

- duty has been paid on petrol, including as amended above;
- the petrol, in whole or part, is returned to a manufacturer licensed under the *Excise Act 1901*; and
- the requirements in section 103 of the Customs Regulation are met.

Section 103 requires that applicants for this refund circumstance keep records that allow an officer to determine the volume of petrol returned and verify that duty has been paid on the petrol returned. An "officer", under section 4 of the Customs Act, is an officer of customs and includes various persons including employees of the Department of Home Affairs and persons specifically authorised to perform the functions of an officer.

Application and transitional provisions

Item 4 of the Customs Amendment Regulations inserts a new section 163 into Part 18 of the Customs Regulation. This Part contains various transitional matters relating to amendments made to that Regulation over time.

Section 163 provides that the amendments made by the Customs Amendment Regulation all apply in relation to goods entered for home consumption on or after 1 July 2024. This means:

- the new remission without application for "bunker" fuel, created in the table in clause 1 of Schedule 6 of the Customs Regulation, applies in respect of relevant fuels entered for home consumption on or after 1 July 2024; and
- refunds in respect of certain petroleum-based lubricants and greases under item 14 of the table in clause 1 of Schedule 6 of the Customs Regulation, discussed above, are available if the relevant lubricants or greases were entered for home consumption on or after 1 July 2024.