REVENUE

AT A GLANCE

Customs wants to be able to collect the correct amount of revenue in the most effective and efficient way. It is important to us that travellers and traders understand what is required of them.

Getting your feedback

We would like to get your views and gather information on the following issues:

- excise and excise-equivalent duty:
    - the major issues for businesses and how the administration and collection of excise could be improved
- drawbacks, refunds and remissions:
    - how the legislation could be made easier to use
    - whether to allow private importers (such as internet shoppers) to claim a refund of GST and duty paid when goods are returned in good condition
    - whether to extend the drawback provisions to duty-paid goods that are sold duty-free (our preference is not to extend those provisions)
- GST at the border and its impacts on businesses:
    - managing GST accounts between both Customs and Inland Revenue
    - for temporary imports, determining the value of the item and providing Customs with a bond or cash security for the GST and duty on the item
- valuation of imported goods for tariff duty:
    - whether to continue to exclude international freight and insurance costs when determining the customs value and tariff duty obligations (our preference is to retain it)
    - whether to define “sale for export”, what a possible definition would be, and the impact on businesses of defining this term
    - our proposal to clarify the provision about valuing imported goods bought and sold between related parties.
- Comptroller’s discretion:
    - allowing the Comptroller of Customs (Customs’ chief executive) to use discretion in collecting revenue in order to increase efficiency
- review of duty assessments:
    - whether and how the appeals process could be improved.

Terms used in this chapter

Assessment of duty: the determination of the amount of duty payable. In this chapter, the word "assessment" also includes amendments of assessments that were originally made by the duty payer.

Customs Appeal Authority: sits as a judicial authority for hearing and deciding appeals which are authorised by the Customs and Excise Act or any other Act against assessments, decisions, rulings, determinations and directions made by the Customs chief executive. Every Authority is appointed by the Governor-General on the joint recommendation of the Minister of Justice and the Minister of Customs.

Drawback: a refund of previously paid duty (and sometimes GST) when goods are exported.

Excise duty: a tax on certain locally manufactured goods (currently alcohol, transport fuels, and tobacco). When these types of goods are imported, a rate of duty is levied on them that is equivalent to the excise liability that would apply if the goods had been manufactured in New Zealand – this is called ***"excise-equivalent duty"***.

Goods and Services Tax (GST): a tax on most goods and services in New Zealand, most imported goods, and certain imported services. The rate of GST applied is 15 percent.

Input tax credit: When a registered person buys goods or services to use in a taxable activity, the GST portion of the price is called "input tax" and the person is credited with this amount (Inland Revenue generally calls this a "GST credit").

Refund: a return of previously paid duty, available only to the importer or producer of the goods.

Remission: where duty is no longer due because goods do not enter the New Zealand market, do not enter in a usable state, are considered sample goods, or are exempt under the Tariff Act or exempted by the Customs chief executive.

Tariff duty: In New Zealand this is a tax on specific imports and is expressed usually as a percentage of a good's value.

Temporary imports: goods imported into New Zealand temporarily before being exported.

Customs collects approximately 15 percent of total Crown revenue through customs duties and GST on imports, and through excise and excise-equivalent duties and levies. People who pay revenue to Customs are travellers and traders – for example, an international air passenger who pays GST and excise-equivalent duty on tobacco brought into the country that is above the duty-free concession.

> In the year to 30 June 2014, Customs collected $11.847 billion in Crown revenue"

Customs' revenue collection is based largely on the voluntary compliance of travellers and traders. We carry out field audits and verify transactions to check whether businesses have correctly declared how much they owe to the Crown, and we take action against businesses that make false declarations.

> In the year to 30 June 2014, Customs collected 99.2 percent of the revenue due on time"

Most businesses meet their revenue obligations.

Customs aims to make it easier for businesses to comply with their revenue obligations. To achieve this, we undertake an outreach programme with businesses and we actively look for ways to improve our processes.

Revenue: The law as it stands

The Customs and Excise Act and Regulations cover Customs' collection and administration of:

- GST on all imported goods[8]
- excise and excise-equivalent duty on tobacco, alcohol and transport fuels
- tariff duty on imported goods (where applicable)
- anti-dumping duty on imported goods (where applicable)
- countervailing duty on imported goods (where applicable)
- levies on behalf of other agencies (for example, the Petroleum and Engine Fuel Monitoring Levy on petrol).

Our revenue functions are also defined and heavily influenced by a range of international obligations, such as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the World Trade Organization Customs Valuation Agreement) and free trade agreements.

[8] GST is governed by the Goods and Services Tax Act 1985.

You can appeal to the Customs Appeal Authority if you disagree with a duty assessment.

Revenue: Our goal

Our goal is to have legislation that supports Customs in collecting the correct amount of revenue due in the most effective and efficient way. We also want to make it easier for traders and travellers to understand what is required of them and to comply voluntarily. When a trader or traveller disagrees with a duty assessment, we want to ensure that they have access to dispute resolution that is fair, accessible, transparent, effective and efficient.

THE REVENUE PROVISIONS IN THE ACT MUST:	WHICH WILL RESULT IN THE FOLLOWING BENEFITS:
• support and improve the collection of the correct amount of revenue in a sustainable and efficient manner • support flexibility (where possible) in the way that Customs and our customers work • accommodate changes in the operating environment to ensure that all due revenue can be collected • improve the level of compliance, while also (where possible) reducing compliance costs for both Customs and our customers • provide our customers with access to dispute resolution that is fair, accessible and transparent.	• strengthening of the Government's accounts • improving revenue risk management through the targeting of high-risk areas, such as deliberate under-valuation and misdescription of goods • increased voluntary compliance based on legislation that is transparent and easy to understand and comply with • the legislation supports future changes in the operating environment • greater customer trust and satisfaction in Customs as we refine our compliance-based approach • greater collaboration with other government agencies.

Revenue: Key issues and opportunities

Changes in business models and processes over the last 15 years have meant that transactions can be more complex, more diverse, and faster than in the past.

Changing technology has influenced the types of goods traded and how they are imported. For example, new fuels, such as synthetic fuels, are continuing to be developed for the market. Free trade agreements have also had an impact on business processes at the border.

The key issues we have identified are summarised in the boxes below:

Excise and excise-equivalent duty

The Act has not kept pace with changes in excise industries.

Some elements of the system may create unnecessary costs for businesses or for Customs.

GST at the border

GST-registered importers have to work with both Customs and Inland Revenue. A financial security can be required for temporary imports into the country.

Comptroller's discretion to collect revenue

The Act does not allow for discretion to consider individual circumstances in the collection of revenue to promote compliance/highest net revenue over time.

Refunds, remissions and drawbacks

The Act's provisions are not always consistent or clear, and the process can be complex.

Valuation of imported goods

Importers have to use two different values to determine GST and tariff duty.

An importer can choose which sale for export applies.

Review of duty assessments

The Act provides for direct appeal to the Customs Appeal Authority when a duty assessment is disputed. Appeals must be lodged within 20 working days.

Even if an appeal has been lodged, duty must still be paid by the due date and an additional duty is charged on any outstanding amount.

These issues are each discussed in more detail below.

Excise and excise-equivalent duty

Excise is a tax or duty on the domestic manufacture of specific goods – currently these are alcohol, transport fuels, and tobacco.

When goods subject to excise-equivalent duty are imported, a rate of duty is levied on them that is equivalent to the excise that would apply if these goods had been manufactured domestically. This ensures that excisable goods are treated consistently in the New Zealand market. Products for export are not subject to excise.

Excise and excise-equivalent duty are levied for a number of reasons, including reducing demand for goods that contribute to social costs.

Terms used in this section

In the text below we have used **"excise"** to refer both to excise duty levied on domestically manufactured goods and to excise-equivalent duty on imported goods. We also use the term **"excisable goods"** to mean goods that are subject to excise.

The Act and Regulations set out the current excise duty system and the requirements that manufacturers and importers of excisable goods must meet. Manufacturers and importers may also have to pay other government levies to Customs at the same time as excise.[9]

> "In the year to 30 June 2014, we collected $3.8 billion of excise and excise-equivalent duty"

Excisable goods must be manufactured in an area that has been licensed by Customs unless specifically exempted. Once the finished goods are released from the licensed area, excise becomes due. This system enables the Crown to collect revenue efficiently and at the right amount, and to manage the risk of revenue "leakage" as early as practicable in the supply chain.

The current excise legislation appears to be fundamentally sound. The excise scheme is underpinned by a combination of Customs control of the goods in Customs Controlled Areas and a trust-based approach that relies on licensees submitting accurate excise returns and paying the appropriate excise due.

[9] Alcohol goods liable for excise are subject to the Health Promotion Agency levy (formerly the ALAC levy). Fuel goods liable for excise are subject to an ACC levy and the Petroleum or Engine Fuel Monitoring levy.

We believe that some fundamental components of the excise system should not significantly change. These are:

- the level and timing of revenue collection
- the types of goods that excise should apply to (that is, we believe it should continue to apply to alcohol, transport fuels and tobacco)
- excise-equivalent duty
- Customs remains able to exercise its existing powers
- the requirement for licensing or registration for the commercial manufacture of excise goods.

Any proposals for change in the excise and excise-equivalent regimes should not adversely affect these components of the system.

We are aware that there may be some elements of the current legislation and in the way Customs manages the excise scheme that creates unnecessary costs for businesses or for Customs. Some streamlining of current processes could therefore be appropriate.

Changes and opportunities for the excise system

The excise industries of alcohol, transport fuels and tobacco have seen considerable changes since the Act was introduced in 1996.

Alcohol

There has been considerable growth in small, medium and large-scale beer production.

There can now be several participants at different stages of the wine production process, including blending and bottling.

There have also been an increasing number of domestic distillers producing spirits in New Zealand.

Storage of bulk supply outside a manufacturing area has grown.

Fuel

Since the 1990s the fuel industry has seen many changes in the way businesses operate. There has been a growth in independent petrol stations and in intermediaries (such as retailers) operating at multiple sites.

Synthetic fuels and fuel blends have also been developed, while the use of compressed natural gas (CNG) as a vehicle fuel has decreased.

Tobacco

Tobacco is now mainly imported into New Zealand. Excise increases are used by the Government as a means of reducing smoking and the harm it causes.

We are aware of some concerns that the excise system may work better for alcohol manufacturers who operate their own bottling facilities, and may be less suitable for other

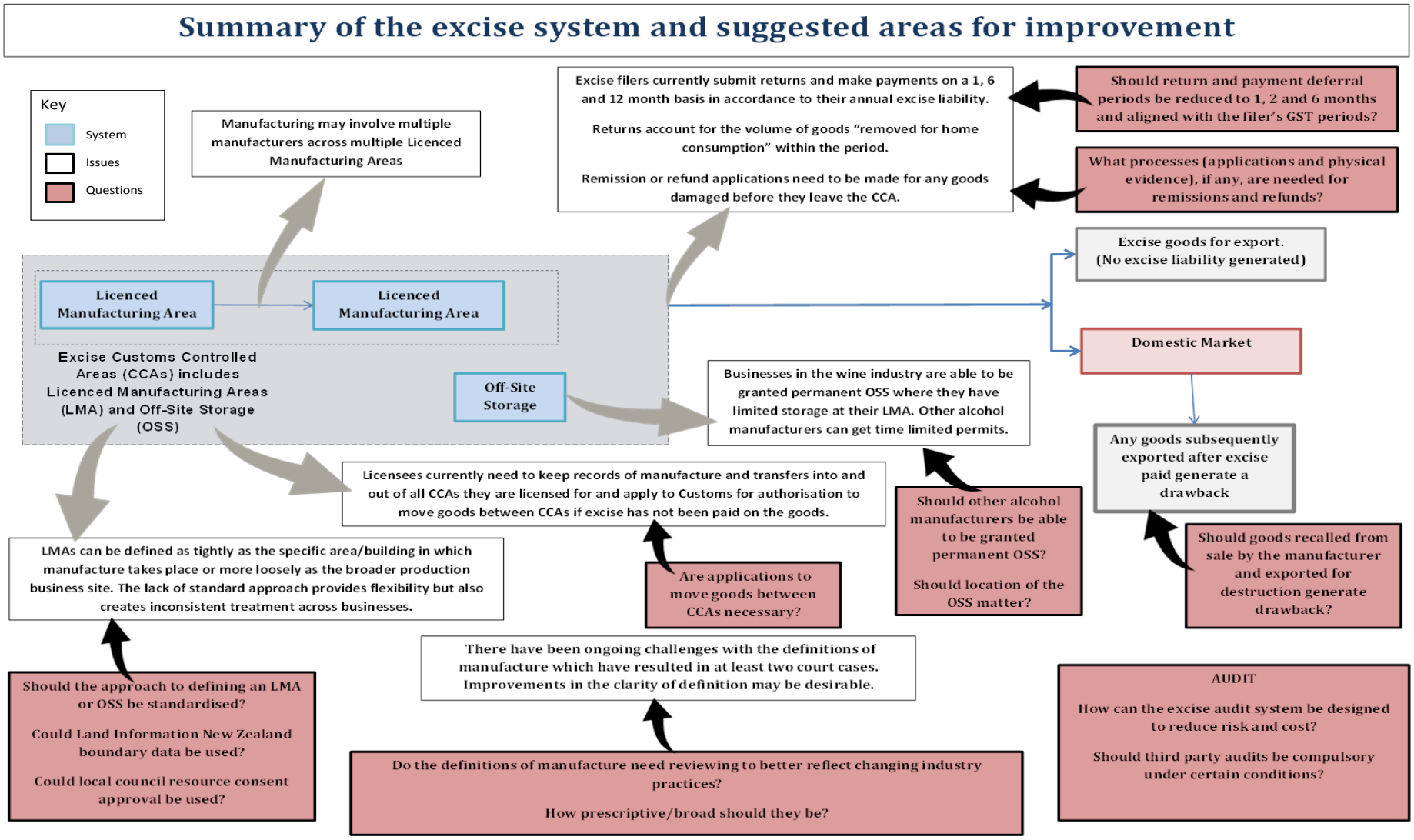
operators. We would like to gather more information on the issues faced by small and medium-sized businesses involved in alcohol production in relation to excise collection and payment.

While Customs believes that the excise system is not fundamentally broken, we are aware from discussions to date that there may be ways to improve the system and reduce costs to business, while at the same time preserving revenue.

This review gives us the opportunity to consider whether the excise legislation could be made more flexible so that it is able to respond to future market developments or goods, such as new fuel blends or changes in the manufacturing of tobacco, or to future Government decisions, such as new types of goods being added to the excise scheme. It also gives us the opportunity to ensure that businesses' excise obligations are sufficiently clear.

Getting your input on some specific issues

The diagram on the following page is a stylised view of the excise system and how it operates (the blue-shaded boxes), and it also presents some issues that have arisen (the white boxes) and asks questions about whether there are opportunities to streamline the system (the red-shaded boxes).


Summary of the excise system and suggested areas for improvement
Key
System
Issues
Questions
Manufacturing may involve multiple manufacturers across multiple Licenced Manufacturing Areas
Excise filers currently submit returns and make payments on a 1, 6 and 12 month basis in accordance to their annual excise liability.
Returns account for the volume of goods "removed for home consumption" within the period.
Remission or refund applications need to be made for any goods damaged before they leave the CCA.
Should return and payment deferral periods be reduced to 1, 2 and 6 months and aligned with the filer's GST periods?
What processes (applications and physical evidence), if any, are needed for remissions and refunds?
Excise goods for export. (No excise liability generated)
Licenced Manufacturing Area
Licenced Manufacturing Area
Excise Customs Controlled Areas (CCAs) includes Licenced Manufacturing Areas (LMA) and Off-Site Storage (OSS)
Off-Site Storage
Domestic Market
Businesses in the wine industry are able to be granted permanent OSS where they have limited storage at their LMA. Other alcohol manufacturers can get time limited permits.
Any goods subsequently exported after excise paid generate a drawback
Licensees currently need to keep records of manufacture and transfers into and out of all CCAs they are licensed for and apply to Customs for authorisation to move goods between CCAs if excise has not been paid on the goods.
Should other alcohol manufacturers be able to be granted permanent OSS?
Should location of the OSS matter?
Should goods recalled from sale by the manufacturer and exported for destruction generate drawback?
LMAs can be defined as tightly as the specific area/building in which manufacture takes place or more loosely as the broader production business site. The lack of standard approach provides flexibility but also creates inconsistent treatment across businesses.
Are applications to move goods between CCAs necessary?
There have been ongoing challenges with the definitions of manufacture which have resulted in at least two court cases. Improvements in the clarity of definition may be desirable.
Should the approach to defining an LMA or OSS be standardised?
Could Land Information New Zealand boundary data be used?
Could local council resource consent approval be used?
Do the definitions of manufacture need reviewing to better reflect changing industry practices?
How prescriptive/broad should they be?
AUDIT
How can the excise audit system be designed to reduce risk and cost?
Should third party audits be compulsory under certain conditions?

The sections below provide more detail on the questions we have posed in the diagram. We are interested in whether you see opportunities to improve the operation of the system for your particular business or industry, while still preserving the fundamentals of the system as listed on page 77. We would also like to know what you would expect the financial impact of those improvements to be for your business or industry.

Deferred payment

As “excise filers”, manufacturers of alcohol have three return periods depending on their total excise liability per year. The table below sets out the requirements for alcohol manufacturers.

Current requirements for alcohol excise returns

Annual excise duty liability	Return and payment frequency
$0 – $50,000 (for any year starting 1 July)	15th working day of July immediately following that year
$50,000 – $100,000 (for any period starting 1 July)	15th working day of January immediately following that period
$50,000 – $100,000 (for any period starting 1 January)	15th working day of July immediately following that period
>$100,000	15 working days from the end of the month in which the goods are removed from the Customs Controlled Area

The thresholds and the deferred return and payment options have provided flexibility for small manufacturers, although it appears that in some cases this contributed to them falling into debt. Reducing the deferral period (from twelve to six months, and from six months to two months) may help some businesses avoid debt problems. We would like your feedback on the effect this change would have on your business.

Customs is currently not able to shorten the return and payment period when excise filers fall behind in filing or payment. We would like your feedback on whether Customs should have this option, and also on whether aligning the timing of the excise return periods with the return periods for GST would lower compliance costs for businesses.

Off-site storage

If they have limited storage in their Licensed Manufacturing Area (LMA), wine industry businesses can be granted permanent approval for additional storage of wine outside of the Licensed Manufacturing Area without excise duty becoming due, as it normally would once the wine leaves the manufacturing area. This additional storage, commonly referred to as “Off-Site Storage”, has the status of a Customs Controlled Area; it is a secure and controlled environment where the activities are monitored by Customs in the same way as an LMA. Within an Off-Site Storage area Customs has extensive powers to control the movement of wine, people and vehicles that enter the area. Off-Site Storage areas are licensed under

section 10(f) of the Customs and Excise Act 1996 and regulation 6(a) of the Customs and Excise Regulations 1996.

The current Off-Site Storage provisions reflect the dynamics of the wine production process but also create inconsistencies across alcohol manufacturers, as other alcohol manufacturers are restricted to applying for time-limited permits for Off-Site Storage. However, this may not be a problem because of the short shelf life of most non-wine alcohol products. Customs is interested in hearing your views on whether other alcohol manufacturers should also be able to be granted permanent Off-Site Storage.

Definition of "manufacture"

The current definitions of "manufacture", as set out in the Act, may not reflect changing industry practices and so may not cover the entire manufacturing process. They may also create some ambiguity about what types of activities amount to "manufacture" and therefore what activities require a licensed area and the payment of excise.

Example of a difficulty with the definition of "manufacture"

Tobacco can be grown and stored in New Zealand before it is manufactured, but can only be manufactured in a Licensed Manufacturing Area (there is a personal use exemption). The Act allows for growers to sell commercial quantities of tobacco leaf, which is cured[9] but not cut, without paying excise.

Curing is a significant step in tobacco processing. Once cured, tobacco can be cut and used in self-rolled cigarettes. Technically, anyone who buys this tobacco and then cuts it (usually with small home cutters) should be required to have a Licensed Manufacturing Area; however, they are unlikely to become licensed and it may be difficult for Customs to identify them.

In future, as excise rates on tobacco increase, we believe Customs may need to exercise greater control over both the commercial growing and curing of tobacco leaf.

Audit

A number of the issues we have discussed in this section involve the need for more flexibility in the excise system. However, in looking at introducing more flexibility, it will be important to consider the key role of auditing in maintaining the appropriate collection of revenue.

[10] Curing of tobacco leaf involves a drying process to control the temperature and moisture content to produce tobacco fit for smoking. It is commonly done by "flue-curing" the leaf in a kiln.

Refunds, remissions and drawbacks

In order for manufacturers to get a remission of the excise due on goods that have been lost or spoiled while in a Customs Controlled Area, they must apply to Customs. Applicants must be able to provide physical evidence that the goods are lost. If the goods were spoiled, the manufacturer must also get Customs to oversee the destruction of the goods if they want to get a full remission or refund.

As part of the licence agreement for a Licensed Manufacturing Area or Off Site-Storage, the licensee must keep production records and records of all movements into and out of the area. Customs is interested in your feedback on what processes should be used for remission and refund applications and what evidence should be required.

Permits for movements between Customs Controlled Areas

Owners of excise goods must obtain a permit from Customs if they want to move goods between Customs Controlled Areas without paying excise on those goods. This requirement may place an unnecessary administrative burden on businesses, given they are already required to maintain robust records of movement into and out of, and production within the Customs Controlled Area.

Defining Licensed Manufacturing Areas (LMAs)

The applicant for approval for a Licensed Manufacturing Area (LMA) is responsible for defining the area to be licenced. However, there are currently no set requirements or guidelines for defining the area. An LMA can be defined as either an entire business premise, or specific buildings on a premise, or areas within buildings.

The absence of requirements or guidelines appears to have led to inconsistencies across the country. In some cases Licensed Manufacturing Areas may have been established that do not sufficiently allow for business growth or peak production, so that the manufacturers then must apply for temporary or permanent Off-Site Storage. Better and more precise initial licensing may help address this.

EXCISE AND EXCISE-EQUIVALENT DUTY: WHAT DO YOU THINK?

In your responses to the questions below, please focus in particular on the financial impact for your business or industry of potential changes to the excise system.

System design

Q 39 What do you see as the major issues with the collection and administration of excise generally (on alcohol, transport fuels and tobacco)? What impact, if any, have these had on your industry or business?

Q 40 Are there specific issues in excise collection processes that affect small and medium-scale businesses more than others? If so, what are these?

Q 41 Should other alcohol manufacturers be able to be granted permanent licences for offsite storage of product? Should location of the off-site storage matter? What impact if any, does the location of off-site storage have on your business?

Q 42 Are applications (permits) to move goods between Customs Controlled Areas necessary? Do you have a view on what would be a less administratively burdensome process?

Q 43 Should the approach to defining a Licensed Manufacturing Area or off-site storage be standardised? Could Land Information New Zealand boundary data be used? Could local council resource consent approval be used?

Q 44 How can the excise audit system be designed to reduce risk and cost? Should third-party audits be compulsory under certain conditions? What parts of your business are currently subject to third-party audits?

Definitions

Q 45 Do the definitions of “manufacture” need reviewing to better reflect changing industry practices? How detailed or broad should they be? Should the current definition of manufacture of tobacco be extended to include the curing of tobacco leaf? Please give your reasons.

Payment

Q 46 Should the excise return and payment deferral periods be reduced to one, two and six months? What impact would this have on your business?

Q 47 Would it be useful to have the excise return timing aligned with the filer’s GST filing periods? What impact would this have on your business?

Q 48 Should Customs have the ability to shorten the return and payment period for excise payers who fall behind in their filing and/or payment?

Refunds, remissions and drawback

Q 49 What changes to processes (applications and physical evidence), if any, are needed for remissions and refunds for excise duty? If changes were made to the current processes, what impact would this have on your business?

Q 50 Should goods recalled from sale by the manufacturer and exported for destruction generate drawback? Please give your reasons.

General

Q 51 Is there anything else we need to consider in relation to how Customs administers excise on alcohol, transport fuels and tobacco? In particular, are there amendments that could be made to reduce costs and simplify the system for excise payers without involving fundamental change?

Refunds, remissions and drawbacks

Refunds, remissions and drawbacks provide mechanisms for the return of duty to a person or business, but they each serve a distinct purpose.

In the previous section on excise and excise-equivalent duty, we asked for your views on refunds, remissions and drawback for goods recalled by the manufacturer. In this section, we talk about refunds, remissions and drawbacks in other circumstances.

At this stage, we have identified two possible issues, in relation to refunds and drawbacks:

- in some cases people who import goods into New Zealand (private importers) cannot claim a refund of duty when they return the goods
- when imported goods on which duty has been paid ("duty-paid goods") are sold duty free to incoming passengers, there is currently no entitlement to a drawback.

We would also like your views on where we can make the legislative provisions on refunds, remissions and drawbacks easier to use. There may also be situations where a drawback, refund or remission does not currently apply and you believe that it should.

Private importers cannot claim a refund in some cases

Refund

An example of when a refund may be paid is when a line of clothing has been imported but once in the New Zealand market is found to be faulty. In this case, the importer who paid duty (including tariff duty) on the goods can apply to Customs for a refund.

The refund is paid to the person or business that paid the duty in the first place.

We have been approached by a number of people who have bought goods and brought them into New Zealand but who have then returned the goods because they do not meet their requirements. In these cases, the person has asked Customs for a refund of the duty and GST they paid on the goods when they arrived. However, the Customs and Excise Act only allows for a refund if the imported goods are faulty, damaged, destroyed, "pillaged" (stolen) or lost. If the goods are still in a good condition, then the drawback provisions may apply, but in that case the person would also be liable for an export entry transaction fee under the Act's cost-recovery provisions.

Examples of where we cannot give a refund

Jane buys clothing over the internet, and pays duty of $100 when the goods arrive in the country. However, the clothing does not fit as Jane was expecting, so she returns the goods to the supplier and gets a full refund. She approaches Customs for a refund of the $100 duty.

Chris buys a model aircraft kit over the internet and pays $60 duty when the kit arrives. Chris finds the kit has the wrong specifications and returns it. He approaches Customs for a refund of the $60 duty that he paid.

We would like your views on whether the status quo should be retained or whether the refund provision should be extended beyond where goods are faulty, damaged, destroyed, pillaged or lost.

Retaining the status quo would be consistent with the Goods and Services Tax Act 1985 (GST Act). It would mean that the drawback provisions would apply; these can be complicated for people and an export entry transaction fee is payable.

The return of duty and GST for reasons other than those specified in the Customs and Excise Act is governed by the GST Act. If goods are returned because they are faulty or do not fit the specifications of what was ordered, the GST Act (section 12) specifies that the drawback provision in the Customs and Excise Act (section 117) will apply for any refund of duty.

Extending the refund provision would align the refunding of GST for private imports with the refunding of GST for private purchases domestically, and it would be consistent with the broader GST policy of only taxing final consumption in New Zealand. However, extending the refund provision would be difficult to administer because the private importer would have to approach Customs directly for a refund of tax paid (in a domestic context these refunds happen as a matter of course when the customer receives a refund for the returned goods). Amendments to the GST Act may also be necessary.

Transaction fees may need to be considered if the refund provision is extended.

Who would be affected by change

People who import goods into the country in their private capacity (usually through buying online) and pay duty to Customs would benefit from change to the refund provisions. It is difficult to estimate how many people approach Customs each year asking for a refund, but we can expect numbers to increase as more and more people shop online.

Drawback does not apply when duty-paid goods are sold duty free

Drawback applies to goods that have had duty paid on them and that are later exported.

Example of drawback

An example of drawback paid out is where an exporter of craft beer buys the beer from a local craft brewer and the excise duty has already been paid on the product. When the beer is exported, the exporter can claim back the amount of excise duty paid in drawback.

The criteria for a drawback are in accordance with an international customs agreement to which New Zealand is a signatory: the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures.

Currently, drawback does not apply where goods have been imported duty-paid and are then sold through duty-free stores to incoming passengers, or to departing passengers for them to collect when they return to New Zealand.

This has been identified as an issue for businesses that want to claim a drawback of the duty on goods that they sell to international travellers.

The Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures restricts drawback to goods that are physically exported and requires drawback to be paid to the person exporting the goods. Our current legislation is consistent with the Convention in those two respects.

There is no way to guarantee whether goods sold to international travellers are taken out of New Zealand or consumed here. Permitting drawbacks on duty-paid goods that are then sold duty free would not align with our commitments under the Revised Kyoto Convention, and therefore we do not suggest making amendments in this area.

Who would be affected by change

Businesses that operate duty-free stores would benefit from a change to the drawback provisions. We are interested in your views if you believe your business would be affected if the status quo is retained.

REFUNDS, REMISSIONS AND DRAWBACKS: WHAT DO YOU THINK?

Q 52 Have you experienced issues with refunds, remissions or drawbacks of duty and, if so, what were they?

Q 53 What might be the impact on your business or industry of expanding the refund provision for imports? Can you estimate how big this impact would be?

Q 54 What is your view on extending the current drawback provisions for duty-paid goods sold to incoming passengers or to departing passengers for collection on return to New Zealand? What effect would this have on you or your business?

GST at the border

Goods and services tax (GST) is a tax on most goods and services in New Zealand, most imported goods, and certain imported services. GST is added to the price of taxable goods and services at a rate of 15 percent.

Customs is responsible for collecting GST on most imported goods at the border (under section 86 of the Customs and Excise Act). Imposing GST at the border allows the Crown to collect this tax at the earliest point in the supply chain, which reduces opportunities for avoidance.

> “In the year to 30 June 2014, we collected $7.8 billion of GST on imported goods on behalf of the Crown”

People who import goods and are registered for GST must work with both Customs and Inland Revenue when satisfying their GST obligations. They must pay GST to Customs and then claim a refund or input tax credit from Inland Revenue.

Importers can either pay their GST to Customs immediately by cash account, through a broker (with payment deferred up to 21 days), or through Customs’ Deferred Payment Scheme for approved importers registered for GST (with payment deferred until the 20th of the following month).

For GST-registered businesses, GST on imports is largely tax-neutral, as it can be offset with input tax credits that are claimed in a GST return. This means that an importer needs to pay the GST to Customs at the time goods are imported and if they are registered for GST they claim the GST back from Inland Revenue through their standard GST return.

Example: Importer’s cash-flow concerns

The importer of a large capital item recently asked Customs to defer payment of the $30 million GST due. The deferred payment scheme requires a bank guarantee or written undertaking for the amount of the deferred payment, and in this case the importer could not secure the guarantee.

The Customs and Excise Act and Customs’ procedures currently do not provide for a one-off cash deferment.

Managing GST between Customs and Inland Revenue

Some businesses have indicated to Customs that the reporting times and payment dates for Customs and Inland Revenue may not align or coincide, and that this can create cash-flow difficulties for them. Start-ups or small businesses may be particularly affected, as they may need to import costly capital equipment and GST could be a significant liability.

The data that Customs holds does not provide enough information to identify the impact of GST timing on individual businesses. Based on our data, we know that approximately 85 percent of importers are on a deferred payment scheme. We believe that these importers are less likely to experience cash-flow difficulties because of the different GST reporting and payment dates for Customs and Inland Revenue.

We also do not have a clear picture of the possible compliance burden and costs for businesses associated with managing GST across both Customs and Inland Revenue.

Before we undertake further work on this issue, we would like information from businesses on the nature and extent of any difficulties they face.

Temporary imports

Temporary admission of imported goods is a widely used international Customs mechanism that is covered by a range of conventions. The Convention on Temporary Admission (the Istanbul Convention 1993) is a single international instrument that combines all the existing Conventions on temporary admission. It is aimed at simplifying and harmonising temporary admission procedures.

Temporary admission without payment of customs duties is a means of minimising the costs of border crossings and provides an important incentive for the development of economic activity.

“Temporary goods” in this context are non-consumable goods entering New Zealand for less than 12 months for later re-export.

What is a temporary import?

A temporary import is when goods are imported into New Zealand for a temporary period only before being exported. An example is a luxury yacht that is brought into the country to be refurbished by specialist yacht outfitters in Whangārei. The yacht’s owners intend to export the yacht after the work is finished in nine months’ time.

Bond and security arrangements for temporary imports

The Customs chief executive can require a bond to be paid on temporary imports (section 116 of the Act). There are three types of temporary import entry, each with a different type of bond:

- **Temporary Import Security** – a type of temporary admission approval where the security is a financial deposit (cash, cheque, bond or guarantee)
- **Carnet** – a type of temporary admission approval where the security is an international guarantee. These are governed by World Customs Organisation conventions. International carnets are typically used by businesses and professionals temporarily importing commercial samples, professional equipment, and goods for use at trade shows, concerts and events
- **Temporary Import Agreement and Undertaking** – a type of temporary admission approval where the security is an agreement (provided as a procedure statement).

A temporary import entry approval number is assigned to each approval granted under any of those three categories.

Any bond or security payment is later refunded when Customs is provided with evidence that the goods have in fact been re-exported.

Customs ordinarily requires a bond for temporary imports because they are often high in value compared to other import types. This helps to reduce the potential fiscal risk to the Crown if GST and duty are not paid and the goods are not later exported.

Possible issues with bond and security arrangements

Businesses that temporarily import items and do not have access to the deferred payment scheme have reported that they can have difficulty in providing a bond or cash security for the GST and duty on the item. Businesses also find the process costly and time-consuming.

We understand that in particular this can create problems for businesses in the oil exploration, luxury yacht and aviation sectors.

We would like feedback from businesses that have been required to provide a security or bond to Customs when temporarily importing an item – particularly about any problems associated with providing a security or other problems in dealing with Customs.

GST AT THE BORDER: WHAT DO YOU THINK?

Managing GST between Customs and Inland Revenue

Q 55 Is accounting for GST separately to Customs and Inland Revenue a significant issue for your business or industry? If so, in what way?

Q 56 Are there areas of GST collection that you think require better legislative provisions in the Act?

Q 57 Are there areas of GST collection where you think Customs and Inland Revenue need to work together better to provide benefits for businesses?

Temporary imports

Q 58 Have you experienced issues working with Customs around temporary imports or in providing a security for temporary imported items? If so, how?

Q 59 In what ways do you think Customs could make the temporary importing of goods easier for businesses?

Valuation of imported goods

Anyone who imports goods into New Zealand is required to declare the "Customs value" of the goods. The Customs value is then used to calculate the amount of any tariff duty and GST owing on the goods (and other relevant levies). The Tariff Act 1988 provides for Customs to enforce and collect tariff duties.

The Customs value is determined according to Schedule 2 of the Customs and Excise Act. This is done in accordance with the rules and principles for valuing goods, established under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the World Trade Organization Customs Valuation Agreement).

The Agreement's principles promote uniformity, certainty, fairness, neutrality and transparency in customs valuation among trading nations.

In the year to 30 June 2014, we collected $170 million of tariff duty on imported goods on behalf of the Crown"

How is the Customs value of an imported good determined?

Schedule 2 of the Act sets out the methods for determining the Customs value of an imported good.

The "transaction value" method is the valuation method that is used for most goods imported into New Zealand. The transaction value is the price paid or payable for the goods when sold for export to New Zealand, subject to specific adjustments (such as excluding international freight and insurance costs).

If the Customs value cannot be determined using the transaction value method, Schedule 2 lists five alternative valuation methods that must be applied.

We considered three issues when looking at Schedule 2 of the Customs and Excise Act:

- whether the Customs value of an imported good should include or exclude the costs of international freight and insurance
- whether the Act should define "sold for export" to clarify which sale in a supply chain determines the Customs value of an imported good
- whether the provision about the use of the transaction value method when the buyer and seller of the goods are "related parties" could be made clearer.

Whether to include or exclude international freight and insurance costs

New Zealand currently excludes international freight and insurance costs when determining the Customs value of an imported good. This could also be referred to as the "Free on Board" (FOB) value of the good. Other countries that exclude international freight and insurance costs when valuing imports include Australia, the United States and Canada.

We are aware that some New Zealand importers and businesses encounter problems when they are complying with Customs requirements. Valuation of imported goods is required to determine revenue obligations, conduct risk assessment and for statistical purposes.

Two different values are needed to determine tariff duty and GST,[11] which means that two different calculations are required. This can be confusing and create extra compliance burden for importers.

New Zealand has two different values for determining tariff duty and GST

Tariff duty is determined using the "Free on Board" value: importers have to calculate the cost of the goods plus the cost of the freight within the country of export.

GST is determined using the "Cost, Insurance, Freight" (CIF) value: importers have to calculate the cost of the goods plus the cost of the freight within the country of export **plus** the cost of international freight and insurance.

Most goods are subject to GST only. Free trade agreements are reducing the rates of tariff duty, so the number of goods imported that are subject to tariff duty will decrease over time.

A business submits an import entry to Customs for imported goods in order to obtain Customs' clearance for the goods and for Customs to assess risk and duty liability. When submitting the entry the business must declare the following figures: the Free on Board value (that is, the

[11] The method for calculating GST is determined according to section 12 of the Goods and Services Tax Act 1985. The Cost, Insurance, Freight value is part of that calculation but the Act also requires that the Customs value be calculated.

Customs value), and separately declare the cost of international freight and the cost of insurance.

Some importers face difficulties obtaining the **actual** costs of international freight and insurance for the goods. For example, an exporter may view actual freight costs as commercially sensitive information and not provide freight costs to an importer (or their broker).

Possible solutions

At this time, we consider that the costs of international freight and insurance should continue to be excluded when determining the Customs value of imported goods, and therefore determining tariff duty – that is, the status quo should be retained. This means businesses would continue to declare the Customs value as the Free on Board value, and calculate GST separately using the Cost, Insurance, Freight value.

Continuing this approach is consistent with New Zealand's commitment, as a World Trade Organization member, to promoting trade liberalisation. If New Zealand were to include the costs of international freight and insurance for determining tariff duty, importers would pay more tariff duty (because tariff duty would be levied on a higher base). Tariff duty could potentially increase by $7 million in the first year if the Cost, Insurance, Freight value were used as the Customs value from 2017.

Customs has issued guidelines to assist importers who experience difficulty in obtaining freight and insurance costs. These guidelines are available on our website.

Whether to define "sale for export"

Most goods imported into New Zealand are valued using the transaction value method: the price paid or payable for the goods when sold for export to New Zealand. Currently, New Zealand does not define what is meant by "sold for export to New Zealand".

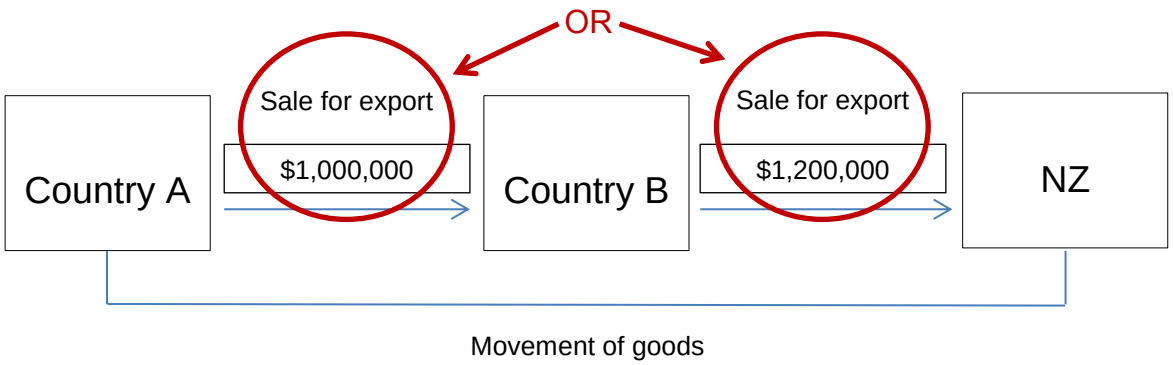
This can be straightforward when there is only one transaction between a seller outside New Zealand and a buyer in New Zealand. However, this can often be complicated when there are multiple sales, particularly those between related parties. Where there are a series of sales, an importer can choose the sale for export for valuation purposes, as long as the sale can be evidenced.

An importer can choose the sale for export

When there is a series of sales in the supply chain, an importer can choose which sale is the sale for export, so long as they can provide evidence of the sale. The choice is more likely to be available to related multinational companies. They can generally access relevant documents of related entities to evidence the sale.

Using an earlier sale is more likely to result in a lower Customs value for the goods, and therefore lower tariff duties. We believe this can be unfair to some importers: multinational companies are generally able to choose an earlier sale, as there are related entities in the goods' supply chain, whereas unrelated entities usually do not have the same ability to evidence earlier sales.

The diagram below shows an example of where there are two possible sales for export.



For earlier sales between **related parties**, importers need to show that the relationship between the buyer and seller did not influence the price. Supplying evidence to Customs can be complex when earlier sales involve entities located outside New Zealand.

Other countries, such as Australia and Canada, have prescribed in legislation which sale must be used in situations where there is potentially more than one sale for export occurring. The definitions can differ and have different outcomes in practice.

Guidance from the World Customs Organization supports prescribing that the **last sale** is the sale for export:

> **"…in a series of sales situation, the price actually paid or payable for the imported goods when sold for export to the country of importation is the price paid in the last sale occurring prior to the introduction of the goods into the country of importation, instead of the first (or earlier) sale. This is consistent with the purpose and overall text of the Agreement [the WTO Agreement on Customs Valuation]."[12]**

[12] World Customs Organization (2007). Meaning of the expression "sold for export to the country of importation" in a series of sales. Commentary 22.1 amending supplement no.6.

Possible solutions

We think that it is worth considering whether the legislation should define the sale for export to be used in determining the value of an imported good. We would like your views on:

- whether the legislation should define "sale for export"
- what a possible definition of "sale for export" could be
- what the effect of defining "sale for export" would be on you or your business.

Possible definitions of "sale for export"

- the last sale before the goods are introduced into New Zealand
- the sale for export to New Zealand, to a buyer in New Zealand (this sale may not be the last sale prior to the goods entering New Zealand)
- the sale which is entered into last (that is, the most recent contract for sale and purchase)

We do not currently have a preferred option.

We note that defining the sale for export as the last sale would be consistent with guidance issued by the World Customs Organization, of which New Zealand Customs is a member. We are aware however that tariff duty and GST could be higher under this definition as the last sale would normally mean a higher Customs value for the imported goods.

Minor amendments to improve related parties provisions

Multinational companies as "related" parties or businesses, can reduce the duty they need to pay by under-pricing the sale of goods for import where they are sold between non-resident and resident branches.

To avoid under-taxing and to help maintain competitiveness between importers, Clause 2 of Schedule 2 of the Act governs the valuation methods of goods bought and sold between related parties.

We recognise that there is some ambiguity in the current wording and structure of Clause 2. We propose to address this by better aligning this section of the Act with the World Trade Organization's Customs Valuation Agreement.

VALUATION OF IMPORTED GOODS: WHAT DO YOU THINK?

Valuation method

Q 60 What would be the impact of changing the valuation method for the Customs value of imported goods?

Q 61 What are the financial costs to you of having to do two calculations using different values to determine tariff duty and GST?

Sale for export

Q 62 Do you think the legislation should define the sale for export to be used for customs valuation purposes? Please give your reasons.

Q 63 If you think the legislation should define the sale for export, what is your preferred definition? Please give your reasons.

Q 64 What would be the impact on you or your business if sale for export were defined? Please give specific or identifiable costs and benefits if possible, including if sale for export were to be defined as the last sale.

Related parties provisions

Q 65 Do you currently encounter difficulties with interpreting the “related party” provisions in clause 2 of Schedule 2?

Q 66 Would clearer wording in clause 2 of Schedule 2 help you or your business? Please give your reasons.

Comptroller’s discretion in collecting revenue

The Customs chief executive (the Comptroller of Customs) is regularly required to make decisions under the Customs and Excise Act on the appropriate collection of revenue. These decisions may involve, for example, determining whether to pursue an amount of revenue that is owing, or reviewing a penalty notice.

The current Act does not specifically give the Comptroller a discretion to make management decisions around the collection of revenue. We think that explicitly allowing the Comptroller to use his or her discretion in specified circumstances would increase efficiency and customer satisfaction by allowing decisions to be tailored to individual cases, and it would ensure that we target resources in the most appropriate way. More generally, an explicit discretion would ensure that the wider customs and border systems operate in a practical and efficient way.

Comparison: Discretion in the Tax Administration Act

These are the provisions in the Tax Administration Act 1994 that cover the similar position:

Section 6(1):

Every Minister and every officer of any government agency having responsibilities under this Act or any other Act in relation to the collection of taxes and other functions under the Inland Revenue Acts are at all times to use their best endeavours to protect the integrity of the tax system.

Subsections 6A(2) and (3):

(2) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.

(3) In collecting the taxes committed to the Commissioner's charge, and notwithstanding anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—

(a) the resources available to the Commissioner; and

(b) the importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and

(c) the compliance costs incurred by taxpayer

In deciding how to act under subsections 6A(2) and (3) of the Tax Administration Act, the Commissioner of Inland Revenue must take into account the extent to which the available courses of action might undermine, or support, the integrity of the tax system, as defined in section 6. This includes considering public perceptions of the tax system and the importance of voluntary compliance, among other factors.

We think that the discretion in the Tax Administration Act already extends to the Comptroller of Customs in his or her role in collecting taxes. However, we think that explicitly including a similar provision in the Customs and Excise Act will increase clarity and avoid ambiguity.

We recognise that we would need to include strict controls, similar to the combination of sections 6 and 6A of the Tax Administration Act, to ensure that factors such as public perceptions of the tax system and voluntary compliance are not compromised.

COMPTROLLER'S DISCRETION: WHAT DO YOU THINK?

Q 67 Do you think managerial discretion should be explicitly added to the Customs and Excise Act, similar to that provided for in the Tax Administration Act 1994? Please give your reasons.

Review of duty assessments

When people want to dispute an assessment made by Customs under the Customs and Excise Act there should be appropriate processes available to them. Appropriate access to dispute resolution is an important part of any regulatory regime. We want to ensure those who engage with Customs have access to dispute resolution that is fair, accessible, transparent, effective and efficient.

The previous sections of this paper on revenue discussed how revenue is assessed. We now want to discuss and get your views on re-assessment and appeal.

The disputes process as it stands

If you dispute a duty assessment made by Customs, you can appeal to the Customs Appeal Authority. The Authority is established under the Customs and Excise Act 1996 as a judicial authority to hear and decide appeals that are provided for under the Act. This includes direct appeals to the Authority to dispute an assessment.

If Customs has issued a new assessment, or amended an existing assessment, an importer has 20 working days to start the appeals process. An applicant can apply for an extension of the time to appeal, so long as the application for the extension is received within 20 working days (section 256).

An appeal application must be in the required form and include the required fee (currently $410). The form and fee are prescribed by Regulations.

Currently, lodging an appeal with the Authority does not alter the requirement to pay the relevant amount, or the due date for payment. If the duty is not paid by the due date, an additional duty is charged on the outstanding amount – this is initially five percent of the unpaid duty, compounding at two percent for each subsequent month that the amount of duty remains unpaid.

REVIEW OF DUTY ASSESSMENTS: WHAT DO YOU THINK?

Q 68 Does the 20 working day period set out in the Act allow enough time to prepare and lodge an appeal?

Q 69 Have you ever decided not to appeal a Customs assessment because you thought the Customs Appeal Authority process was too difficult or complex? If yes, please give details of why you came to that conclusion.

Q 70 Do you have any views on whether and how the review of duty assessment and appeals process could be improved? Please specify what you think should be different and why.

Q 71 Should due duty be required to be paid before a dispute is settled? Please give your reasons.

Q 72 What are your views on the application of additional duties while an assessment is under dispute?