

GUIDE TO COMPENSATORY INTEREST AND LATE PAYMENT PENALTIES

Date: October 2018

Contents

About this guide.....	3
When compensatory interest & late payment penalties will be charged	5
How compensatory interest is calculated.....	9
How late payment penalties are calculated.....	11
How compensatory interest and penalties apply when you commit an offence	12
Late payment scenarios.....	16
Shortfall scenarios	18
Incorrect refund and drawback scenario	20
Provisional values scenarios.....	21
Applying for a refund or remission	25
Administrative reviews and right of appeal.....	28
Contact us	29
Appendix 1	30
Appendix 2	34
Appendix 3	37
Appendix 4	39

About this guide

- Audience** This guide is for individuals, companies and businesses that are required to pay:
- excise duty
 - excise-equivalent duty
 - import duty
 - GST
 - Anti-dumping and countervailing duties
 - PEFM levy
 - SGG levy.
-

- Purpose** This guide explains:
- when Customs may charge compensatory interest and late payment penalties
 - how compensatory interest and late payment penalties are calculated and applied
 - the grounds, and how to apply, for a refund or remission of compensatory interest and late payment penalties
 - what options are available for duty payers who disagree with Customs' decision
 - how to contact Customs.
-

Terminology This document uses the term “Customs-entry” which is also known in Trade Single Window (TSW) as a “Customs declaration”, or a “Customs lodgement”.

- References to legislation** This guide refers to the following Act and Regulations:
- Customs and Excise Act 2018 (The Act)
 - Customs and Excise Regulations 1996
-

Using this guide The following table gives an overview of each section of this guide, and where you can go for the information you need.

Section	Content
When compensatory interest and late payment penalties will be charged	<ul style="list-style-type: none"> • The types of non-compliance that result in Customs charging compensatory interest and late payment penalties • The types of revenue (duty and levies) subject to compensatory interest and late payment penalties • The threshold below which Customs will not collect compensatory interest and late payment penalties

How compensatory interest is calculated	Description of how compensatory interest is applied
How late payment penalties are calculated	Description of how late payment penalties are applied
How compensatory interest and penalties will apply when you commit an offence	Diagrams of how compensatory interest and different types of penalties for non-compliance will apply to: <ul style="list-style-type: none"> • late payments • shortfall payments • incorrect refunds and drawbacks • provisional values
Applying for a refund or remission	The grounds, and how to apply, for a refund or remission of compensatory interest and/or late payment penalties
Administrative reviews and right of appeal	The options available if you disagree with a Customs decision about compensatory interest and/or late payment penalties
Contact us	How to contact Customs if you have an enquiry about compensatory interest and/or late payment penalties

When compensatory interest & late payment penalties will be charged

For goods entered and dealt with from 1st October 2018, compensatory interest will be charged whenever you don't pay the right amount to Customs at the right time, including late payments, shortfalls and incorrect refunds/drawbacks:

Late payments – the amount owed is a late payment when:

- excisable goods are removed from a Customs controlled area (CCA), but the excise duty isn't paid within the prescribed timeframe.
- payment of import duties/levies is by deferred account and some or all the charges are not paid by the due date on the statement.
- a provisional value is updated but charges are not paid by the due date.
- charges on an assessment notice, or any other written notice requiring payment are not paid by the due date.

Shortfall payments – shortfalls are owed when:

- an error in an import or excise entry means not enough duties/levies are paid.
- an import or excise entry is not lodged when it should have been, and Customs later assesses that duties/levies are payable.
- an importer using provisional values makes an error in the final value, meaning that not enough duty/levies were paid.
- an importer using provisional values does not provide a final value within the prescribed timeframe. The final value is assessed and is higher than the provisional value.

Incorrect amount claimed back (incorrect refunds or drawbacks) occur when:

- incorrect information is provided and a refund claimed incorrectly.
 - an error in an export entry means a drawback that you were not entitled to is claimed.
 - an importer using provisional values provides an incorrect final value, which results in an incorrectly claimed refund.
-

Note

- Value updates made through the provisional values scheme are not subject to interest
- However, if importers make regular value adjustments outside of the provisional values scheme, compensatory interest will apply as if the adjustments were entry errors.

When late payment penalties will be charged

For goods entered and dealt with from 1 October 2018, late payment penalties will be charged, when:

- excisable goods are removed from a Customs controlled area (CCA), but the excise duty isn't paid within the prescribed timeframe.
- payment of import duties/levies is by deferred account and some or all the charges are not paid by the due date on the statement.
- a provisional value is updated but charges are not paid by the due date.
- charges on an assessment notice, or any other written notice requiring payment are not paid by the due date.

Late payment penalties are charged in addition to compensatory interest.

Duty and levies that are subject to late payment penalties

Compensatory interest and late payment penalties will be charged on the following types of duties/levies (including any GST):

- import duty
- excise duty
- excise-equivalent duty
- GST
- Petroleum or Engineering Fuel Monitoring (PEFM) levy
- Anti-dumping and countervailing duties
- Synthetic Greenhouse Gas (SGG) levy

The following revenue types (including any GST) are not included in any compensatory interest and late payment penalty calculations:

- Import Entry Transaction Fee (IETF)
- Biosecurity System Entry Levy (BSEL)
- Accident Compensation Corporation (ACC) levy
- Health Promotion Agency (HPA) levy
- Heavy Engineering Research Association (HERA) levy.

Threshold for collecting compensatory interest and late payment penalties

Customs will not collect compensatory interest and/or late payment penalties if the amount owed is less than \$1000.00.

If the amount you need to pay is below \$1000.00, you will be issued an invoice or assessment notice, but you will not be required to pay compensatory interest or late payment penalties.

Threshold examples

In most cases (except for import duties and levies paid by deferred account or finalised provisional values) the threshold applies to a:

- Customs entry
 - if you have a shortfall of \$1000.00 or more, you will incur compensatory interest
 - if the amount you pay late is \$1000.00 or more, you will incur compensatory interest and late payment penalties
- Customs' assessment (or amendment of an assessment) of duty/levies on goods you failed to enter is \$1000.00 or more, you will incur compensatory interest.

Deferred account

For import duties and levies paid by a deferred account, the threshold applies to the global balance of the duty accounting period (not applied entry by entry).

For example:

- if the total amount you pay late in your (fortnightly/monthly) accounting period is \$1000.00 or more, you will incur compensatory interest and late payment penalties
- if an audit reveals errors, that result in a total shortfall of \$1000.00 or more within a duty (fortnightly/monthly) accounting period, you will incur compensatory interest on the shortfall.

Importers updating a provisional value

For importers updating provisional values, the threshold applies to any duty/levies payable for final values in a financial year. So when:

- as a result of a final value audit (or correction), the extra revenue is \$1000.00 or more, you will incur compensatory interest
- a final value is not provided within the required timeframe, and the final value assessed is greater than the provisional value, if the extra duties/levies owed are \$1000.00 or more, you will incur compensatory interest.

In summary

- Compensatory interest will be charged whenever you don't pay the right amount at the right time.
 - Late payment penalties will only be charged when you make a late payment.
 - Compensatory interest and late payment penalties are not charged on some duty, levies and fees.
-

How compensatory interest is calculated

Compensatory interest rate

Customs has two compensatory interest rates.

Full rate

In most cases the full rate is applied - the Use of Money Interest (UOMI) rate used by Inland Revenue.

Reduced rate

A reduced rate, based on the 90-day bank bill rate, will be applied if you meet all the following criteria:

- the underpayment was the result of an error in an import entry, excise entry or provisional value update
- the error was voluntarily disclosed before any notice of compliance action (e.g. audit) was issued
- you can demonstrate that the error was inadvertent - an explanation, with supporting evidence, must be provided when you disclose the error. Customs may contact you for further details and/or an explanation to confirm your eligibility

For further information on what qualifies as an inadvertent error refer to [Appendix 1 - Partial remission or refund of compensatory interest for inadvertent error](#)

- you pay the outstanding duties/levies and interest by the due date.

Note: If you meet the first three requirements, you will be issued a Statement of Liability calculated using the reduced interest rate. If you don't pay within 20 working days, you will be issued a new Statement of Liability and the whole interest period will be recalculated at the higher interest rate.

To find out the latest and previous rates, see the Compensatory interest page on the [Customs website](#).

Compensatory interest formula

Compensatory interest is calculated using the formula:

$$\frac{(\text{amount owed}) \times (\text{day's interest rate})}{365}$$

This is not compounding.

Compensatory interest period

Compensatory interest is charged for every day the duty/levies are outstanding.

- Start date
 - For late payments and shortfall payments, the interest period starts from the day after the date on which duties/levies should have been paid
 - For incorrect refunds and drawbacks, the interest period starts the day after your refund or drawback was paid
- End date (for all)
 - The interest period ends the day you pay the outstanding duties/levies in full.

However, if you have been issued a Statement of Liability, and you pay the duties/levies, interest, and any late payment penalties in full by the due date, the interest accrued after the issue date will be waived (i.e., you only need to pay the amount of interest on the Statement of Liability).

Note: If you don't pay by the due date on the Statement of Liability, your interest will be recalculated and you will receive a second Statement of Liability.

In summary

- There are two compensatory interest rates
 - The full interest rate is based on the UOMI rate used by Inland Revenue
 - The reduced interest rate is based on the 90-day bank bill rate
 - To be eligible for the reduced rate you must meet certain requirements including voluntary disclosure
 - Compensatory interest is charged daily
 - Compensatory interest continues to be charged until you pay the Statement of Liability in full.
-

How late payment penalties are calculated

Calculating late payment penalties

Late payment penalties are calculated as follows:

- the day after the due date, you will be charged 1% of the duty/levies you still owe,
- on the eighth day after the due date, you will be charged a further 4% of the duty/levies you still owe.

For example, if you had an outstanding amount of \$1000.00, 1% would be calculated on day one (\$10.00). If you paid off \$600 on day 4, and made no other payments, 4% would be calculated on \$400 on day 8 (\$16.00). Or, if you made no payments towards the outstanding amount, 4% of \$1000 (\$40.00) would be calculated on day 8.

No further late payment penalties will be charged after this – but the unpaid duties and levies will continue to accrue compensatory interest until fully paid.

No penalty for a good payment record

If, over the past two years, you always paid duties/levies on time, we will automatically remit or refund late payment penalties. The late duty or levy must be paid in full first, for the late payment penalties to be remitted or refunded.

Note:

- Only late payment penalties will be remitted or refunded. You will not automatically get a refund or remission of the compensatory interest charged.
 - When your late payment penalty is remitted or refunded for a good payment record, your good payment record is reset to zero. Therefore, you need to pay on time for the next two or more years before you are eligible for another refund or remission.
-

In summary

- You will be charged a penalty on day one on the duties/levies you still owe
 - You will be charged a second penalty on day eight on the duties/levies you still owe
 - Late payment penalties will automatically be refunded or remitted if you have a two year good payment record.
-

How compensatory interest and penalties apply when you commit an offence

Introduction

This section explains how compensatory interest and different types of penalties apply when you commit an offence that has revenue implications. It includes diagrams showing how interest and penalty charges apply in different scenarios.

Compensatory interest

- Compensatory interest is charged whenever you don't pay enough duty and/or levies at the right time
 - Compensatory interest compensates the Crown for the loss of use of money
 - Is not a penalty
 - Interest is charged daily from the day after payment was due until fully paid. However, if you pay the duties/levies, interest, and any late payment penalties in full by the due date on the Statement of Liability, we will waive the interest that has accrued since the statement was issued
 - If you meet the following requirements, we will apply a reduced interest rate:
 - it was an error in an import entry, excise entry or provisional value update
 - the error was voluntarily disclosed
 - you can demonstrate that the error was inadvertent
 - you pay the outstanding duties/levies and interest by the due date.
-

Penalties

- Customs will also charge a penalty for the offence that led to the incorrect payment
- The penalty will differ depending on the type of offence
- There are three types of penalties:
 - Late payment penalties apply to all late payments
 - the day after the due date, you will be charged 1% of the duty/levies you still owe,
 - on the eighth day after the due date, you will be charged a further 4% of the duty/levies you still owe
 - Administrative penalties can apply to entry errors if the:
 - error or omission was made knowingly, 100% of shortfall
 - error or omission occurred because the person was grossly careless, 40% of shortfall
 - error or omission occurred because the person did not take reasonable care (but was not grossly careless), 20% of shortfall

For more information see the Administrative penalties page on the [Customs website](#).

- Infringement notices may be served when you have failed to enter goods, update a provisional value or provided incorrect information
 - fee for an individual \$400.00
 - fee for a body corporate \$800.00

For more information see the Infringement notices page on the [Customs website](#).

When interest and penalties are applied

If you...	compensatory interest will be charged to...	this penalty may also be issued to...			See note:
		the duty payer	the declarant	the duty payer where they are also the declarant	
Who is charged:	the duty payer	the duty payer	the declarant	the duty payer where they are also the declarant	
LATE PAYMENTS					
don't pay by the due date (late payment)	at the full rate	late payment penalty	n/a	n/a	
SHORTFALL					
make an error in an entry which results in your duty being under assessed	at the full rate or reduced rate	infringement notice	administrative penalty, or	administrative penalty	1, 2, 3
did not make an entry when you were required to, and you owe duty	at the full rate	infringement notice	n/a	infringement notice	3
REFUNDS OR DRAWBACK					
provided incorrect information resulting in you claiming a refund you weren't entitled to (other than refunds made under the provisional values scheme)	at the full rate	infringement notice	n/a	infringement notice	3
made an error in an export entry, and claimed a drawback you weren't entitled to	at the full rate	infringement notice	administrative penalty	administrative penalty	1, 3
PROVISIONAL VALUES					
made an error in your final (provisional) value, and, as a result, either didn't pay enough duty, or over-claimed a refund	at the full rate or reduced rate	infringement notice	n/a	infringement notice	2, 3
did not update your final (provisional) value within the set timeframe, and you owe duty	at the full rate	infringement notice	n/a	infringement notice	3
OTHER					
make an error in an entry but there is no revenue impact for Customs	n/a	infringement notice	administrative penalty	administrative penalty	1
commit an infringeable offence but there is no revenue implication	n/a	infringement notice	n/a	infringement notice	

Note 1:

An administrative penalty is the most likely response in this scenario.

An infringement notice would be issued if the declarant had relied, in good faith, on incorrect information provided by the duty payer. In this case, the infringement notice would be issued to the duty payer.

Customs would not issue an infringement notice if the error was voluntarily disclosed by either the duty payer or the declarant.

Note 2:

The reduced compensatory interest rate is charged when:

- the error was voluntarily disclosed
- Customs is satisfied that the error was inadvertent
- the underpaid duties/levies and interest are fully paid by the due date.

Note 3:

In these cases you will be issued with an assessment notice/statement of liability for the duty/levy shortfall and the compensatory interest. If you do not pay these charges by the due date, this is classed as a late payment and you will also be charged late payment penalties.

Note 4:

If the non-compliance is serious, Customs may consider prosecution instead of issuing an Infringement Notice or Administrative Penalty. In these cases the Court may impose a fine greater (or less than) the prescribed infringement fee.

In addition to a monetary penalty or prosecution, Customs has a range of other sanctions/interventions available, including but not limited to:

- suspending or revoking JBMS registration
- moving excise licensees to monthly or six monthly payment cycles
- suspending CCA licences
- detaining future imports for document audit/inspection
- seizing the goods for which the duty has not been paid.

Late payment scenarios

Diagram 1 *You pay less than one week late*

You made a late payment but settled the debt within one week

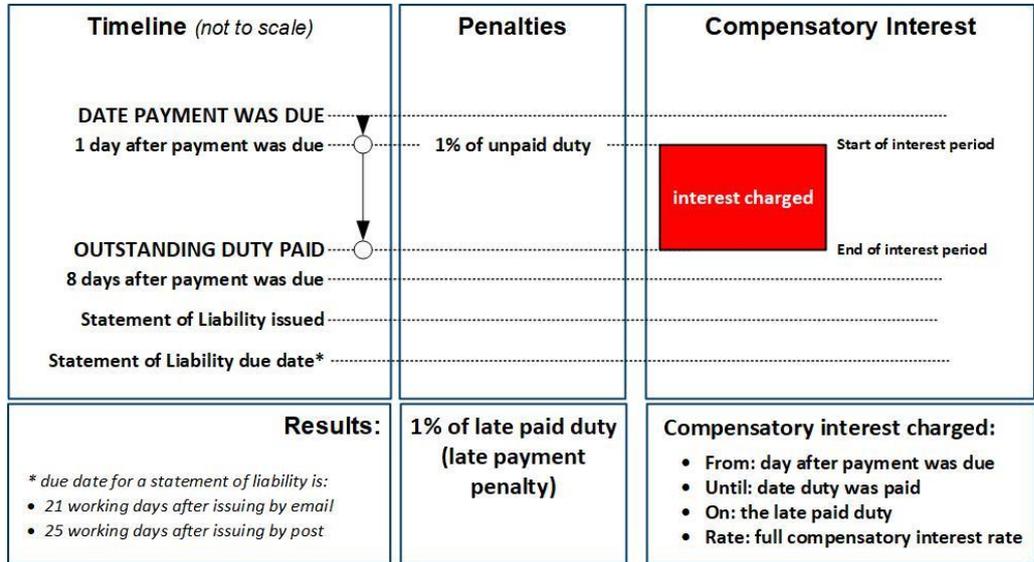


Diagram 2 *You pay more than a week late but before the Statement of Liability due date*

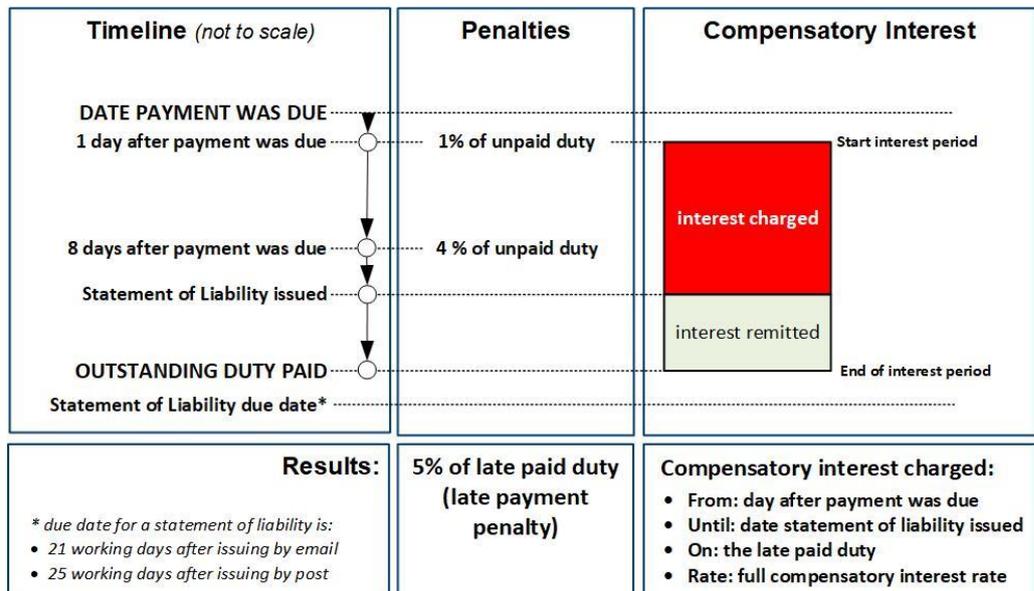
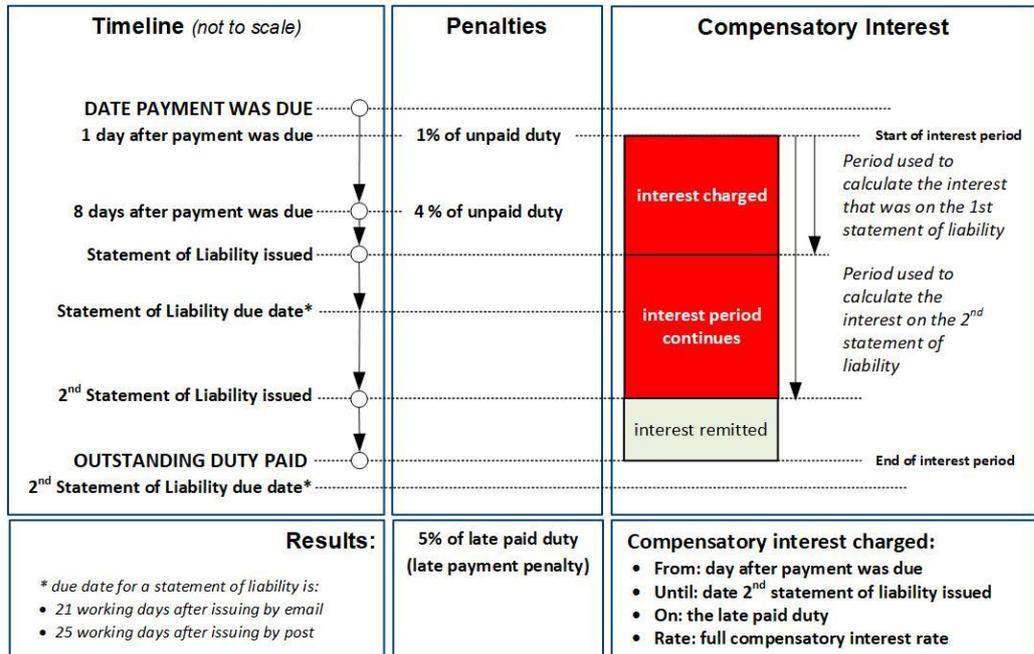


Diagram 3 *You do not pay by the Statement of Liability due date*



Shortfall scenarios

Diagram 4 *You have a duty shortfall but you don't pay by the statement of liability's due date*

Non inadvertant error paid by the due date on the Statement of Liability.

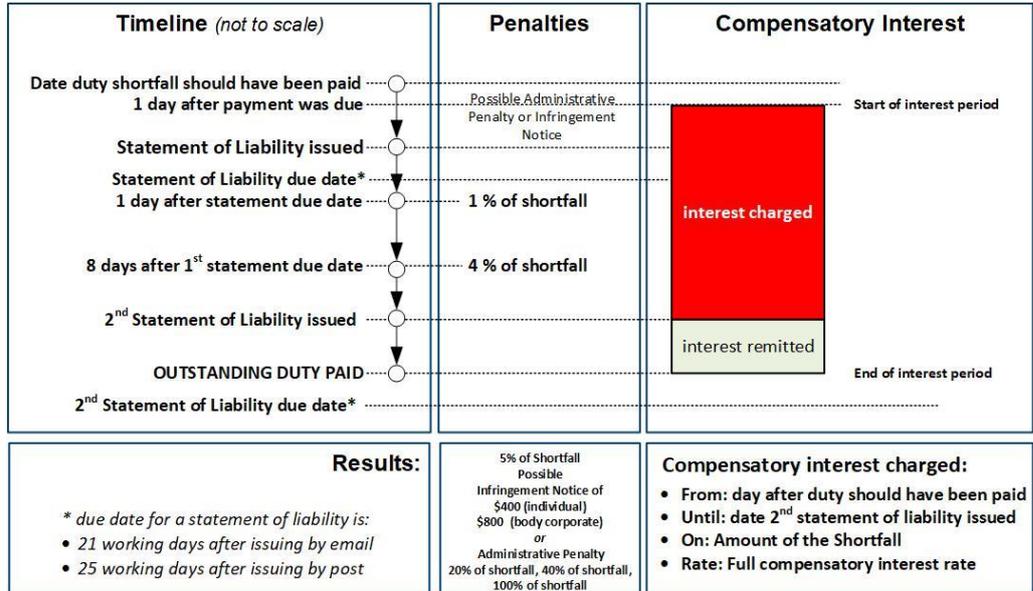
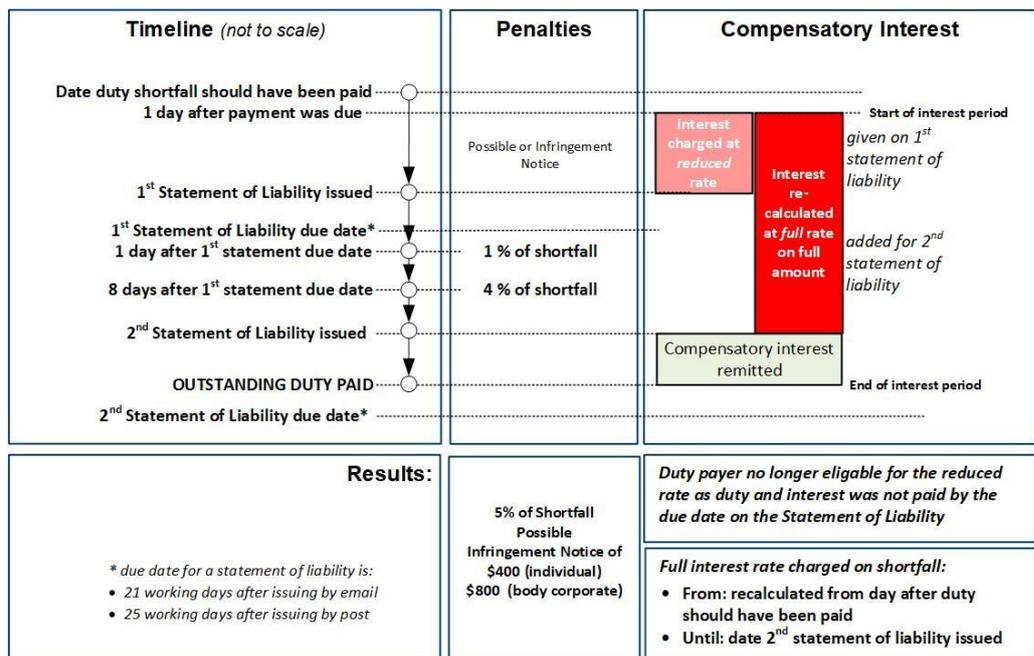


Diagram 5 *You get a reduced interest rate on your shortfall, but you don't pay by the statement of liability's due date*

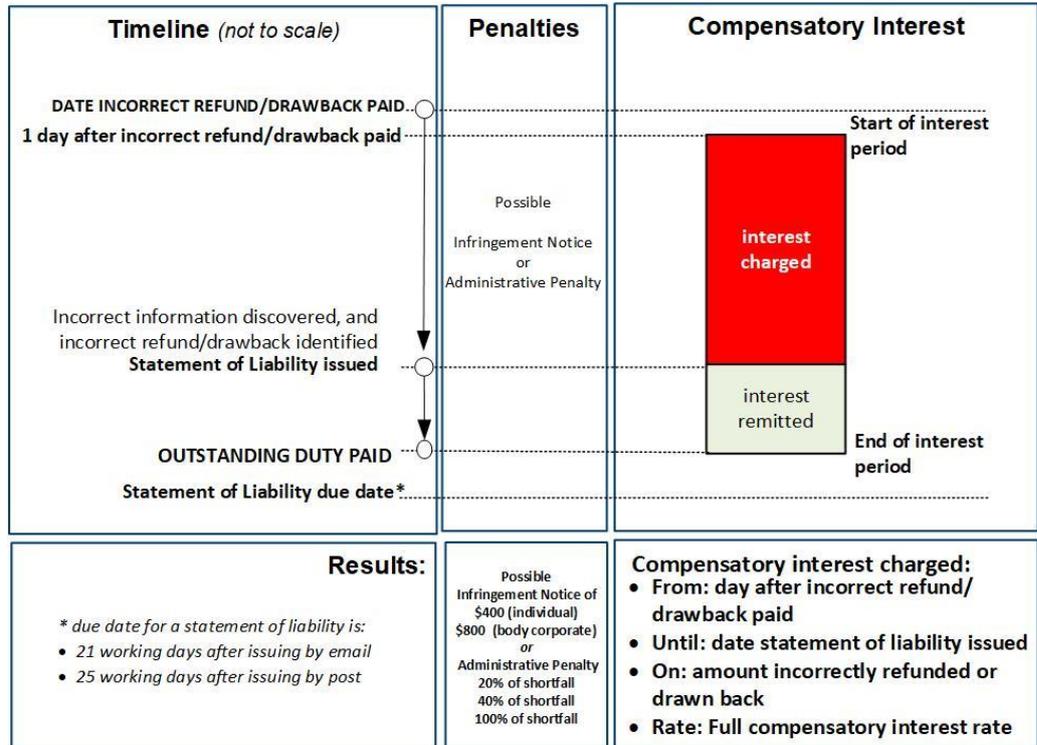
You voluntarily disclosed an inadvertent error to Customs, and you qualified for a reduced interest rate on your shortfall. However, you did not pay duties/levies and interest by the due date on the Statement of Liability.

No administrative penalty applies in this scenario as the error was voluntarily disclosed.



Incorrect refund and drawback scenario

Diagram 6 *You got an incorrect refund or drawback*



Provisional values scenarios

Diagram 7 *Correcting your final value reveals a shortfall*

Your original final value was greater than your provisional value but your corrected final value increases the duties/levies owed.

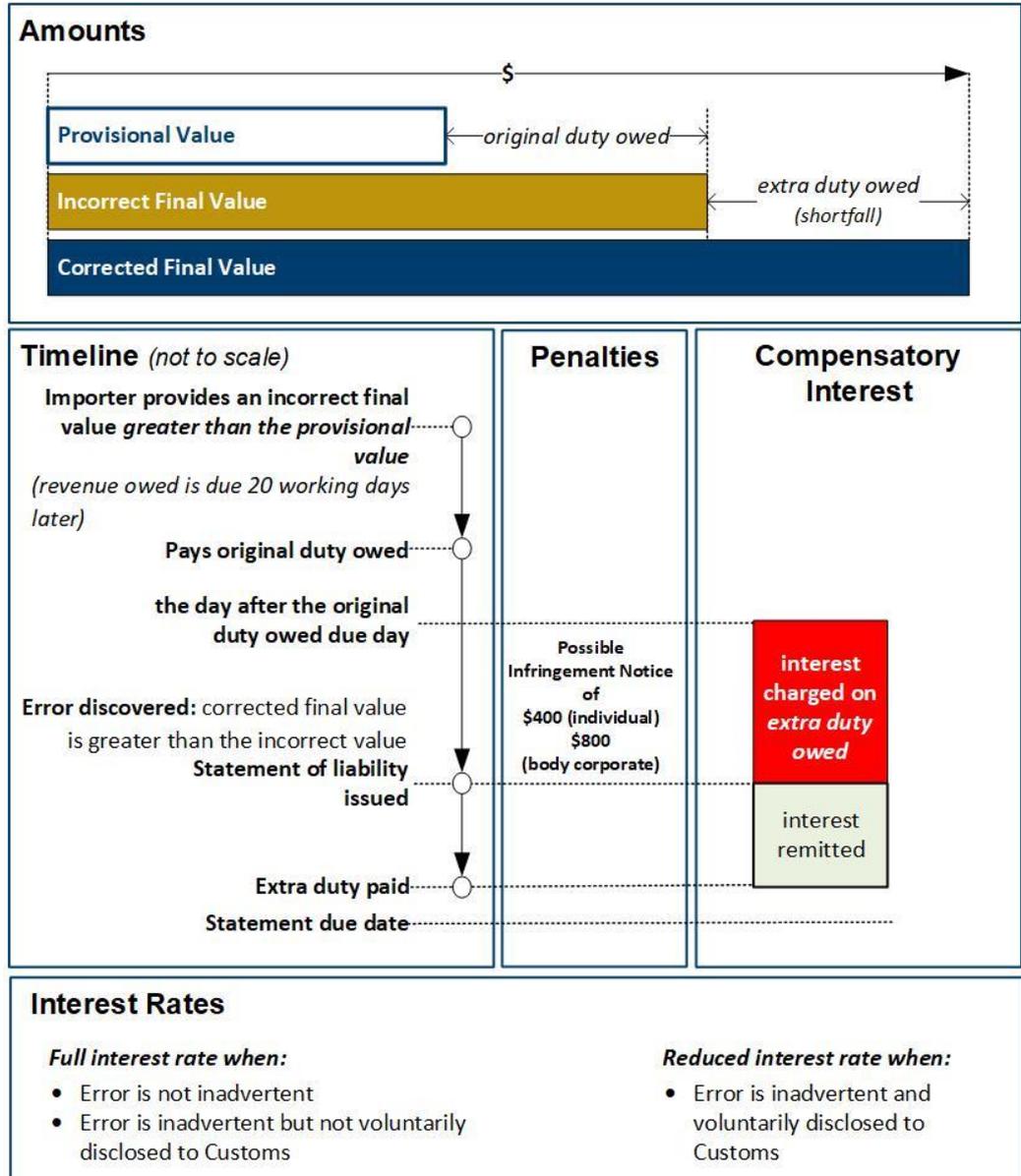


Diagram 8 *Correcting your final value reveals an incorrect refund*

You provided a final value (less than the provisional value) and received a refund. Correcting your final value reveals you received an incorrect refund.

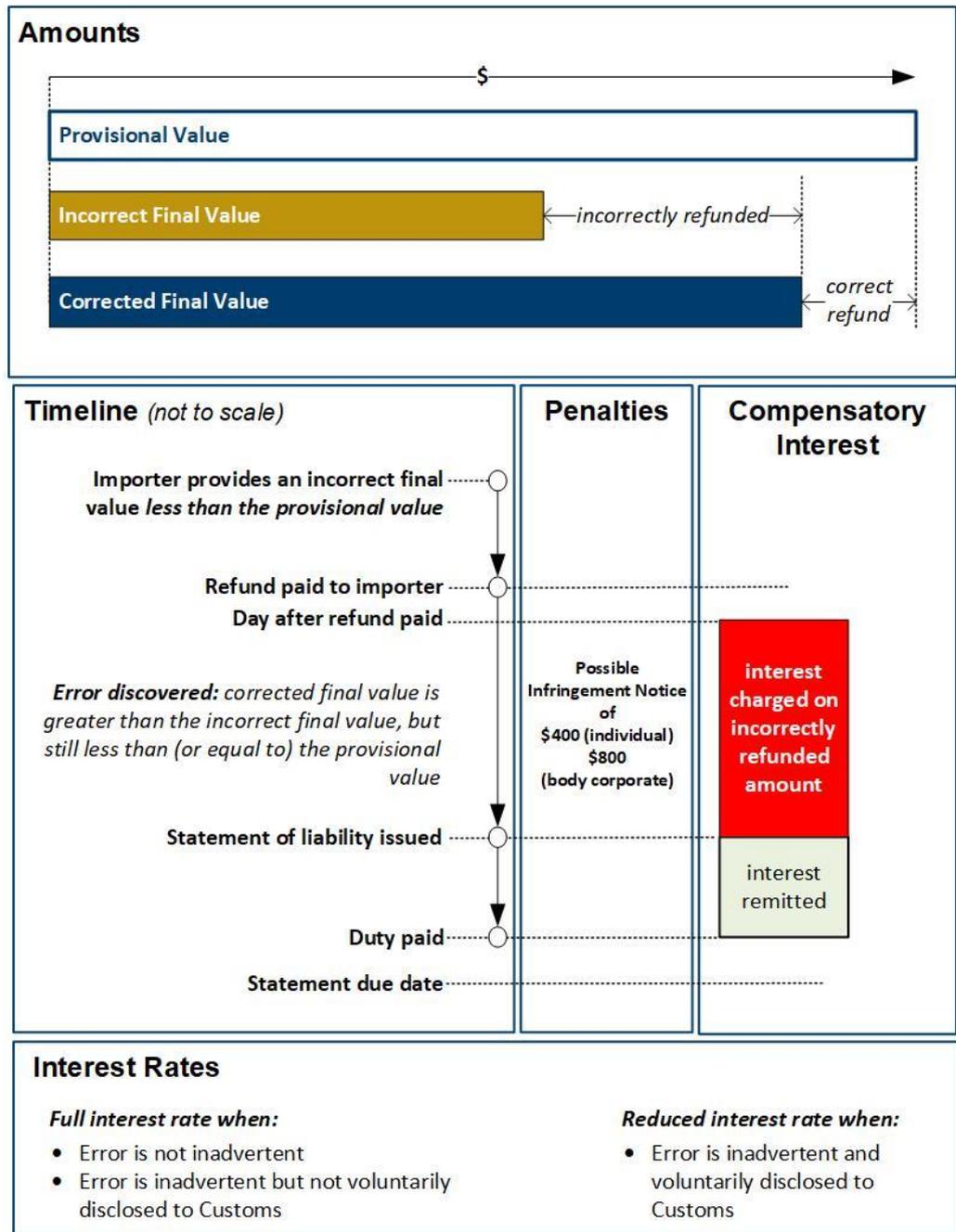


Diagram 9 *Correcting your final value reveals an incorrect refund, and duties/levies are owed*

You provided a final value less than your provisional value and received a refund. Correcting your final value reveals the refund was incorrect, and instead you actually owed duties/levies.

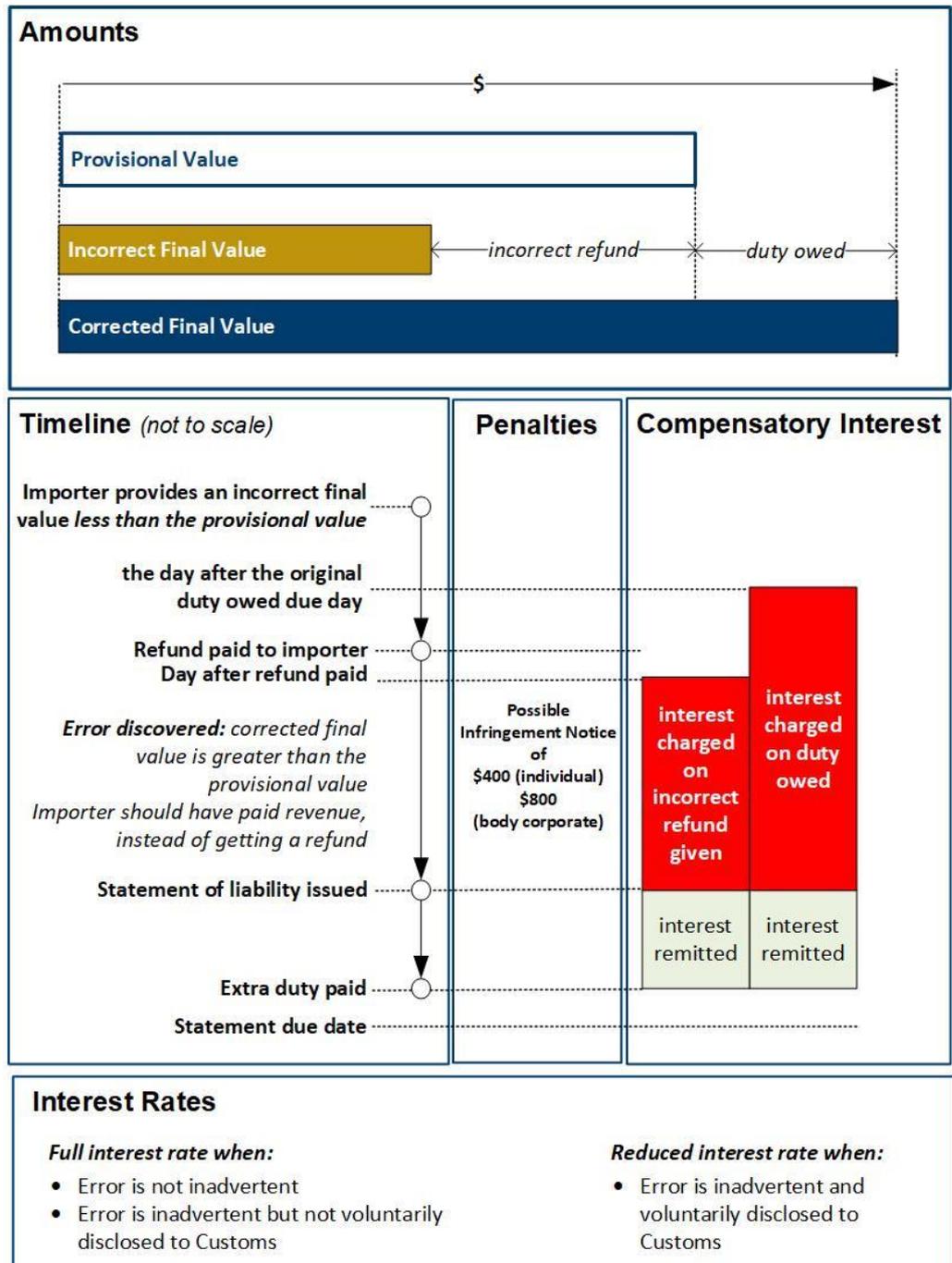
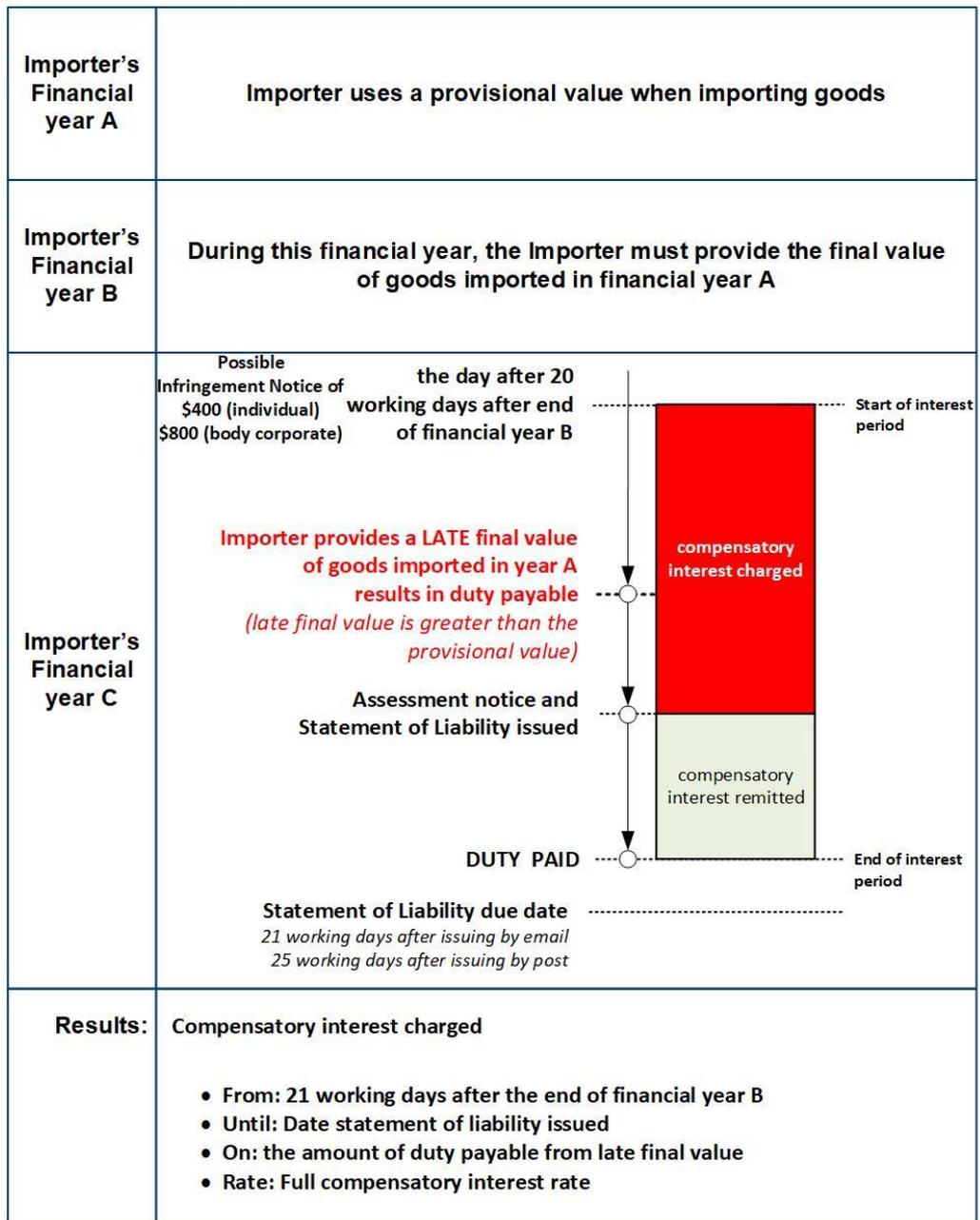


Diagram 10 *Providing a late final value and you owe duty*

If you provide your final value late (outside of the prescribed timeframe) and the final value is greater than the provisional value, the duties/levies you owe will be liable for compensatory interest.

(Timelines not to scale)



Applying for a refund or remission

Introduction

In some cases, where you have been charged compensatory interest and/or a late payment penalty, you may be eligible for:

- a refund
 - a remission (waiving) of compensatory interest and/or the late payment penalty you have not yet paid.
-

When to apply

If unforeseen events, or exceptional circumstances, lead to you being charged compensatory interest and/or a late payment penalty, you can apply for a refund or remission.

You need to meet specific criteria and provide evidence for your application to be approved.

Interest refunded/ remitted for emergency events

If you are charged compensatory interest due to a late payment, you may be eligible for a refund or remission if an emergency event caused the late payment.

For a refund or remission to be approved, you must meet all of the following conditions:

- it was an emergency event that physically prevented you from paying duties/levies on time
- the event was declared an emergency event by an Order in Council, and you were affected. An Order in Council is temporary legislation made in response to the emergency and listed on the [Customs website](#)
- you have applied for your refund or remission as soon as practicable
- you paid the late duties/levies as soon as practicable
- it would be equitable for your compensatory interest to be remitted or refunded.

For further information refer [Appendix 2 - Remissions and refunds of compensatory interest for emergency events](#).

**Penalty refunded/
remitted for a
reasonable
excuse**

If you are charged late payment penalties, you may be eligible for a refund or remission, if all of the following are true:

- the late payment was caused by an event or circumstance beyond your control, and could not reasonably have been anticipated or avoided (examples include: accidents; natural disasters; illness; emotional distress, or mental distress)
- you paid the duties/levies as soon as practicable
- the refund or remission of your penalty is fair.

For further information refer [Appendix 3 - Remissions and refunds of late payment penalties for reasonable excuse](#).

**Remissions or
refunds for
exceptional
circumstances**

We will only approve applications not covered by the previous two grounds in exceptional circumstances.

Evidence must be provided to show that in your exceptional circumstances, it would be unreasonable to charge you all of the compensatory interest and/or a late payment penalty.

In considering your case, we would look at the efforts you made to comply with your duty obligations, for example, voluntarily disclosing any entry errors you might have found, and paying any resulting outstanding duties/levies as soon as possible.

Note:

Remissions or refunds will not be granted if:

- it would undermine incentives to voluntarily comply
- you are applying on the basis of your financial position.

For further information refer to the guidelines [Appendix 4 - Remissions and refunds of compensatory interest and late payment penalties for collection of highest net revenue over time](#).

**Application
process**

You need to complete the application form and provide details of the charges you want refunded or remitted, along with your reasons, and documents that support your claims.

For an application form, see the Compensatory interest page on the [Customs website](#).

**Processing
your
application**

We will review your details and the supporting evidence and then decide if you meet any of the criteria for refunds/remissions.

The criteria for refunding or remitting compensatory interest is much stricter than the criteria for refunding or remitting late payment penalties.

It is possible that you could get the late payment penalty remitted/refunded, but not the compensatory interest remitted/refunded.

Your application should be processed within 20 working days of Customs receiving it.

Administrative reviews and right of appeal

If you disagree

If you disagree with Customs about an aspect of your compensatory interest and/or late payment penalties, you can:

- apply for an administrative review and then, if you are dissatisfied with the outcome, you can
- appeal to the Customs Appeal Authority (CAA)
However, you are not able to apply for an administrative review and appeal to the CAA at the same time

OR, you may:

- appeal directly to the Customs Appeal Authority (CAA)
 However, you will then not be able to apply for an administrative review.
-

What you can disagree with

You can apply for an administrative review, and/or appeal to the CAA when you disagree with:

- the calculation of your compensatory interest and/or late payment penalties
- a decision not to remit or refund your compensatory interest and/or late payment penalties.

This includes a decision not to apply either of the following remissions or refunds:

- remission/refund of a late payment penalty for a good payment record
 - remission/refund to a reduced compensatory interest rate
-

Applying for an administrative review

For details on how to apply for an administrative review of compensatory interest and/or late payment penalty, refer to the Administrative review page under Reviews and Appeals on the [Customs website](#).

Appealing to the CAA

The CAA hears appeals against Customs' decisions or directions and is administered by the Ministry of Justice.

Details on how to lodge an appeal with the CCA are on the [Ministry of Justice website](#) (Home>Tribunals>Customs).

In summary

- You can apply for an administrative review first and then lodge an appeal with the CAA if you are dissatisfied with the outcome – but not both at the same time
 - You can lodge an appeal with the CAA but you will then not be able to apply for an administrative review.
-

Contact us

Specific enquiries

If you need to contact us about being charged compensatory interest and/or a late payment penalty, refer to the contact details on the Statement of Liability that was issued to you.

For all correspondence regarding your compensatory interest and/or penalties, ensure you quote your client code, and the reference number on your Statement of Liability.

General enquiries

For general enquires:

Contact Method	Detail
Post:	New Zealand Customs Service PO Box 2218 Wellington 6140
Freephone within New Zealand:	0800 428 786 (0800 4 CUSTOMS)
Email:	feedback@customs.govt.nz

Appendix 1

Partial remission or refund of compensatory interest for inadvertent error

Guidelines

Introduction

Use these guidelines to determine whether you (the duty payer), because of an incorrect payment, are eligible for partial remission of compensatory interest due to an inadvertent error.

Partial remission of interest for inadvertent errors

Under section 166 of the Customs and Excise Act 2018, and regulation 71B of the Customs and Excise Regulations 2018, compensatory interest can be partially remitted, down to the 90-day bank bill rate, if the incorrect payment was due to an inadvertent error.

To be eligible for this remission, the duty payer must meet each of the following:

- the incorrect payment is due to an error in an import entry, excise entry, or provisional value reconciliation
- the shortfall payment was voluntarily disclosed
- Customs is satisfied that the error was inadvertent.

In addition, for the remission to be granted, the duty payer must fully pay the outstanding core duty by the due date under section 124. Revenue Management is responsible for checking whether the duty has been paid on time and informing duty payers if they are no longer eligible for a reduced interest rate.

Incorrect payment due to error in an import entry, excise entry or provisional value reconciliation

The inadvertent error provisions only apply in the following cases:

- an error in an import or excise entry led to an underpayment
- an error in a provisional value reconciliation led to either an underpayment or the importer claiming a refund that they were not entitled to.

In other cases where compensatory interest has been applied, the duty payer is not eligible for a reduced rate of interest for inadvertent error. This includes:

- late payments
- over-claimed drawbacks
- over-claimed refunds (other than those that are due to an error in a provisional value reconciliation)
- shortfall payments due to a failure to enter goods or update a provisional value in the prescribed timeframe.

Shortfall payment voluntarily disclosed

A voluntary disclosure means that the duty payer or their agent informed Customs of the shortfall before Customs notified them of any of the following compliance actions:

- selecting the relevant goods for examination
- requiring documentation for the erroneous duty assessment to be presented to Customs
- conducting an audit or investigation that would include the duty assessment.

A voluntary disclosure can be made by lodging an amendment in CusMod or TSW or by contacting a Customs officer directly.

Note: If a duty payer voluntarily discloses an error, and Customs subsequently discovers that it was a systematic error that occurred over time, only the initial error disclosed to Customs meets the definition of a voluntary disclosure.

Customs is satisfied that error was inadvertent

What is an inadvertent error?

An inadvertent error is an error in a duty assessment that was not made knowingly. Inadvertent errors could include:

- typing errors
- accidentally using an incorrect invoice
- not realising that an invoice was missing
- misunderstanding which goods qualify for a particular concession.

The inadvertent error provisions make a distinction between errors that were known to the duty payer or their agent at the time the information was submitted to Customs, and errors that were not known. They do not take into account whether the duty payer should have taken greater care to ensure that the information was correct. Punishing declarants for lack of reasonable care or gross carelessness for the information they submit to Customs is the role of administrative penalties (note that voluntary disclosures are intentionally excluded from the administrative penalty regime).

Customs must consider the knowledge and intent of the declarant, as well as the knowledge and intent of the company they are representing. If there is evidence that the declarant or anyone else employed by the company had knowledge of the error at the time it was made, the error cannot be considered inadvertent.

When is Customs satisfied that an error is inadvertent?

The onus is on the duty payer to satisfy Customs that the error was inadvertent, however the duty payer must be given reasonable opportunity to provide an explanation for the error and any supporting information to Customs.

If the duty payer fails to provide either a sufficient explanation for the error, or any supporting evidence that could reasonably be expected, the duty payer has not satisfied Customs that the error was inadvertent.

If the duty payer has provided all the necessary information, Customs will review all the information available to them, and determine, on the balance of probabilities, whether the error is likely to have been inadvertent.

Note: If the duty payer appeals Customs' decision that an error was not inadvertent, the onus is on the duty payer to demonstrate that the error was inadvertent, on the balance of probabilities.

Example – Customs satisfied that error is inadvertent

An importer imports a large shipment of televisions. Their broker voluntarily discloses that he/she mistakenly entered the wrong currency on the import entry, resulting in the televisions being under-valued by \$200 each. Following discussions with the broker, and a review of all available evidence, Customs is satisfied that the error was most likely an unintentional keystroke error. Compensatory interest is therefore remitted to the 90-day bank bill rate.

Example – Customs satisfied that error is inadvertent

The list of invoices provided by an importer’s overseas supplier is incomplete, but the importer does not notice that any invoices are missing, and provides the incomplete information to Customs. After the goods have been imported, the supplier notices their mistake and sends the missing invoices to the importer. The importer then contacts Customs to voluntarily disclose the error and provides copies of the emails from the overseas supplier to support their explanation of the error. Customs reviews the email evidence and is satisfied that the duty payer was not aware that an invoice was missing at the time of import. Compensatory interest is therefore remitted to the 90-day bank bill rate.

Example – Customs satisfied that error is inadvertent

An alcohol excise payer voluntarily discloses that they entered the wrong volume of alcohol removed on a recent excise entry, leading to a shortfall payment. They explain that it was a simple transposition error, e.g. they entered 3456 litres when the correct volume was 3546 litres. A review of the excise payer’s compliance history does not show any pattern of similar errors, so Customs is satisfied that the error is inadvertent. Compensatory interest is therefore remitted to the 90-day bank bill rate.

Example – Customs not satisfied that error is inadvertent

An alcohol excise payer voluntarily discloses a shortfall in duty in their latest excise entry. When Customs contacts the excise payer, they are unable to explain how the error was made, but insist that it was not a deliberate attempt to under-assess their duty liability. As no explanation has been provided, Customs cannot be satisfied that the error was inadvertent, so interest is charged at the standard underpayment rate.

Example – Customs not satisfied that error is inadvertent

An importer voluntarily discloses a few days after their deferred account was due for payment that they have under-assessed their duty liability. Customs contacts the importer, who explains that the error was due to a missing invoice. A review of the importer’s history reveals that they have repeatedly been making voluntary disclosures of this nature a few days after payment was deducted from their deferred account. Customs suspects that the importer is deliberately under-assessing duty, and then voluntarily disclosing the error, due to cash flow issues. The error is not accepted as inadvertent, and interest is charged at the standard underpayment rate.

Example – Customs not satisfied that error is inadvertent

A small alcohol excise payer voluntarily discloses a large shortfall in duty. Customs contacts the excise payer, who explains that the shortfall was due to a keystroke error, putting the decimal point in the wrong place on the excise entry.

Notes made by Revenue Management indicate that the excise payer had previously paid their duty late for several months in a row, and had explained that this was because they were having

difficulty repaying a bank loan. Customs suspects that the excise payer is deliberately under-assessing duty, and then voluntarily disclosing the error some time later, as a cheaper source of finance than the bank loan. The error is not accepted as inadvertent, and interest is charged at the standard underpayment rate.

Appendix 2

Remission and refunds of compensatory interest for emergency events

Guidelines

Introduction

Use these guidelines to determine whether or not you qualify for remission or refund of compensatory interest when you (the duty payer) applies for remission on the grounds of an emergency event.

Remissions and refunds of interest for emergency events

Under section 165, compensatory interest can be remitted, in full, if an emergency event physically prevents the duty payer from paying duty on time.

To be eligible for remission under section 165, the duty payer must meet the following requirements:

- an Order in Council (OIC) must have declared the event an emergency event for the purposes of section 165
- the duty payer must have been physically prevented from paying duty on time
- the duty payer must be a member of the class of persons prescribed by the OIC (if applicable)

Once the above requirements are met, remission may be granted if:

- the remission or refund must be equitable; and
- the remission/refund application and payment of the late duty must have been made as soon as practicable

Note: Remission or refund under section 165 only applies to compensatory interest. Remission of late payment penalties for emergency events should be considered under section 167 (reasonable excuse for late payment of duty).

Order in Council has declared the event an emergency event

The specific emergency events that qualify for remission or refund are prescribed by an Order in Council (OIC), for an emergency as defined under section 4 of the Civil Defence Emergency Management Act 2002. Check to see if there are any current prescribed emergency events here.

Duty payer physically prevented from paying duty on time

The duty payer must have been unable to pay the duty on time, because they were physically prevented from doing so. This could be because:

- the duty payer is unable to access their records – for example, through evacuation or destruction of a home or business; or

- the duty payer is unable to make payments – for example, due to extensive infrastructure damage that prevents any local movements, disrupts postal deliveries or damages phone lines.

Whether a duty payer was physically prevented from paying duty will depend on individual circumstances, and should be considered on a case by case basis. Where possible, supporting evidence should be provided, such as insurance reports, or confirmation from the relevant authority that the duty payer was affected by the event.

Example

A spill of a hazardous substance is declared as an emergency event by an OIC. As part of the emergency response, a cordon is erected to prevent access to the affected area. A duty payer's business premises are located within the cordon, and the duty payer is unable to access their business records, which are located on the premises. As a result, the duty payer cannot determine how much duty to pay.

The relevant authorities confirm to Customs that the duty payer's business premises were located inside the cordon. Customs grants remission, because the duty payer was physically prevented from paying duty on time.

However, if the relevant business records are all stored in the cloud, and can be accessed remotely, the duty payer is not physically prevented from paying duty.

Duty payer is a member of class of persons prescribed by the Order in Council

An OIC may specify that remission or refund is only available to a specific class, or classes, of persons. In practice, the class of persons will usually be defined simply as the duty payers who are physically prevented by the emergency event from making payment on time. However the OIC may also prescribe a narrower class of persons where circumstances warrant it.

Note that it is not a requirement for an OIC to prescribe a class of persons to whom remission or refund is available. If no class of persons is specified, remission or refund is available to all duty payers physically prevented by the emergency events from making payment on time.

Remission or refund is equitable

Customs must be satisfied that remission of the compensatory interest would be equitable. This means that the duty payer's personal situation makes it unjust or unfair not to remit or refund the interest. This will depend on the circumstances of each case, and Customs may use discretion to determine whether remission or refund would be equitable.

Customs should primarily give consideration to whether it would have been reasonable to expect the duty payer to have paid their duty on time, given their personal circumstances. The onus is on the duty payer to demonstrate that remission or refund would be equitable in their circumstances.

Example

An earthquake is declared as an emergency event by an Order in Council. As a result of earthquake damage, engineers deem a duty payer's business premises unsafe to enter. The duty payer is unable to access their business records to determine how much duty to pay. In this case,

it would be equitable to remit the interest, as the duty payer could not reasonably have been expected to make payment given the circumstances.

Assume instead that, a week after the earthquake, preliminary repairs have been completed and it is now safe to provide supervised access to the site. The site manager offers to accompany the duty payer into the building to retrieve the documents, but the duty payer does not make themselves available to do so. In this case, it would not be equitable to remit the interest, as it would have been reasonable to expect the duty payer to make themselves available to retrieve the records.

Remission/refund application and payment made as soon as practicable

The duty payer must pay the late duty in full, and make an application for remission or refund, as soon as practicable. “As soon as practicable” should be understood to mean as soon as feasible or realistic. This will depend on the circumstances of each case, and Customs may use discretion to determine when it would be reasonable to have expected the duty payer to pay the duty and apply for remission or refund.

Example

A storm is declared an emergency event by an Order in Council. As a result of the storm, internet and telephone services are not functioning and movements are severely restricted. As a result, a duty payer is unable to organise payment of duty by the due date. The duty payer organises payment as soon as possible after regaining internet and telephone services, and, soon after makes an application for remission of compensatory interest. Remission is granted, as the duty was paid and an application for remission made as soon as practicable.

However, if, after several months that internet and telephone services were re-established, a portion of the duty remains unpaid, or an application for remission has still not been made the compensatory interest cannot be remitted under section 165L, as either the payment of the duty or the application for remission was not made as soon as practicable.

Appendix 3

Remissions and refunds of late payment penalties for reasonable excuse

Guidelines

Introduction

Use these guidelines to determine, when you (the duty payer) apply for remission on the grounds of reasonable excuse for late payment of duty.

Remissions and refunds of penalties for reasonable excuse for late payment

Under section 167, a late payment penalty can be remitted if Customs is satisfied that, as a result of a relevant event, a duty payer has a reasonable excuse for not paying their duty before the penalty was incurred, i.e. at the close of the due date (one percent penalty), or the close of the seventh day after the due date (four percent penalty).

The duty payer must also have fully paid the late duty to Customs as soon as practicable, to be granted remission.

Reasonable excuse

A reasonable excuse for late payment must be the result of an event that was:

- beyond the duty payer's control, and
- could not reasonably have been anticipated or avoided by the duty payer.

In addition, Customs must be satisfied that the event provided the duty payer with a reasonable justification for late payment, i.e. it is reasonable for an average person in the duty payer's position to have paid late. This will depend on the circumstances of each case, and Customs may use discretion to determine whether the event provided a reasonable justification for late payment. Where possible, supporting evidence should be provided, e.g. insurance reports, police reports or medical certificates.

A reasonable excuse could include, but is not limited to:

- an accident or natural disaster
- illness or emotional distress.

A reasonable excuse cannot include the duty payer's financial position.

Example

A small alcohol excise payer does not make their monthly excise payment by the due date. Customs contacts the duty payer after the due date, with no response.

After a few weeks, the duty payer contacts Customs to advise that she has now made full payment, and the initial late payment was due to her daughter being involved in a serious car accident prior to the due date and she required surgery and intensive care. The duty payer spent weeks with her daughter to help with her recovery. A medical certificate and police report are

provided to support the application for remission. In this case, the duty payer had a reasonable excuse for late payment.

Example

A direct debit payment on an importer's deferred account was dishonoured. Customs contacts the duty payer to request payment, which is paid by direct credit the next working day. The duty payer advises that the dishonour was caused by the bank failing to transfer sufficient funds from the current account to savings account. The bank confirms this to Customs in writing. In this case, the duty payer had a reasonable excuse for late payment, as the bank's error was beyond the duty payer's control, and could not have been anticipated.

However, if the direct debit was dishonoured due to a change of staff, and the new staff member failed to load the payment on time the duty payer does not have a reasonable excuse for late payment, as they should have provided proper training and oversight to ensure the new staff member loaded the payment correctly.

Duty fully paid as soon as practicable

The duty payer must have paid the late duty in full as soon as practicable. The term "as soon as practicable" should be understood to mean as soon as feasible or realistic. This will depend on the circumstances of each case, and the officer should use their discretion to determine when it would be reasonable to have expected the duty payer to pay the duty.

Example

A duty payer's business premises are damaged during an earthquake. Engineers advise that the premises are unsafe to enter, and the duty payer cannot access their business records, so cannot determine how much duty to pay. A few weeks after the earthquake, the duty payer is informed that initial repairs have been completed, and it is now safe to enter the building under the supervision of the site manager to retrieve the records. To be eligible for remission, the duty payer must organise payment of the late duty as soon as possible after retrieving the records.

Appendix 4

Remissions and refunds of compensatory interest and late payment penalties for collection of highest net revenue over time

Guidelines

Introduction

Use these guidelines to determine, when you (the duty payer) apply for remission of compensatory interest and late payment penalties on the grounds that it would be consistent with the collection of the highest net revenue over time.

Remissions and refunds if consistent with collection of highest net revenue over time

Under section 170, Customs may remit or refund compensatory interest or late payment penalties if it is consistent with the chief executive's obligation to secure the collection of the highest net revenue over time.

In this context, the term 'inconsistent with the collection of the highest net revenue over time' means that collecting the interest and/or penalties would be unreasonable and inconsistent with the aim of promoting voluntary compliance.

This remission is intended to be used only in exceptional circumstances, due to a one-off situation beyond the duty payer's control. There is no obligation to remit under section 170, and each case should be considered on its merits.

Any decision to remit under section 170 must not:

- take the duty payer's financial position into account
- undermine incentives to voluntarily comply.

Also, as section 170 remissions are limited to exceptional circumstances, before granting remission Customs must:

- consider whether it would be more appropriate to remit the interest or penalty on any of the grounds for remission contained in sections 165-169
- get the decision reviewed by the Manager of Trade Assurance, Revenue Management, or Service Delivery.

Remission does not undermine incentives to voluntarily comply

The purpose of both compensatory interest and late payment penalties is to encourage compliance. Any decision to remit under section 170 must not set a precedent that would undermine incentives for voluntary compliance in the future. This means that to be granted remission, duty payers should have met all of their duty obligations as far as could reasonably be expected in the circumstances, including:

- paying the outstanding duty as soon as possible after becoming aware of an incorrect payment

- voluntarily disclosing an error as soon as it is discovered by the duty payer.

Examples

Note that these examples are provided as a guide only. Each case must be considered on its merits.

Duty payer relied on incorrect information from Customs

It may be appropriate to remit interest and/or penalties under section 170 if duty was underpaid as the result of Customs providing incorrect information, e.g. a Customs officer provided incorrect advice directly to a duty payer, or there was an error in a Customs publication.

However, Customs must consider the facts of the case, such as:

- when the information was corrected
- whether it would have been reasonable for the duty payer to rely on the incorrect information.

Unreasonable delay by Customs

It may be appropriate to remit a portion of compensatory interest if there was an unreasonable delay between Customs identifying a shortfall payment and notifying the duty payer, e.g. an audit is put on hold, but Customs fails to notify the duty payer of any shortfall payments already discovered and give them an opportunity to settle the debt.

Only the portion of compensatory interest incurred due to the unreasonable delay should be remitted.

Customs must consider the facts of the case, such as:

- whether there was a valid reason for the delay
- whether the delay could have been prevented by any action on the part of the duty payer.

Third party default

Compensatory interest should not normally be remitted if the interest or penalty was incurred as a result of a default by a third party, e.g. the duty payer's agent/broker. In these circumstances, the duty payer should seek compensation from the third party.

Late payment penalties would not normally be remitted under section 170 in this case either, as it would likely be more appropriate to remit the penalty under section 167 (reasonable excuse for late payment).