

Regulatory Impact Statement: Customs and Excise Act Review: Regulations: Drawback

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the New Zealand Customs Service (Customs).

It provides an analysis of options relating to the refund of import duty when goods are then exported (called drawback) to ensure the continuity of late and periodic drawback opportunities for exporters when the Customs and Excise Bill is enacted.

There are no constraints on the analysis.

Signed by Anna Cook on 31 July 2017

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31 July 2017

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Executive summary

- 1 Drawback situations occur when duty is paid on imported goods which are later exported. In these cases the importer or manufacturer has originally paid duty on the basis that the goods will be consumed in New Zealand. The subsequent export of these goods provides grounds for a refund of duty by way of a drawback.
- 2 Drawbacks are allowed under the current Customs and Excise Act 1996 and the Customs and Excise Bill (the Bill). The Bill stipulates that 'a claim for drawback may be made with the export entry of the goods under s89 or at any other prescribed time' (s149(2)).
- 3 To support the export industry, Customs allows drawbacks in two circumstances other than at the time of export. These are:
 - Late drawbacks, which usually occur through an error or omission on the part of an exporter after goods have been shipped overseas
 - Periodic drawbacks, which allow an exporter to claim a drawback on multiple exports occurring over an agreed period (usually one to three months, depending on the circumstances of the exporter).
- 4 Regulations providing timing and conditions for late and periodic drawbacks will need to be made under the Customs and Excise Regulations 1996 (the regulations) to ensure that Customs can continue to support exporters in these ways.
- 5 Regulation 68(1)(a) states that the deadline for a standard drawback is six hours prior to the shipping of goods. This is inconsistent with the usual practice of claiming a drawback as part of an export entry (which has a deadline of 48 hours prior to shipping), and with the default timing of a drawback under the Bill. To avoid confusion, it is proposed that this regulation is revoked, allowing the default timing in the Bill (drawback to be made at the time of export entry) to take effect.

Status quo and problem definition

- 6 Drawback situations can occur when duty is paid on imported goods (including components for New Zealand made products) and other excisable goods manufactured in New Zealand, which are later exported. In these cases the importer or manufacturer has originally paid duty on the basis that the goods will be consumed in New Zealand. The subsequent export of these goods provides grounds for a refund of duty by way of a drawback. In practice drawbacks mainly comprise excise or excise-equivalent duty, and some GST. A claim for drawback is generally made to Customs at the same time as an export entry is lodged.
- 7 The Bill continues to make provision for drawback claims. Unlike the current Act, the Bill states that drawback must be made at the time of export entry, or at any other prescribed time (in regulations). The Bill does not explicitly allow for late or periodic drawback.
- 8 Customs' operational policy allows later drawbacks to be made where an exporter omits for some reason to make a claim by the standard drawback deadline in regulation 68(1)(a) or where an approved exporter makes a periodic drawback covering multiple export entries.
- 9 Regulation 68(1)(a) states that the deadline for a standard drawback is six hours prior to the shipping of goods. This is inconsistent with the usual practice of claiming a drawback as part of an export entry (which has a deadline of 48 hours prior to shipping), and with the default timing of a drawback under the Bill.
- 10 The current regulated timeframe and its inconsistency with the Bill will create legal uncertainty for processing drawbacks when the Bill is enacted.
- 11 Exporters claim about \$35 million in drawback per year. About \$15 million of this amount is claimed through periodic drawback agreements, with about 50 exporters using this facility. Further, 30 – 40 late drawback claims are made each year. These make up a very small percentage of the total drawback claimed.
- 12 If exporters are unable to claim a late drawback they will suffer monetary loss. This could disadvantage some exporters, and is inconsistent with the government's agenda to promote export markets. If exporters are unable to claim periodic drawbacks, this will increase compliance costs as they will need to claim drawback for each export rather than a single drawback covering multiple exports.

Objectives

- 13 This Regulatory Impact Statement (RIS) provides an analysis of options to support the change in drawback provisions under the Bill.
- 14 Options were considered against the criteria of avoiding financial impacts on exporters, minimising compliance costs and providing flexibility for exporters by maintaining the ability to claim late and periodic drawback when the Bill is enacted.
- 15 Non-regulatory options were not considered because the Bill requires conditions and timing for drawbacks to be prescribed in regulations.

Options and impact analysis

16 Customs considered the following regulatory options:

Option 1: status quo – no amendments are made to the current six hour regulatory deadline, no provision for late or periodic drawbacks

- 17 If no regulations are made under clause 149(1) and (2) of the Bill, the regulated deadline for a drawback would remain at six hours before shipping, while current practice and the Bill provide for drawbacks to be made at the same time as an export entry (which has a deadline of 48 hours prior to shipping). The current regulation would be inconsistent with the Bill and the current practice of filing a drawback claim as part of an export entry.
- 18 The absence of the ability to claim late drawbacks will impact on the 30 - 40 applicants a year that make late drawback applications and the 50 exporters that have approval make periodic drawbacks. This will result in a monetary loss for some exporters and additional compliance costs for others.

Option 2: revoke the current six hour regulatory deadline, and continue late and periodic drawbacks under prescribed conditions and times (preferred)

- 19 Under this option, the current six hour regulatory deadline would be revoked, thereby aligning the timing of a drawback with current practice and the default drawback timing provision in the Bill (at the time of the export entry). Regulations would also be made to continue late and periodic drawbacks for exporters, to align as far as possible with current practice and operational policy.
- 20 For late drawbacks an exporter would be able to make a drawback claim up to four years¹ from the date of the relevant export entry, provided that the chief executive of Customs is satisfied with evidence supporting:
- the amount of duty originally paid on the goods
 - the shipment of goods to an overseas destination
 - reasons given by the exporter for a late drawback application, and in consideration of
 - any other matter that is reasonable in relation to the drawback application.
- 21 For periodic drawbacks an approved exporter would be able to make a drawback claim for all exports made during a period not exceeding three months, provided the chief executive of Customs is satisfied with evidence that:
- filing a drawback with an export entry would be unduly onerous on the exporter, given the volume of exports

¹ Most late drawbacks are made within a year of the relevant export entry, and only on very rare occasions exceed this. The four year deadline aligns with other statutory limits in the Bill, including refunds of duty made in error.

- the exporter has an acceptable record of compliance with Customs requirements
- the exporter has documented systems in place to account for, track and demonstrate that each periodic drawback was the correct amount for the permitted period, and that
- the exporter agrees to any conditions that the chief executive of Customs may reasonably require in granting permission for periodic drawbacks.

Impacts

- 22 The preferred option will effectively preserve the opportunity for exporters to make late and periodic drawback claims and prevent an adverse impact when the Bill is implemented.

Conclusions and recommendations

- 23 Option 1 (status quo) did not meet the assessment criteria. Option 2 (revoke the current six hour regulatory deadline, and make regulations to continue late and periodic drawbacks under prescribed conditions and times) is recommended. Option 2 avoids adverse financial impacts on exporters, and will minimise compliance costs and provide flexibility for exporters making drawback claims.

Consultation

- 24 The following private sector organisations with an interest in drawbacks were consulted: Retail NZ, Rigby Cooke Lawyers, ExportMe Consultancy, Tatua Co-operative Dairy Company, DHL New Zealand, Fonterra Co-operative Group Limited, Business New Zealand Inc, Customs Brokers and Freight Forwarders Federation of New Zealand Inc, LPG Association of New Zealand Ltd, Contact Energy Ltd, The Todd Corporation Ltd, Todd Energy Ltd, Z Energy, Gull New Zealand Ltd and Terminals (N.Z.) Ltd, BP, Mobil, Refining NZ, Wiri Oil Services Ltd, New Zealand Winegrowers, Spirits NZ, Fruit Wine & Cider Makers New Zealand, Brewers Association of Australia & New Zealand, Brewers Guild of New Zealand, Pernod Ricard Winemakers, Cider Bulmer Harvest, WineWorks Marlborough, Lion Pty Ltd, Anchor Ethanol Ltd, New Zealand Food & Grocery Council, Tuatara Brewing, Independent Liquour, Constellation Brands NZ Ltd, DB Breweries Ltd, Russell McVeagh, Blackburn Croft & Co Ltd, Imperial Tobacco New Zealand, British American Tobacco (New Zealand) Ltd, Philip Morris (New Zealand) Ltd, Kuehne + Nagel Ltd. The preferred option was supported by those that provided feedback.
- 25 The Treasury, Ministry of Transport, the Ministry of Business, Innovation and Employment, the Police, the Ministry of Justice, the Office of the Privacy Commissioner, the Department of Prime Minister and Cabinet, and Inland Revenue were consulted on the proposal.
- 26 A concern was raised by Inland Revenue about the possibility of GST registered persons claiming twice for a duty refund (once as a business expense and again as a drawback). Customs does not currently allow this, and there is no intention to change this policy setting for drawbacks (late or otherwise) in the future.

Implementation plan

- 27 The Bill is currently before the House having been reported back from Select Committee.
- 28 The plan for the implementation of the Bill includes a comprehensive plan for seamless transition to the new arrangements, including the development of operational guidelines and staff training. The new regime will apply as of commencement of the legislation (currently planned to be 1 April 2018).
- 29 There are no implementation risks which require further special action to mitigate them.
- 30 There will be a communications plan associated with the passing of the Bill to publicise the changes. A further enforcement strategy is not required.

Monitoring, evaluation and review

- 31 An evaluation and review process will be established by Customs after a period of implementation of the legislative amendments. Monitoring will be built into normal reporting and assurance (including audit) functions.