

# **Regulatory Impact Statement: Customs and Excise Act Review: Regulations: Nil returns for excisable alcoholic products manufactured in New Zealand**

## **Agency Disclosure Statement**

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

It provides an analysis of options to give effect to the nil excise returns provisions in clause 82 of the Customs and Excise Bill.

The impacts discussed in this paper are on Customs Controlled Area licensees holding alcoholic products, and Customs in its role of managing the collection of excise.

The following are constraints on the analysis: Customs has no robust evidence as to current levels of excise compliance among liable Customs Controlled Area licensees. Therefore it is not in a position to quantify the likely benefits of the proposed regulations.

*Signed by Anna Cook on 31 July 2017*

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Director Policy

31 July 2017

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## Executive summary

- 1 Clause 82 of the Customs and Excise Bill (the Bill) makes provision for a new requirement on Customs Controlled Area (CCA) licensees holding domestically manufactured excisable goods. The Bill requires nil return entries for specified goods 'held in' a CCA, where none of the goods are removed from the CCA for home consumption during a prescribed period. The intent of the Cabinet Economic Growth and Infrastructure Committee (EGI) was to subject CCA licensees holding specified alcoholic products to nil return provisions [EGI – 15 – MIN – 0129 refers]. The particular circumstances and timing are to be prescribed in regulations.
- 2 This Regulatory Impact Statement (RIS) provides an analysis of options to ensure that regulations for nil returns give effect to the policy intent of the nil return provisions in the Bill (i.e. improved excise compliance in the alcohol industry).
- 3 The recommendations in this RIS are to require licensees who are holding specified alcoholic products in their CCA that have not been removed for home consumption to file a nil return for alcoholic products based on their liable filing cycle. Those with no liable filing cycle would file annually.



## Status quo and problem definition

- 4 CCA licensees are required to submit excise returns and pay excise in accordance with their annual excise liability. About 700 returns are submitted to Customs annually. Almost 50% of returns are made on an annual basis, with about 40% made monthly. The balance is made up of six monthly returns.
- 5 The timing for excise entries is specified in the Customs and Excise Regulations 1996 (the regulations). Monthly, six monthly and annual filing periods are prescribed based on the amount of estimated excise liability for the year (those with higher levels of liability file more frequently for example).
- 6 Licensees holding an inventory of excisable goods, but not releasing them, are under no obligation to make an entry. Clause 82 of the Bill, however, makes provision for a return or entry to be made in the event that goods are held in a CCA, with the particular circumstances and timing for nil returns to be prescribed in regulations.
- 7 The purpose of this provision in the Bill is to improve excise compliance by the following means:
  - having to make an entry, even when not releasing excisable goods, arguably promotes better routines and improved compliance on the part of licensees
  - the information from nil returns allows Customs to focus its follow-up work on a smaller number of non-filing licensees, thereby enabling a faster response to non-compliance.
- 8 The nil return provisions apply to all excisable goods manufactured in New Zealand, under prescribed circumstances, and for prescribed periods. Unless circumstances are prescribed to specifically target the manufacturers of alcohol, fuel and tobacco manufacturers will not be excluded from this requirement. It was the EGI's intent to include alcohol in this requirement only. A prescribed timeframe is also necessary to bring the requirement into effect.

## Objectives

- 9 To set a time period for nil returns that promotes voluntary compliance.
  - 10 This Regulatory Impact Statement (RIS) provides an analysis of options against the following criteria to ensure that regulations for nil returns:
    - have no undue on-going compliance costs for manufacturers
    - have a clear, simple and cost-effective implementation pathway
    - maintain current arrangements for fuel and tobacco.
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## Options and impact analysis

- 11 Customs considered the following regulatory options:

**Option 1: status quo - no timing or circumstances for nil returns are specified in regulations**

- 12 The intent of EGI was to subject CCA licensees holding specified alcoholic products to nil return provisions [EGI-15-MIN-0129]. The Bill, however, provides for domestically manufactured excisable goods to be included in nil return requirements unless particular circumstances are prescribed. In the absence of prescribed circumstances, fuel and tobacco licensees could inadvertently be drawn into this requirement where they are holding but not removing goods for home consumption.
- 13 The Bill also makes no reference to a default timing for nil returns. The absence of prescribed timing in regulations will result in an uncertain legal basis for when a nil return must be entered.

**Option 2: nil return for specified alcoholic products based on liable filing cycle**

- 14 This option would confine the nil returns requirement to CCA licensees holding alcoholic products, and who have an existing liable filing cycle. It would not capture those who do not have such a cycle, but who hold alcoholic products. These licensees would be required to file a nil return at the time that they would otherwise have filed a liable entry. This means that cycles for liable and nil returns would be based on the current annual excise liability of:
  - \$50,000 or less (annual return)
  - more than \$50,000 and less than \$100,000 (six monthly return)
  - more than \$100,000 (monthly return), or
  - monthly where this is otherwise required (new licensees for example).
- 15 By locking the nil return requirement to the liable filing cycle of a licensee, this option would promote more regular filing routines for licensees holding and removing alcohol during the course of a year. It would also reduce follow-up work by Customs to identify the reasons for the absence of an excise entry. The form used for making a nil return would be the same as that required for a liable excise entry, thereby minimising the impact on the alcohol industry.

**Option 3: nil return for alcoholic products based on liable filing cycle and annually for those with no liable filing cycle (preferred)**

- 16 This option would incorporate all the provisions of option 2. In addition, an annual nil return would be required in instances where a CCA licensee was holding alcoholic products at any point during the course of a year but removing none for home consumption during that year. An annual entry period is the same period as that required of licensees removing alcoholic products with less than \$50,000 excise liability per annum.
- 17 This option would encourage regular excise return filing practices across a broader range of licensees than option 2. It would also provide certainty for Customs as to the status of a greater number licensees holding (but not removing) alcoholic products from their CCAs.



## Impacts

18 The preferred option would have the following impacts for licensees holding alcoholic products, and for Customs.

<b>Impact on licensees with an excise liability of \$100,000 or more</b>	Minimal – It is likely the majority will be making an entry as goods are likely to be removed for home consumption each month. The compliance cost for making a nil return if they did not remove any goods for home consumption would be minimal as the form for making a nil return is the same as that for declaring an excise liability.
<b>Impact on licensees with an excise liability of more than \$50,000 but less than \$100,000</b>	Minimal – It is likely the majority will be making an entry as goods are likely to be removed for home consumption six monthly. The compliance cost for making a nil return if they did not remove any goods for home consumption would be minimal as the form for making a nil return is the same as that for declaring an excise liability.
<b>Impact on licensees with an excise liability of \$0-\$50,000</b>	Minimal - most will be making an end of year entry in any case as goods are likely to be removed for home consumption. The compliance cost for making a nil return if they did not remove any goods for home consumption would be minimal as the form for making a nil return is the same as that for declaring an excise liability.
<b>Impact on licensees who are holding but not releasing goods in a given year</b>	Minimal – licensees holding but not removing goods in a given year will need to make one return for the year ending 30 June, by 15 July – the same as those releasing goods with excise liability of less than \$50,000.
<b>Impact on Customs</b>	Licensees will be brought into a more regular reporting cycle, which promotes improved compliance. A wider range of licensees will provide excise entries, thereby giving Customs more certainty about the status of licensees and assisting enforcement. The process, forms and information technology for receiving and entering nil returns will be the same as those for making entries where liability is incurred, which will minimise implementation and ongoing operational costs.

## Consultation

19 Customs undertook targeted consultation with the following stakeholders with an interest in, or likely to be affected by, the nil returns provisions: 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. The proposal was supported by those who responded.

- 20 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 the Prime Minister and Cabinet, and Inland Revenue were consulted on the proposal. No concerns were raised by these agencies.

## Conclusions and recommendations

- 21 In the absence of regulations specifying a return period, the nil return provisions will not be brought into effect. If a period is specified, but the circumstances are not, this will have the unwanted effect of drawing fuel and tobacco manufacturers into the requirement. Option 1 is therefore rejected. Option 2 is not preferred because it only captures those with a liable filing cycle.
- 22 Option 3 limits the nil return requirement to alcohol manufactures, aligns the nil return filing period with liable filing cycles, and applies an annual return requirement on those holding but not releasing alcoholic products in a given year. For these reasons, Customs recommends Option 3.

## Implementation plan

- 23 The Customs and Excise Bill is currently before the House having been reported back from Select Committee.
- 24 The plan for the implementation of the Customs and Excise 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).
- 25 There are no implementation risks which require further special action to mitigate them.
- 26 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

- 27 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.
- 28 Once licensees are entering nil returns, compliance can be monitored from Customs' Trade Single Window IT system on excise payees and amounts paid. Standard audit procedures will check the validity of the entries.