

Storage of business records

Operational Policy

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About this policy

Introduction

1. This policy outlines the intent and purpose for allowing authorised people, or third party storage providers, to store records outside New Zealand.

Related documents

2. Use this operational policy in conjunction with the following documents:

Document name	Document type
Authorise storage of records outside New Zealand	Process and procedures
Amend or withdraw authorisation for storage of records outside New Zealand	Process and procedures

Overview

3. The Customs and Excise Act 2018 requires that licensees of Customs-controlled Areas, importers, exporters, agents (of an importer, exporter or licensee), and authorised certification bodies store business records for seven years. This is so Customs can perform its data verification and revenue assurance functions for the Crown.
4. Records must be stored in New Zealand, unless a person has been authorised by Customs to store records outside New Zealand, e.g. store records in the 'cloud' on servers located outside New Zealand.

Storage of records outside New Zealand

5. Allowing authorised people to store business records outside New Zealand ensures that businesses can take advantage of modern and cost effective storage methods, while balancing the ability for Customs to access records to conduct data verification and its revenue assurance functions.
6. Not all people are permitted to store records outside New Zealand; they must be authorised to do so, or they must store their records with an authorised third party. Third party storage providers can be authorised to store records outside New Zealand on behalf of their clients. This reduces the compliance burden for traders, and reduces the administrative burden for Customs as one storage provider may operate systems that store many traders' records. Customs must be satisfied that records are stored in an acceptable format and readily accessible.

Situations when authorisation is not required

7. Customs considers that the requirement to store the records in New Zealand is satisfied and an authorisation is not necessary if:
 - 7.1. a backup of the records is retained in New Zealand
 - 7.2. the records to be stored outside New Zealand are a backup of the records held in New Zealand
 - 7.3. an individual is using an authorised third party storage provider to store their records.

Customs can set terms, conditions and restrictions

8. When authorising storage of records outside New Zealand, Customs can set any terms, conditions, or restrictions it considers appropriate. The need to impose conditions is determined on a case by case basis.
9. Some examples of conditions that can be set are how records must be stored (e.g. the format or file type), how Customs' access to records can be obtained (e.g. through an electronic device based in New Zealand), and the timeliness for providing information (e.g. information requested by Customs must be provided within a defined period of time).
10. Customs can vary these terms, conditions or restrictions by amending the authorisation letter and resending it to the authorised party.

Criteria for authorising storage of records outside New Zealand

11. Customs can authorise an individual person or business to hold their own records outside New Zealand, or another third party (such as a storage provider or cloud service provider) to store records outside New Zealand for multiple people or businesses.
12. Customs uses the same criteria as the Commissioner of Inland Revenue for assessing whether a person or third party should be authorised to store records outside New Zealand. Those criteria are outlined in the Application Form: Application to store records outside New Zealand. This supports consistency by government agencies, which aims to reduce the compliance burden for traders.

Records can be stored electronically

13. Requirements under the Contract and Commercial Law Act 2017 apply to electronic records stored both inside and outside of New Zealand, either on a person's own electronic storage system or on an outsourced system. Records can be stored electronically as long as the requirements of the Contract and Commercial Law Act 2017 are met:
 - the integrity of the information contained in the records is to be maintained, and
 - the information is readily accessible so as to be usable for subsequent reference.

Failure to comply

14. Under the legislation there are actions Customs can take if a person fails to comply with their obligations to keep and provide access to records.
15. If a person fails to keep records in New Zealand or keeps records outside New Zealand without authorisation, or fails to provide access to records, Customs may prosecute, however it is possible that the person will be issued with a warning and advised to apply for authorisation in the first instance.
16. If a person fails to comply with any terms, conditions or restrictions Customs places on an authorisation Customs may withdraw the authorisation.

REFERENCES

Customs and Excise Act 2018

- [Section 354](#): Keeping of records
- [Section 355](#): Application to keep records outside New Zealand
- [Section 356](#): Offences in relation to records
- [Section 358](#): Offences in relation to failure to give Customs access to records

Customs and Excise Regulations 1996

- Regulation 20B: Access to business records

Tax Administration Act 1994

- Section 22: Keeping of business and other records

Contract and Commercial Law Act 2017

- Subpart 3, Part 4: Application of legal requirements to electronic transactions