SO WHAT DOES THE NEW ACT DO?

The new legislation commences on 1 October 2018. Customs will be providing guidance and self-help education material before then to assist stakeholders and customers understand and comply with the new Act.

Modernisation

The new Act:

- creates the framework to easily update Customs' processes so that they are appropriate for the modern business environment and can be adapted as that environment evolves
- removes ambiguity and reduces red tape
- establishes a number of new or enhanced services for Customs
- provides greater clarity and transparency and reduces compliance costs, while providing a balance between individual rights and protection of the country
- supports economic growth by making it easier for traders to do business
- supports greater information sharing between Customs and other agencies.

For the new services, there are two streams of change. One means major improvements for business and one clarifies and updates a number of sanctions and penalties.

Major improvements for business

Provisional values

Where there is valid reason for not being able to establish the Customs value of goods at the time of import, an importer can now look at declaring a provisional value at the time of import and then declaring the final Customs value once all the required information is available. The provisional values scheme covers two groups of importers, being those:

- that automatically qualify to use provisional values; or
- that have applied and been approved to use provisional values.

The automatic qualification is split into the following groups:

- the importer is party to a transfer pricing agreement for the supply of their imported goods and has a binding ruling in place with Inland Revenue and, as a result of that agreement, it is not possible for the importer to finalise the value of their goods on importation
- the Customs value of the imported goods is determined under the Transaction Value Method, and there are royalty or licence fees payments (which may not be able to be finalised at the time of importation) to be added to the transaction value
- the Customs value of the imported goods is determined under the Transaction Value Method, and there are proceeds of any subsequent resale, disposal or use of the goods, that are to be accrued to the seller.

Once a provisional value has been declared, the importer will be required to declare the final Customs value within the specified timeframe, which is based on the end of the importer's financial year plus 12 months.

Customs and Excise Act 2018

Valuation rulings

Customs rulings are now being expanded to include valuation matters. This will allow an importer to request that Customs make a binding decision on how to establish the Customs value for their goods. This service will be time bound, with the maximum timeframe for Customs to issue this type of ruling being 150 days. Customs will be cost recovering for the time spent working on the ruling application.

> **Note:**
> The current Customs rulings provided are for tariff classification of goods, excise classification of goods, interpretation of a tariff concession and the origin of goods.

Storing business records

The ability to store records offshore or in the cloud is in line with modern business practice, and aligns with Inland Revenue. Those wanting to do this must be authorised to do so, or store their records with an authorised third party. There are three circumstances where an authorisation is not required:

- a backup of the records is retained in New Zealand
- the records to be stored outside New Zealand are the backup of the records held in New Zealand
- an individual is using an authorised third party storage provider to store their records.

Excise

In addition to the changes brought into effect in 2017 via Regulation, Customs is further updating its Excise system by making a number of small enhancements:

- a licensee will be required to lodge a nil return when, in a period, they have goods in their CCA they have manufactured but have not released for home consumption
- an additional collection point for fuel excise has been added to account for the practice of blending at tank farms. It will enable the calculation of additional volume from blending of butane, slops, other additives, and original dutiable motor spirit
- as with Alcohol, specific fuel excise plans will replace the former procedure statement and will accompany a fuel excise licence
- clarifies the circumstances where goods moved from one Customs-controlled area to another may be considered to have remained in Customs' control. Generally, goods that have left the control of Customs are not eligible for refund, remission, drawback of duty, or a duty credit.

JBMS competency requirements

A new requirement for traders, or their representatives, to maintain a level of competency to retain their registration privileges*. As with all the other services, clear guidance material is under development and will be provided to business and their advisors.

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Modernisation of Legislation

New legislation that is more transparent, better supports compliance, and can be adapted as the business environment evolves

Clarity of sanctions and penalties

Compensatory Interest and Late Payment Penalty
A more proportionate compensatory interest and penalty regime for late and shortfall payments of duty

Administrative Penalties
Clarification of level of penalties and the circumstances when a penalty will apply

Infringement Notices
The petty offences regime ends at 1 October 2018.
The infringement notice scheme will be introduced on 1 April 2019, with education provided from 1 October 2018

Comptroller's discretion
The Comptroller or their delegate will have explicit statutory discretion applying to the making and correcting of assessments and collecting duty

Major Improvements for Business

Provisional Values
Will allow importers to declare a Customs value at the time of import with exact value to be disclosed within a timeframe

Valuation Rulings
Can now obtain binding rulings on value-cost recovered

Storing Business Records
Can now store records in the cloud and offshore

Excise Changes
Changes that make complying with Excise requirements easier to do

JBMS
Users now required to maintain a level of competency to obtain and retain registration

Administrative Review

Gives the right to use an internal review process where you are dissatisfied with an assessment of duty or the issuing of a penalty before making an appeal to the Customs Appeal Authority

WHAT IS THE NEW CUSTOMS AND EXCISE ACT 2018 AT A GLANCE?

Tear off reference card

Clarification to Sanctions and Penalties

Compensatory interest and late penalties
The compensatory interest and late penalties payment scheme replaces the additional duties regime. It is based on Inland Revenue's use of money interest and will apply in the same way to both importers and excise producers. Late penalties may be remitted in specific circumstances, and compensatory interest may be reduced or remitted, in specific circumstances.

Administrative penalties
Administrative penalties have been extended to include export entries, and the penalty for material errors or omissions is $200.00. If the error resulted in a shortfall of duty being paid or declared, or excess drawback being claimed, the penalty is 20% of the undeclared duty or excess drawback, capped at a maximum of $20,000 for lack of reasonable care; 40% capped at $35,000 for gross carelessness; and 100% capped at $50,000 for an error made knowingly.

Infringement notice scheme
Customs is implementing a new infringement notice scheme for minor offending to replace the petty offences regime. It will be a more efficient method for Customs to deal with deliberate noncompliance. The petty offences regime ends at 1 October 2018. The infringement notice scheme will be introduced on 1 April 2019, with education provided from 1 October 2018.

Comptroller's discretion
The Customs Comptroller (chief executive) or their delegate, will have explicit statutory discretion applying to the making and correcting of assessments and collecting duty.

What happens if you do not agree with Customs?

To make dispute resolution simpler and easier to use, the legislation introduces a new level internal review.

Administrative reviews
The purpose of the new administrative review process is to reduce barriers and allow duty payers to make an initial appeal to Customs for a formal review and resolution on small value disputes. Reviews can be sought for duty assessments, administrative penalties, and in relation to compensatory interest and late penalty payments. Applicants can still appeal to the Customs Appeal Authority if dissatisfied with the administrative review decision.

What do you need to do?

From July 2018, Customs will provide information to help businesses to become familiar with, and make any necessary changes, to comply with the new Act requirements, before it goes live on 1 October 2018.

Over August and September, we recommend businesses allow time and other resources to put in place any changes to their business practices and train staff if they are affected by changes. Businesses are responsible for managing any changes they need to do, prior to 1 October, to meet their new compliance obligations.

Where can you go to for help?

Public information and self-help education materials about the new Act will be available on the Customs website from July at customs.govt.nz

In the meantime, if you have a query, please contact the Customs and Excise Implementation team by emailing:
CustomsActImplementation@customs.govt.nz

Note:
*The 1 October 2018 implementation date is different to the 1 July 2018 date for Trade Single Window (TSW) WCO3 Mandatory Adoption. 1 July 2018 is the mandatory date for moving on to the WCO3-format for cargo reporting and clearance messages, or have a clear plan for switching over before the deadline, except the Inward Cargo Report (ICR) which is dependent on completion of a pilot phase. There is more information on the Customs website www.customs.govt.nz/business/trade-single-window/latest-news/tsw-mandatory-date/

NEW ZEALAND CUSTOMS SERVICE
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