



# KPMG Tax Chat



## The new Customs Act – A recipe for non-compliance?

The 'new' Customs and Excise Act is almost upon us! The most recent guidance from Customs indicates that the new Act will likely be in force from 1 October 2018.

The new Act introduces a number of changes to New Zealand's customs law, which are mostly business friendly, but there are some fishhooks that can be missed. One of these fishhooks relates to post-importation valuation adjustments.

This is of particular interest to importers that are part of multinational groups, where there may be additional charges payable to related parties after the goods have been imported, e.g. year-end transfer pricing adjustments are common post-importation valuation adjustments.

### So what's changing?

Under the current Customs procedures (the "old regime"), post importation adjustments are normally disclosed by filing regular reconciliations (usually annually) or by filing a voluntary disclosure to Customs. Once the reconciliation / disclosure is accepted, Customs issues a confirmation letter and an assessment if there is any additional GST and duty resulting from the adjustment.

The 'new' Customs Act on the other hand, introduces a 'provisional value' scheme for making post-importation adjustments. In a nutshell, the scheme allows 'eligible' importers to declare a provisional import value when the goods are initially cleared for import and then 'true-up' the value declared at a later time (within a prescribed timeframe) when all the information required to finalise the value is available, e.g. when the amount of the year-end transfer pricing adjustment is known.

At first glance, the change appears to be only procedural, and therefore should not create a different outcome for an importer that makes a post-importation adjustment under the new Act. This would be true for importers that make the adjustments under the provisional value scheme, but herein lies the fishhook under the new rules: not all importers that have post-importation adjustments may be able to.

There is an eligibility criteria under the new Act which must be met in order for an importer to apply the provisional value scheme. Briefly, these criteria divide importers into three groups:

- 1) Importers that have advanced pricing agreements
- 2) Importers that have valuation adjustments relating to certain prescribed additions (e.g. royalties, license fees) which are unknown at the time of import
- 3) Importers that get approval from Customs to apply the provisional value scheme (i.e. the 'all other importers bucket').

The first two categories of importers have an automatic right to apply the provisional value scheme (although we understand there may be an initial registration requirement), but all other importers wishing to apply the provisional value scheme will have to rely on Customs' discretion. If an importer cannot get into the provisional value scheme, then their fallback option for disclosing a post-importation adjustments is to file a voluntary disclosure.

### **“So what?” you might ask?**

If an importer cannot apply the provisional value scheme and discloses a post-importation adjustment by lodging a voluntary disclosure, then under the new Act, it will be subject to an interest charge on the resulting GST and duty shortfall. This creates additional costs to an importer from disclosing the adjustment under the new Act which was not present under the old regime. This is not only an issue for the importer however, but also for Customs as it creates a disincentive for importers to continue to disclose post-valuation adjustments under the new Act, i.e. a non-compliance risk.

There are ways to manage the cost and risk on both sides.

For Customs, we would encourage them not to be too restrictive in applying their discretion in allowing importers into the provisional value scheme, as this would promote voluntary compliance. The concern from Customs may be that importers will abuse the scheme by declaring an artificially lower provisional value initially in order to delay paying the GST and duty; however, we think the risk of this happening in practice is low for two reasons.

- Importers that would apply to get into the scheme would be, by and large, importers that want to be fully compliant. Logically, if an importer wanted to game the system, you would think that they would try to fly under the radar, and applying to get into the provisional value scheme would do exactly the opposite.
- There are very strong deterrents under the Customs Act (i.e. financial penalties and in the extreme cases, imprisonment) that would make even the most aggressive importers (let alone the compliant ones) think twice about gaming the system.

For importers, their first point of call would of course be to try to get approval into the provisional value scheme (which we hope all importers that have a genuine need to apply the scheme will be able to get). Failing this, importers will need to be more pro-active in monitoring and disclosing any post-importation adjustments as soon as they are known, so any potential interest costs are minimized - not an easy task especially when you're part of a multinational group where multiple layers of approvals may be needed to file a simple disclosure with the Customs authority!

Going back to the question raised in our title heading: Are the new rules and procedures for making post-importation adjustments under the new Act a recipe for non-compliance? A cynic would say “yes”, but we are more optimistic and think not, but only if importers and Customs work together to ensure that the new scheme works.



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