KPMG Centre
18 Viaduct Harbour Avenue
P.O. Box 1584
Auckland
New Zealand

Telephone +64 (9) 367 5800
Fax +64 (9) 367 5875
Internet www.kpmg.com/nz

New Zealand Customs Service
Via email (C&EReview@customs.govt.nz)

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1 May 2015

Dear Sir or Madam

Submission: Review of the Customs and Excise Act 1996

KPMG welcomes the opportunity to submit on the 'Customs and Excise Act 1996 Review – Discussion Paper 2015' ("the discussion paper").

KPMG agrees that the review of the Act is important in order to ensure the effective protection of New Zealand's borders and improve the facilitation of trade and travel in and out of New Zealand.

Executive summary

KPMG supports the move to a principles based act. We believe that the discussion paper presents an opportunity to modernise Customs' role in New Zealand and position the organisation and processes for the demands of the 21 century.

We believe the review of the Customs and Excise Act would be enhanced through a more top-down framework driven approach. In the broader context, three areas would help inform this framework:

- Customs 2020 – the vision for Customs for "Protecting and promoting New Zealand through world class border management."
- The Government's Business Growth Agenda which has supporting the growth of export markets as a key feature.
- The Government's results areas identified for the improvement of public sector performance particularly results areas 9 and 10 relating to improved digital services and greater co-ordination and co-operation across Government agencies. In particular there are significant reforms underway affecting other agencies that impact the border and business interaction with Government which could help inform the Customs and Excise Act design.

Our submissions address the areas we believe could be usefully addressed in this framework and in enhancing the coherence of the proposals contained in the discussion paper.

We also provide submissions on the modernisation of the excise regime to reflect modern commercial realities. The current processes are labour intensive and updating these and providing flexibility for the future would be consistent with the goals for the review of the Act.

We have identified a number of areas which we submit should be included in the Act rewrite because they will directly contribute to creating a trade enabling framework. They will do this by:

- Enhanced transparency by publication of Customs views on technical matters.
- Rulings or other forms of advanced audits to provide upfront certainty.
- Greater linkage with transfer pricing methodologies and processes used for income tax purposes – this is a potentially significant opportunity in terms of meeting the Government's results area targets.
- Providing a formal framework for transactions value adjustments to reduce the workload for Customs and take pressure off baseline funding.
- Providing a non-judicial appeals framework for speedy resolution of Customs disputes.

Many of our submission points are aimed at improving certainty for traders, which supports a modern self-assessment duty / excise system. We appreciate these submissions will have resourcing impacts for Customs; however, we submit that this also provides an opportunity to re-prioritise the deployment of Customs' resources by proactively dealing with issues faced by businesses in advance, rather than auditing historical positions that they have taken.

Further information

Please contact me on (09) 363 3532, or John Javier on (09) 363 3503, if you would like to discuss our submission in greater detail.

Yours sincerely

Kim Jarrett
Partner

KPMG's detailed submissions

1 Strategic objectives of the review

The discussion paper states the New Zealand Customs Service ("Customs") is seeking an Act that would support the following outcomes:

- **Making compliance easy to do and hard to avoid**
- **Providing high assurance, light touch**
- **Providing effective and efficient facilitation**
- **Supporting New Zealand's international competitiveness**

KPMG supports the above stated outcomes for the review. We also acknowledge that these outcomes align with the Government's Business Growth Agenda (in particular, in supporting the growth of New Zealand's export market) and Customs' 2020 strategy.

However, there appears to be a disconnect between the breadth of the stated outcomes for the review, and the detailed proposals included in the discussion paper. A large part of the discussion paper includes proposals focused on enhancing NZ Customs' ability to perform its enforcement and border protection functions. KPMG fully acknowledges the importance of ensuring that Customs performs these functions effectively. However, we consider that the discussion paper misses an opportunity to also enhance Customs' role in facilitating trade for New Zealand.

KPMG submits that a 'top down' approach to the review, which leads with all of the strategic goals of the review and the desired outcomes, and then formulates proposals that would support these outcomes would open new areas for consideration. This approach is most likely to provide a legislative framework that is future proof and enhances Customs ability to achieve the four stated outcomes.

An example of how such an approach is applied is provided below using an importer as an example:

Given the desired outcomes outlined in the review document and summarised above, what can be done to support the outcomes in relation to an importer?

- Changes that lower compliance costs and complexity as these will:
  - Make it easier for importers to comply with the rules thereby increasing voluntary compliance
  - Better compliance reduces revenue risk to Customs and risk of audit adjustment to importers

- Support New Zealand's international competitiveness – low compliance costs and complexity makes New Zealand an attractive place to do business in (e.g. for multinationals looking to set-up import operations in New Zealand).

What specific proposals can lower compliance costs and complexity for an importer?

- Proposals that ensure that most importers will be able to use the transaction value method in valuing their imported goods (i.e. as it is widely accepted that the transaction value method is the most cost-effective method to apply in practice).
- Proposals that provide certainty to importers for positions taken on importation (e.g. valuation rulings).

2 Trade Facilitation initiatives

We appreciate that Customs is actively involved in the Export Markets work stream of the Business Growth Agenda. We agree that making the Customs Act a trade enabling framework will be crucial to supporting the Business Growth Agenda's export goals including actions which make it easier to trade from New Zealand.

A modern and benchmark-setting Act

New Zealand has always prided itself on having a world-leading Customs Service, which has often provided training and support for other Customs organisations in our region. We would like to see that tradition continue, and the Act rewrite is an opportunity to do this by providing a modern legislative framework for dealing with the complexities of modern international trade. The area of Customs valuation, in particular for transactions between related parties, is an area where international practice and customs enforcement varies widely, and this creates significant complexity for New Zealand exporters. Enacting legislation that can be used as a benchmark for other Customs organisations internationally would help facilitate trade for New Zealand businesses.

We note that the current Act has not kept pace in this area when compared to some of our other trading partners, including Australia, the United States and Canada. The rewrite is an opportunity to align with international practice in major markets.

Specific areas where we can see trade facilitation opportunities include:

- Valuation
- Appeals Process
- Process for import price adjustments
- Rulings (e.g. valuation, interpretations of specific areas of law)

3 A fresh approach to the legislation

KPMG supports the move to a principles-based Customs and Excise Act and agrees this will provide Customs the flexibility in dealing with the changing environment that it operates in and will also help in ensuring that the new Act will be future proof.

3.1 Moving details to regulations / rules

We support moving the prescriptive detail currently in the Customs and Excise Act 1996 to the regulations and rules. However, there should be further consultation on what the threshold test will be that determines which provisions are kept in the main Act and subject to full Parliamentary review, and which provisions can be delegated to regulations or rules.

3.2 Consultation process

The consultation process that will underpin any changes to future legislation and regulation must enable affected parties to assist Customs in drafting commercially appropriate legislation. Transparent processes and access for importers and exporters to participate in legislation and regulation development is essential to demonstrate appropriate principles of fairness and due process have been followed.

KPMG supports having the consultation process for making and amending regulations and rules to be legislated in the Act. At a minimum, the consultation process should include:

- Public notice via the appropriate media, Customs' website and/or media release by the Minister of Customs;
- A minimum consultation period of one month for interested parties to make submissions. This can be extended depending on how significant the proposal is.
- In certain circumstances, there is a need to make immediate remedial changes, which would make having a consultation period impractical. As such, we would support the ability for Customs' to make remedial changes to regulations and rules to address significant and urgent border security risks.

Having a robust consultation process will encourage engagement by interested parties and will ensure that regulations and rules are fit for purpose.

3.3 Transparency

We support the move to publish all Customs rules on the Customs' website as this will make them easily accessible.

3.4 Statements of purpose and principles

KPMG supports the inclusion of a purpose statement and statement of principles in the new Act. We agree that including these statements will reduce the ambiguity in the interpretation of the new Act.

KPMG submits that the purpose statement and statement of principles should acknowledge Customs' role in the facilitation of trade and travel in New Zealand and supporting New Zealand's economic development.

4 Information

KPMG recognises the need for Customs to have the ability to share information it holds under certain situations. However, we consider that the issue of information sharing would be better addressed in a government wide consultation process including how the Official Information Act and Privacy Act applies to various government agencies and whether exemptions and enhancements of how these Acts apply is appropriate. We do have specific concerns regarding an automatic ability for Customs to share the information it holds (be it to other government agencies, non-governmental entities, international customs agencies, etc.). In our view this should be limited to where Customs is fulfilling its enforcement and border protection role.

4.1 International information sharing

We have a particular concern regarding the proposal in the discussion paper to expand Customs' information sharing with overseas agencies to:

- Include goods and revenue information; and
- Share information to a wider range of overseas agencies

Goods and revenue information is almost always commercially sensitive and thus, careful consideration is required before this information is shared internationally.

Increasing the range of agencies that the information can be shared with increases the risk of commercially sensitive information being 'made available' more broadly, which may jeopardise the competitiveness of New Zealand businesses.

KPMG submits that where trade information is shared internationally, Customs' information sharing arrangements should include the following minimum safeguards:

- Trade information is only shared with foreign agencies that have controls on the use, storage, and sharing of information received from Customs, which at a minimum, are of the same standards as the controls Customs has. Our concern here is where an individual exporter's trade data is shared with foreign agencies, which do not maintain the same confidentiality standards as Customs, and as a result commercially sensitive information maybe released to competitors in the market.
- If the information being shared relates to a specific importer or exporter, then the consent of the affected party should be obtained before their information is shared.

In relation to sharing trade information outside of government, we agree that explicit direction is needed around how and when information can be shared. Customs would need to ensure that a framework enables information to be shared with public entities in a way that ensured non-personal information is protected and commercial confidentiality is maintained.

5 Technology and digital goods

5.1 Business records

We strongly support the proposal to allow businesses to store Customs records offshore.

6 Revenue

6.1 Excise and Excise-Equivalent Duty

We agree that there are elements in the current legislation and in the way Customs manages the excise scheme that creates unnecessary costs for businesses or for Customs, and streamlining of current processes is appropriate.

We also appreciate that Customs has no appetite for looking at moving the timing of revenue collection from manufacture, to the point of physical entry into the market for home consumption (or export). It is however a fact of the modern supply chain that goods are produced in bulk, moved and stored in bulk quantities and further bulk processing can also be performed by other entities. This has lead to increased volume and changes in the supply chain of excisable goods.

We understand that the scope of Customs' review does not include a fundamental change to the excise regime, however we consider that a more comprehensive review of the excise system is needed. For example, the review should consider the risks to Customs moving away from a licensing-based model and to a model that relies on the information systems of excise payers, where a certain level of systems accuracy and risk mitigation are met. This approach would be more consistent with a self-assessment excise regime.

Our key concern with the excise regime as it stands, is that it does not cater for the modern bulk supply chain. The movement and off-site storage of these bulk goods are done for practical reasons, including;

- it can be more cost effective than investing in bulk storage within owned CCA manufacturing facilities, particularly when there are seasonal variations in volume;
- to distribute and/or store the goods safely and effectively; or
- to enable additional processing prior to delivery to customers.

Changes and opportunities for the excise system

We fully support Customs in its desire to improve the excise system. In our view the proposal to improve the excise system and reduce costs to business also needs to include these key changes:

<u>Offsite storage</u>

Customs recognises the seasonal nature of wine production and available storage, hence the ability to move excisable wine product between CCA sites for storage purposes (as opposed to processing or export purposes).

We submit that an extension of the section 10(f) off site storage provisions across all alcohol products, would bring consistency to how Customs administers excise on alcohol products.

Enabling the ability to move all alcohol products in the same manner as wine would address the practical issues faced by alcohol manufacturers operating modern bulk supply chains.

We also submit that such off site storage provisions should not be restricted to within a customs region, but should allow for storage sites across New Zealand. In our view the regional focus is a well-outdated concept that unnecessarily restricts commercial decisions regarding the use of storage facilities across New Zealand.

Permits for movements between customs controlled areas

We agree with Customs' view that the need to obtain a permit for movements of excisable goods between CCA's is an unnecessary compliance burden. Removal of the need for authorisation to move all types of excisable goods between CCA's without the payment of excise would be a welcome reduction in red tape and reflect the strict systems and accountability already involved when operating a CCA.

Upgrade reporting, compliance etc. to a computerised system

Ensuring the Act can cater for an excise system that is computerised would ensure that this could be an option. At the moment excise returns are completed using a manual system that is disproportionately labor intensive for the current automated business climate. At the moment it is not transparent, it is reactionary and there is room for increased risk minimisation.

Definition of manufacture

Any new definition(s) need to increase clarity and be commercially relevant. Given recent court cases, and ongoing uncertainty, more definition is needed in legislation regarding what constitutes de minimis manufacture and how that would be treated for excise purposes in the context of commercial manufacture. For example, is it a relative or finite volume concept or specific types of processing undertaken on total volume?

We refer to our suggestions on opportunities for rulings and statements. These would also provide Customs opportunities to clarify the interpretation and application of law to specific fact sets enabling a more broad and principles based approach.

Audit

Proposal for changes to the excise audit system to reduce risk, cost and including compulsory third party audits, must be commercially practical and not increase the level of compliance work involved for manufacturers or importers.

In relation to the proposal to include compulsory third party audits, there also needs to be assurance that the outcome from the third party audits will be accepted by Customs as equivalent to their own audits to ensure that this does not actually create additional levels of compliance.

We would also submit that there needs to be an accreditation process and clear guidelines as to what the parties' responsibilities are and how that aligns with the legislation.

Section 85 credit for excise duty paid

The excise credit provisions for excise duty paid on goods undergoing further manufacture need to be updated to reflect modern supply chains. This is particularly relevant where there is not always a sale alongside the movement of goods. This avoids the risk of double taxing goods.

Specifically we submit that the Section 85 Credit for excise duty paid in relation to excisable goods used in manufacture should be granted irrespective of whether the licensee has entered into a purchase transaction with the original excise payer.

Where appropriate confirmation regarding the payment of excise duty can be provided we do not see how the requirement for a sales transaction enhances a volume based excise regime.

We note that this was raised as an issue in a recent court decision and continues to remain an issue.

Defining LMA's

We agree that aligning the requirements and guidelines for LMA's including addressing the issue of business growth or peak production will reduce the need for additional permits and therefore will reduce ongoing compliance for business.

7 Valuation of imported goods

This is an opportunity to provide transparency and to acknowledge a modern day commercial need. In our view there is an opportunity here to include more trade facilitation in the framework for the new Act, specifically, we suggest the following opportunities:

- Valuation rulings
- Recognition of transfer pricing information
- Framework for transaction value adjustments

From a global standpoint, quality outcomes for our exporting businesses in foreign countries would be greatly supported if the legislation and associated framework in our "home" administration could be held up as an example of how it should be done.

8 Valuation and interpretative rulings

In our view there is opportunity in the Act review to include capacity for valuation rulings and interpretative rulings on specific areas of legislation (such as those provided by the Inland Revenue) in the framework for the new Act. A framework for obtaining these types rulings would provide significant benefit to traders by:

- Providing structure, clarity and certainty;
- Reducing costs associated with dealing with government; and

- Facilitating negotiations in the international arena for exporters.

Enabling importers to deal with valuation and interpretative issues upfront by seeking out opportunities to actively demonstrate compliance within in a collaborative valuation and interpretative ruling framework will provide Customs the opportunity to:

- To reduce risks
- Reallocate resources tied up dealing with technical or historical issues
- Become a forward focused trade facilitating border organisation
- Enhance self assessment and proactive approach from traders

A ruling on interpretative issues in relation to appropriate commercial aspects of customs law would be very useful where there are differing views on how legislation should be interpreted. Being able to obtain a ruling on Customs' interpretation would allow certainty to be obtained for a trader. For example this could have been valuable to both Customs and affected traders when determining how the Section 85 excise duty credits would be applied in the situation of no sale, or whether a specific set of facts constituted manufacturing in the opinion of Customs.

A valuation ruling would be particularly valuable in these types of situations:

- Related party transactions

  For both transactions that are clearly Transaction Value because it eliminates a compliance risk, and for transactions that are more complex or valued under an alternative method because of the clarity rulings would provide.

- Audit issues

  For an importer with valuation issues identified as a result of an audit, the benefits of obtaining a valuation ruling means that any potential concerns Customs may have can be dealt with proactively and in a constructive environment. It would enable the importer to get it right going forward and clear up any historical issues with certainty.

- High value/complex asset

  In the situation where there is large one off imports that have no transaction value, or where there is a complex asset being imported, the opportunity to obtain a valuation ruling enables an importer to proceed with certainty and know that Customs agrees with how it is clearing a high value asset. It means that the importer can prepare for cash-flow implications, eliminate a compliance risk and ensure that pricing is correct.

- International traders

  The ability to obtain valuation rulings is a fundamental tool that provides certainty, and puts NZ Customs on an equal footing with other well regarded Customs organisations. We note that other respected Customs organisations issue valuation rulings e.g. USA, Australia, Canada, Japan.

As part of a ruling framework, enabling Inland Revenue and Customs to work collaboratively together on Advanced Pricing Agreements is key to providing clarity to traders on border issues.

Consistent with Inland Revenue legislation on binding rulings, a Customs valuation ruling would only be binding on Customs in relation to the facts as presented to Customs as part of the ruling process. Inland Revenue charges the taxpayer a fee to compensate for time and costs associated with processing the ruling and it seems appropriate for Customs to do the same.

9 Recognition of transfer pricing documentation

Incorporating the need for Customs Officers to consider Transfer Pricing documentation and Inland Revenue Advanced Pricing Agreements when assessing the appropriateness of goods prices in a related party transaction is one step toward communicating clearly to industry that Customs recognises the realities of international trading. We acknowledge this is not an appropriate forum to align OECD and WTO valuation rules. However, we consider that there is value in recognising that Inland Revenue transfer pricing reports and APA's will be considered as part of the Customs valuation review process (e.g. when considering the circumstances of sale). This could be more appropriately recognised in Customs Regulations.

We note that other countries have specifically addressed this issue in guidance issued by Customs organisations. The clear message is that these Customs organisations accept the need to consider transfer pricing documentation in the context of customs valuation.

Canada

The approach by Canada is our preferred approach. Canada has specifically issued guidance for related party pricing which incorporates policy views of APA's and prices established under OECD guidelines. When considering the impact on pricing as a result of relationships between parties and in the context of considering whether the relationship did not influence the price, the CBSA Memorandum D13-4-5 'Transaction Value Method for Related Persons' specifically refers to the use of a price derived from one of the OECD methods. In paragraphs 15 and 16 it discusses the information to be used in establishing whether the price is influenced:

"…the objective …is to establish that the selling price is not significantly different from the price that would have been charged to an unrelated purchaser, given identical circumstances except for that of a relationship."

"The [OECD report]…sets out several methods of pricing goods in order to achieve a price…in similar circumstances. The CBSA will accept, for valuation purposes, a price paid or payable which is derived from one of the methods set out in the OECD's report, unless there is information on prices available which is more directly related to the specific importations. "

CBSA Memorandum D13-3-6 'Income Tax Transfer Pricing and Customs Valuation' addresses the issue also. In addition it comments on the acceptability of an APA in relation to customs valuation. In paragraph 109 it advises that:

"CBSA will accept transfer prices established through an APA negotiated between income tax and the taxpayer as a price paid or payable, but will adjust [for required additions and deductions], as required.

Australia

Australia has issued a practice statement, the purpose of which is to ensure Industry understands the valuation legislation requirements and the relevant transfer pricing policies.

It specifically addresses what the Australian policy is in relation to transfer pricing documentation, in the context of a Valuation Advice application. Customs and Border Protection will have regard to (amongst other things) the outcomes of any transfer pricing study that has been examined by the ATO or subject of a prudential audit, and the documentation supporting the transfer pricing study. It also acknowledges that transfer pricing studies may provide useful contextual information.

10 Instigating a formal Transaction Value adjustment framework

We submit that a formal process be implemented to address post importation adjustments such as true-ups, royalty payments, year-end payments etc.

Currently, any post importation adjustments made to Transaction Value are dealt with through the uplift program or voluntary disclosures. The program, although it has worked well, is an informal arrangement and is not transparent. We recommend it be replaced with a formal and structured program, with clear parameters for which importers and transactions it will apply to.

An adjustment framework would provide clarity and flexibility to make transaction value pricing adjustments a business as usual process. It would provide:

- Enhanced ability of traders to comply and to actively demonstrate compliance.
- Increased surety that the importer is compliant and Customs collects the correct revenue.
- Reduced compliance costs and increased efficiency for Customs and traders.

Amending the Act to allow for an adjustment framework would align well with Customs (and WTO/WCO) policy initiatives to simplify and harmonise trade by recognising and adapting to modern business methods and practices.

Internationally, other Customs administrations are dealing with this issue. Examples include Italy and the US.

The US has a process where amendments are made to initial entries. In our view, this is a recognition that not all applicable information is actually available or known at the time entry and it is a system that would encourage voluntary correction of information.

We note that Italian Customs and Revenue have publicly confirmed they are also working on this issue. We understand they are currently preparing a joint statement of practice. The statement of practice, drafted by a working group staffed by officers from the Revenue and Customs Agencies, will indicate two ways of dealing with TP adjustments. A publication from KPMG's office in Italy notes the first solution will allow the customs values of goods to be conclusively determined, subject to an agreement between the importer and the Customs Agency. As an exception to article 32 of Commission Regulation (EEC) No 2913/92, the

Customs Agency will authorise the importer to declare customs values based on specific criteria, as certain additions are not quantifiable at the time of customs declaration.

The second solution will allow the importer, subject to authorisation from the Customs Agency, to declare a provisional value when importing goods. Afterwards, a definitive value will be set, allowing the authorities to check the customs duties. In the view of KPMG's office in Italy, when all this goes ahead, it will finally be possible for TP and customs valuation in Italy to work side by side.

11 Increased guidance

The review of the Act is a prime opportunity to work towards creating a framework which provides clarity, increases certainty, and supports self-assessment and adjustments.

The Fact Sheets that are currently available serve a purpose in that they explain the law. What would be very valuable is a more comprehensive guidance and publications framework communicating information on the application of law to particular fact patterns including providing Customs' view.

We note that such a framework would be valuable for compliance in all areas, however, we primarily see immediate value in relation to Customs valuation. If the new Act incorporated sufficient scope to enable a framework for issuing guidance information and policy interpretations that would be an invaluable tool for enhancing voluntary compliance and self-assessment.

An ideal framework example is the Inland Revenue Interpretation Statements and Standard Practice Statements.

Interpretation statements set out the Inland Revenue Commissioner's view of the taxation laws in relation to a particular set of circumstances in cases when a binding public ruling cannot be issued or is considered to be inappropriate.

Standard Practice Statements on the other hand, describe how Inland Revenue will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

If such a framework was available in the new Act, Customs make a statement on their view as to how recent court cases are going to be interpreted or how Customs will treat similar situations.

There are international examples which work towards providing comprehensive guidance on expectations: for example, US Customs valuation encyclopedia and the US Customs Ruling Online Search System, In addition, Australia, US and Canada all have extensive public guidance.

The framework of the new Act should allow for clear guidelines to be issued by Customs against which a company can test its operations to determine whether it is complying, and if not, there is a clear practical framework for how Customs expects adjustments to be made.

12 First sale for export

First sale should stay as an option available for all traders. We are unaware of any New Zealand data which quantifies any level of unfairness or bias towards related parties and there are other major trading countries which still accept some form a first sale rule (e.g. US, Japan, the EU).

We did however find US based research. Based on information collected by CBP, on 23 December 2009, the ITC submitted to the Congress a report titled 'Use of the First Sale Rule for Customs Valuation of US Imports'. The report showed that during 1 September 2008 and 31 August 2009, 8.5 per cent of all US importers, entered merchandise using the 'first sale rule', representing about 2.4% by value of total US imports. The same report also noted that although the main users of the first sale rule are high tariff rate importers, it is also frequently used for duty free imports (21% of all first sale imports). (*source: Thoughts on the 'first sale' rule , Danilo Desiderio and Frank J Desiderio, World Customs Journal, Volume 4, number 1, page 40*).

In our view, the proportion of New Zealand imports declared using first sale rule is unlikely to be greater than in the US. Therefore we do not see that any theoretical imbalance between the abilities of importers to use the first sale rule will have a significant impact on the New Zealand trade.

We are concerned that changing the accepted view of sale for export as including first sale, to one that focuses on the last sale, has significant potential to create more complexity and uncertainty around transactions that are not already impacted by the current first sale transaction rule.

13 International freight

In our view the status quo using the FOB basis works well. The question of separating out costs affects many aspects of the customs valuation rules. Transportation is just one item and there are already widely accepted methods for dealing with this unavailability of information. We note that using the FOB basis is aligned with the method used by Canada, Australia and the US.

14 Review process for duty assessments

Currently, the only avenue to appeal a duty assessment issued by Customs is through an appeal to the Customs Appeal Authority. This is done via sending an appeal in the prescribed form and paying the required fee (currently $410).

The issue with this is that the process is quite formal and relatively expensive when the time and cost (such as legal or advisor costs) of preparing the appeal is factored in on top of the appeal fee. This discourages (and likely even deters) 'minor' duty assessments from being appealed even where a business may have a concern on the accuracy of an assessment issued by Customs. For example, if an importer receives an amended assessment from Customs which increases the duty payable on an entry by $500, it is very unlikely that the importer will appeal this assessment to the CCA, even if the importer did not agree with the assessment. This is because the time and cost of preparing the appeal would most likely exceed the additional amount of duty assessed.

In contrast, we note that under the current administrative penalties provision, there is an ability for a person who has an administrative penalty imposed to ask Customs to review the penalty, before being required to lodge an appeal to the CCA. There is no fee for requesting this review.

We submit that there should be a similar process for requesting an internal review of a duty assessment (i.e. by an independent body within Customs) without having to appeal to the CAA. This will enhance the integrity of the duty /excise system in New Zealand as it allows for a cost-effective review that caters for 'smaller' disputes to be resolved.

We submit that the right of appeal to Customs for duty assessments should specifically be in the new Act. Customs could then establish how to undertake the appeals process in delegated legislation (i.e. regulation or rules). This would make the appeals process transparent as the regulations and rules are publicly available.

15 GST collection

Customs is seeking comments on whether managing the payment and recovery of import GST to and from Customs and Inland Revenue causes significant issues for businesses. Customs notes in the discussion paper that importers on the deferred payment scheme are less likely to experience cash-flow difficulties because of this.

From our experience in dealing with businesses, even importers on the deferred payment schemes can have significant cash-flow issues due to the requirement to have to pay import GST to Customs and then claim this back from Inland Revenue. As Customs pointed out, one reason for this is the difference between the reporting timeframes for the payment of Customs charges (i.e. on a monthly basis under the deferred payment scheme) and the filing of GST returns (i.e. either on a monthly, 2 monthly or six monthly basis). Another common reason may be due to Inland Revenue delaying the release of a GST refund until they have undertaken further investigation on the validity of the GST refund being sought, e.g. this is common for new taxpayers who are seeking a GST refund or if a taxpayer does not have a history of claiming GST refunds, but has a significant GST refund for a particular GST return period.

One option to address the cash-flow issue for importers is to zero-rate imports by GST registered importers. However, KPMG appreciates this change will also necessarily involve changes to the GST legislation, which means this options cannot be unilaterally considered as part of the review of the Customs and Excise Act.

An alternative would be to follow the Australian model, where for importers on the deferred payment scheme, the amount of import GST is automatically included in an importer's GST return as an output tax obligation and then a corresponding input tax is claimed to the extent that an importer can claim the input. Under this model, the importer is not required to make a physical payment for the import GST to Australian Customs, and the liability for import GST (if any) is settled through an importer's GST returns. Another benefit of this approach is that it enables Inland Revenue to audit the import GST being paid/claimed by GST registered importers, which will free-up resources from Customs that are tied up in auditing this area.

We appreciate that this model is not feasible under the Customs' and Inland Revenue's current systems, putting in place the legislative framework in the new Customs Act to enable such an

option should be considered. (NB Inland Revenue's business transformation project may make this model feasible in the future as it may result making it easier to capture import GST information automatically into an importer's GST return).

On a wider scope, we also encourage Customs to consider if there have been any other advances in technology and/or GST developments internationally that must be considered as part of the review of the Act. This will ensure that the new Act will be future proof, given what GST collection at the border may look like in the future.

16 Comptroller's discretion to collect revenue

KPMG supports the proposal to include a provision in the new Act that would give the Comptroller of Customs discretion in collecting revenue.

Customs plays an important role in the facilitation of trade into New Zealand. In order to effectively fulfill this role, it requires a legislative framework that empowers Customs to deliver commercially sensible solutions when dealing with bona fide businesses which genuinely wish to comply. Giving the Comptroller discretion in collecting revenue will give Customs the flexibility required in order to deliver these solutions to its clients.

KPMG agrees that the criteria for when the Comptroller can exercise this discretion should be clear in the new Act, i.e. similar to the Tax Administration Act 1994 as mentioned in the discussion paper. Further consultation should be undertaken once a draft criteria is formulated by Customs to ensure that it aligns.

17 Sanctions

17.1 Administrative penalties for exports

Customs proposes to expand the penalty provisions to export entries.

KPMG does not support expanding the penalties regime to export entries as:

- There is minimal (if any) fiscal risk on export entries as there is no duty payable on export.
- There are usually already penalties operating at the import destination, which encourages accurate information on export entries.

In some situations it is difficult to supply completely correct information at the time of entry, e.g. if complete information is not yet available, but an entry is required in order for the goods to be cleared for export. In these situations, an exporter may lodge the entry based on the best available information at the time of export, due to the commercial pressures their business face (i.e. they may lose a customer if a shipment is delayed). An entry amendment may then be filed by the exporter once complete information about the shipment is available. We do not believe that penalties in such situations is appropriate.

17.2 Cost recovery for correcting errors

Customs is considering whether to impose a fee for processing a correcting entry.

KPMG is against introducing such a fee. We note that there may be valid reasons as to why an entry is not perfectly accurate at the time the initial entry is made, e.g. further information on the classification of the goods is received after an entry is made. Imposing a fee to correct an entry will discourage voluntary correction of errors and will have a negative impact on the integrity of the information collected by Customs.

The discussion paper notes that Customs spends approximately $300,000 per year on processing correcting entries; however, the paper also notes that this costs is likely to reduce given the introduction of JBMS. As such, KPMG considers that risk to the integrity Customs' information outweighs the fiscal costs of not imposing a fee for correcting entries.