



INSTRUCTIONS AND GUIDELINES

Title: Revenue Recovery

Date: April 2011

**This Instruction and Guideline refers to: Practice Statement No: PS2009/28
Compliance Powers and Penalty Schemes**

Published date:	22 June 2011
Availability:	Internal and external.
Subject:	Revenue Recovery:
Purpose:	To outline the legislative provisions and administrative arrangements for the recovery of short paid customs duty and indirect taxes.
Owner:	National Director Trade and Compliance
Category:	Law Administration
Contact:	Director Compliance Capability and Framework

The electronic version published on the intranet is the current Instruction and Guideline.

Summary of main points

This Instruction and Guideline outlines:

- The recovery of customs duty under section 165 of the *Customs Act 1901*.
- The application of a drawback, refund or rebate against duty under section 165A of the *Customs Act 1901*.
- The recovery of short paid indirect tax, payable on an importation of goods, under subdivision 105-5 of the *Taxation Administration Act 1953*.

Scope

The Australian Customs and Border Protection Service (Customs and Border Protection) is responsible for the collection of administered revenue on behalf of the Commonwealth, including customs duty and indirect taxes. Indirect tax includes Goods and Services Tax (GST), Wine Equalisation Tax (WET) and Luxury Car Tax (LCT). On occasion, there may be a short fall in payments which Customs and Border Protection is required to recover.

A shortfall of duty or indirect tax may arise for several reasons, the incorrect classification of goods, incorrectly claiming a Tariff Concession Order or as a result of a transfer pricing adjustment.

It is important that incorrect payments are identified and revenue recovery processes carried out.

This Instruction and Guideline (I&G) outlines the revenue recovery policy for the following situations:

- Where errors are identified and corrected on an import declaration and result in an increase in the owner's liability for duty and/or indirect tax
- Where an import declaration is amended after goods have been dealt with in accordance with the authority to deal, but the shortfall revenue has not been paid, including:
 - Import declarations amended by the owner in response to compliance action initiated by Customs and Border Protection
 - Import declarations amended by the owner voluntarily; and
 - Where a drawback, refund or rebate of duty is overpaid to a person.

In addition, the I&G outlines the provisions in the *Customs Act 1901* (Customs Act) that allow an amount of a drawback, refund or rebate to be applied against duty payable on the same goods in certain circumstances.

The I&G does not include revenue recovery in the following situations:

- When an owner of imported goods fails to comply with the requirements of section 68, 69 or 70 of the *Customs Act* to lodge an entry/return for the goods
- Where an owner of imported goods has given a security for compliance with a requirement and has failed to comply with that requirement

- Recovery proceedings under section 35A of the Customs Act; or
- The recovery of Tradex duty when goods imported under a Tradex agreement, are not used in accordance with the requirements of that scheme.

Instructions and Guidelines

Recovery of Customs Duty

Section 165 of the Customs Act provides that:

- An amount of duty that is due and payable in respect of goods, is a debt due to the Commonwealth and is payable by the owner of the goods
- An amount of a drawback, refund or rebate of duty that is overpaid to a person is a debt due to the Commonwealth and is payable by the person

Demand for duty

Under section 165 of the Customs Act, the Chief Executive Officer (CEO) of Customs and Border Protection Service may make a written demand for the payment of an amount of duty that is a debt due to the Commonwealth. The demand must specify the amount of the duty or overpayment being demanded and must include an explanation of how the amount has been calculated.

Section 165 of the Customs Act limits the time for recovery of customs duty to four years, except in the case of fraud or evasion where no time limit will apply.

For an amount of duty that is due and payable in respect of goods, a demand must be made within four years of the date the amount was to be paid under the Customs Act.

For example, in the case of goods entered for home consumption under section 71A of the Customs Act, duty is payable at the time of the entry of goods for home consumption (section 132AA of the Customs Act). Therefore, in this situation, a demand must be made within four years of the date of entry for home consumption.

For an amount of a drawback, refund or rebate of duty that is overpaid to a person, a demand must be made within four years of the date the amount was paid.

Legal proceedings to recover duty

Customs and Border Protection may undertake legal proceedings to recover duty if the CEO has made a demand for payment under section 165 of the Customs Act or the CEO is satisfied that the debt arose as a result of fraud or evasion.

This means that if a valid demand is not made within four years from the relevant time, the debt is not recoverable. The exception to this is where the CEO is satisfied that the debt arose as a result of fraud or evasion, in which case there will be no time limit on the recovery of the debt.

Application of drawback, refund or rebate against duty

Section 165A of the Customs Act allows the CEO to apply the amount of a drawback, refund or rebate in respect of goods, against the duty payable on the same goods. For section 165A of the Customs Act to apply, the goods must have been delivered into home consumption.

For example, goods may be imported free of duty under a Tradex agreement on the understanding that the goods will be subsequently exported. As the result of an audit it may be

found that the goods are not goods eligible for inclusion under a Tradex agreement and are subject to duty. If the goods have already been exported, the owner may be eligible for a drawback of duty on the goods. Section 165A of the Customs Act provides that the amount of the drawback may be off-set against the duty payable on the same goods.

If the amount of drawback, refund or rebate of duty on the goods is less than the amount of duty payable on the goods, the balance of the duty payable will still be a debt due to the Commonwealth.

Section 165A of the Customs Act also provides that if the CEO applies a drawback, refund or rebate against an amount of duty payable, the CEO must provide to the person who would have been entitled to receive the amount of drawback, refund or rebate, written notice of the amount applied and, if applicable, the amount of duty that is still payable by the person.

Recovery of indirect tax

Section 105-5 of Schedule 1 of the Taxation Administration Act (TAA) provides that the Commissioner of the Australian Tax Office (the Commissioner) may at any time make an assessment of the amount of indirect tax payable on an importation of goods.

Notice of assessment

A notice of assessment under section 105-5 of Schedule 1 to the TAA will identify the amount payable and the circumstances in which the debt arose will be explained.

Time limit for recovery of indirect tax

A notice of an assessment of indirect tax payable on an importation of goods must be given to the owner within four years from the time the indirect tax became payable (section 105-50 of Schedule 1 of the TAA).

The exception to this is in circumstances where the Commissioner is satisfied that a payment of indirect tax was avoided by fraud or evasion. In these circumstances, there is no time limit for the recovery of indirect tax.

Who is liable?

For section 165 of the Customs Act and indirect tax assessments, the person liable to receive a demand for payment will be the owner of the goods. Generally, this is the person listed on the import declaration as the importer.

In situations where the person listed on the import declaration as the importer, denies they are the owner, Customs and Border Protection will seek to determine who the owner of the goods is. This will be done by examining documents relating to the commercial transaction and giving consideration to the authority of any person acting as the owner's agent.

Where there is difficulty in determining liability, the matter should be referred to the Compliance 1 Mailbox at Customs and Border Protection.

Other information

Opportunity to explain

Where Customs and Border Protection identifies a shortfall, the owner/importer should be given the opportunity to explain matters relating to the shortfall before a letter demanding payment of duty and/or indirect tax is sent. Consultation such as this may include an exit interview after an audit or a letter seeking an explanation of why goods were described, valued or classified in a particular way.

Voluntary amendments

Where the owner/importer identifies a short payment and lodges a voluntary amendment, an explanation will not be sought unless other circumstances make it necessary. A letter demanding payment of short paid duty will be issued if the amount outstanding has not been paid within 30 days of lodgement.

Penalties

There are penalty schemes under both the Customs Act and the TAA that provide for a penalty to be issued when false or misleading statements are made that result in a loss of duty or indirect tax. When a shortfall amount is identified, penalties may be considered.

Debt recovery

Following letters of demand and notices of assessment, if payment is not made within the specified time, debt recovery measures will be initiated.

Payment under protest – customs duty

For payments of duty, a person may have the option to pay the duty under protest which enables them to access a review under the Administrative Appeals Tribunal, or not pay the duty and challenge the assessment when Customs and Border Protection implements debt recovery action.

Under subsection 167(3) of the Customs Act, a payment is taken to be made under protest where:

- an owner of the goods or the agent of the owner gives Customs and Border Protection notice, by document or electronically, that the payment is being made under protest; and
- Customs and Border Protection receives the notice no later than seven (7) days after the day on which the payment is made.

When making a payment under protest, the notice to Customs and Border Protection must:

- contain the words 'paid under protest'
- identify the import declaration that covers the goods to which the protest relates
- describe the goods to which the protest relates if the protest does not relate to all goods covered by an import declaration
- include a statement of the grounds on which the protest is made; and
- be signed by the owner or the agent of the owner.

Objection to assessment of indirect tax

A taxpayer may object to an assessment of indirect tax in accordance with Part IVC of the TAA. Objections are lodged with, and considered by, the Commissioner.

Related Policies and references

Customs Act 1901 – sections 165, 165A and 167(3)

Taxation Administration Act 1953 – sections 105-5 and 105-50 of Schedule 1

Australian Customs Notice No. 2005/23 – International transport and insurance and the value of the taxable importation

Australian Customs Notice No. 2008/40 – Duty Recovery

Practice Statements

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Other Instructions and Guidelines

Infringement Notice Scheme

Monitoring Powers

Export Examination Powers

Production of Commercial Documents and Records

Indirect Tax Administrative Penalties

Key roles and responsibilities

Compliance Assurance Branch in Customs and Border Protection Central Office provides policy advice and direction on revenue recovery.

Regional Compliance Assurance areas are responsible for the effective administration of revenue recovery.

Consultation

Internal

The following stakeholders were consulted in the development of these I&Gs:

- Trade Services
- Industry Engagement
- User Services
- Trade Policy and Regulation

External

The content in this I&G was provided to members of the Customs National Consultative Committee for comment.

Approval

Approved date	29 April 2011	
Approved by	Sue Pitman ND Trade and Compliance	
Review Period	Biannually	