

# AUSTRALIAN CUSTOMS SERVICE PRACTICE STATEMENT

**FILE NO: C07/19416**

**PRACTICE STATEMENT NO: PS 2008/19**

**PUBLISHED DATE: 24 APRIL 2008**

**AVAILABILITY: Internal and External**

**SUBJECT:** Refund of Customs Import Duty

**PURPOSE:** To ensure Customs staff understand requirements for assessing refund claims

**APPROVING OFFICER:** National Director Trade

**CATEGORY:** Operational Procedure (OP)

**CONTACT:** Director Tariff Concessions - (02) 6245 5492

## SUMMARY OF MAIN POINTS

Customs Practice Statements are endorsed Customs policy and must be followed by all Customs employees. This Practice Statement outlines:

- The definition of a refund;
- Who can apply for a refund and the refund process;
- Why Customs administers the refund procedure; and
- How a refund is administered.

*The electronic version published on the intranet is the current Practice Statement.*

## STATEMENT

### Introduction:

The purpose of this Practice Statement is to ensure that Customs staff, importers and brokers are aware of Customs refund policy and procedures.

A refund refers to the return of some or all customs duty, GST, Wine Equalisation Tax and Luxury Car Tax paid on imports under circumstances outlined in regulation 126 and 126B of the *Customs Regulations 1926* (Customs Regulations). A refund may be claimed by an owner of the goods imported or an agent of the owner. Section 163 of the *Customs Act 1901* (Customs Act) gives Customs the authority to administer the refunds procedure. Section 163 and the Customs Regulations also set

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out the circumstances in which a refund may be payable, the amount of a refund entitlement, and the procedure for making a refund application.

Authorisation of a Refund application sets in train a process that leads to the spending of public monies from the Consolidated Revenue Fund. Appropriation of these funds is prescribed by section 28 of the Financial Management and Accountability Act 1997 (FMA). Inappropriate exercise of the Customs Act sections that allow a refund will necessarily lead to a breach of the FMA.

### **Context and Scope:**

Customs is committed to transparent policy procedures for the laws it administers.

This Practice Statement addresses the processes that enable Customs to assess a formal refund claim under the Customs Act and the Customs Regulations.

It does not cover refunds of GST made under the Tourist Refund Scheme (TRS). The TRS process and why Customs administers it are covered under Practice Statement No. PSxx/xxxx.

It does not cover drawbacks of customs duty. The drawbacks process and how Customs administers it are covered under Practice Statement No. 2008/18.

### **Policy Statement:**

An applicant for a refund must:

- demonstrate an entitlement to a refund on imported goods; and
- supply all information required by Customs to process the refund application.

The refunds procedure will align with regulations 126 to 128F of the Customs Regulations. The *Refunds Instructions and Guidelines* will guide refund officers in the processing of refunds.

### **Procedural Statement:**

An application for a refund may be made in two ways:

- Electronically through the Integrated Cargo System (ICS) on an approved statement (e.g. amendment of an import declaration); or
- By document on approved forms B653 and B650, or form B624 for COMPILE entries.

The ICS is an on-line mainframe computer based system designed to report legitimate movement of goods across Australia's borders. It is utilised by Customs, customs brokers, freight forwarders, shipping and airline companies and the general importing and exporting community.

Where a refund application has been made by document, Customs lodges it in the ICS and the applicant is advised in writing that his or her application has been lodged.

### **Bulk Amendments:**

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The current method for claiming a refund is for the importer or his or her broker to amend the *header* on each import declaration and/or *each line* requiring correction using the ICS. In order to ensure data integrity, bulk amendments are not currently possible.

**Refund Circumstances:**

A refund may only be claimed under specific circumstances outlined in regulations 126, 126A or 126B of the Customs Regulations. These are:

126(1)(a)	Deteriorated damaged lost or destroyed before Customs control
126(1)(b)	Deteriorated damaged or destroyed while subject to Customs control
126(1)(c)	Lost while subject to Customs control or stolen before or subject to Customs control
126(1)(d)	Deteriorated damaged or destroyed under AQIS treatment
126(1)(da)	Entry withdrawn
126(1)(e)	Manifest error of fact or patent misconception of law
126(1)(ea)	Refund due to AAT decision
126(1)(eb)	<i>Customs Tariff Act 1995</i> amendment
126(1)(f)	CTCO by-law or determination applies
126(1)(fa)	Revaluation - rebate or decrease in price accrues to importer and not refund reason code G (reg 126(1)(g))
126(1)(g)	Revaluation - faulty or defective or not contract specified goods and rebate accrues to importer
126(1)(h)	Revaluation - as with refund reason code G (reg 126(1)(g)) but no recourse or redress from supplier
126(1)(p)	Petrol products
126(1)(r)	TCO applies - Tariff Concession Orders 128A(4E)
126(1)(ra)	Interim Dumping Duty
126(1)(w)	Dumping Duty on exported goods
126(1)(x)	Passenger motor vehicle used for evaluation and donated to an education institution
126(1)(y)	Automotive component donated to an education institution as scrap
126(1)(z)	Automotive Competitiveness and Investment Scheme (ACIS)
126A	Remission of duty if an import entry is taken to be withdrawn
126B	Thailand Free Trade Agreement (excluding safeguard goods)

**Refund period:**

The four-year refund application period applies to any eligible transaction processed under the Customs Act as amended by the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* (and other follow-up Acts).

This means that the four-year refund application period applies to:

- entries processed in the ICS (from 12 October 2005);
  - entries processed in COMPILE after the import cut-over date of 12 October 2005 (as part of the contingency arrangements in place until 3 February 2006);
- and

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- information provided to Customs under sections 71AAAB (which relates to personal or household effects of a passenger of a ship or aircraft) and 71AAAF (which relates to certain low value goods) of the Customs Act (from 12 October 2005).

Whereas refund applications previously had to be made within twelve months of a specified event (such as a decision by the Administrative Appeals Tribunal (AAT) or the making of a Tariff Concession Order), the current arrangements allow for an extended period. This means that where the relevant event occurs more than three years after the duty was paid, the owner of the goods will still have twelve months from the date of the event to apply for a refund. This ensures that an owner of goods covered by these circumstances is not disadvantaged by the changes.

The change does not alter the 14-day period applicable to refund claims relating to the deterioration, damage, loss or destruction of goods.

**Refund Procedure:**

*Documentary* - An application for a refund by document must be in an approved form, include information as required by the form, be signed as required by the form, state which circumstance under the subregulation 126(1) or regulations 126A or 126B of the Customs Regulations is applicable, and either be given to an officer doing duty in relation to refunds or be left in a Customs Office at a place designated for lodgement of applications for refunds.

*Electronic* - An application for a refund may also be lodged by a computer. The application must include information as required by an approved statement, state which circumstance under the subregulation 126(1) or regulation 126A or 126B of the Customs Regulations is applicable, and be transmitted and signed in a manner that meets the information technology requirements determined under section 126D of the Customs Act that apply to the import declaration, or self-assessed clearance declaration, about goods of the kind to which the application relates.

The procedures followed by Customs in dealing with applications for refunds are set out in regulation 128AAA of the Customs Regulations.

Regulation 128AA sets out two circumstances in which an application for a refund does not need to be made, these are: (1) the goods on which the duty has been paid are Subdivision AA goods within the Customs Act and therefore were not subject to a self-assessed clearance declaration or an import declaration, the duty was paid through manifest error of fact or patent misconception of the law, and Customs is notified, in writing within four years after the duty was paid, on what grounds the refunds is sort, and: (2) the refund is the result of a decision by the Administrative Appeals Tribunal.

Refunds are subject to a redline / greenline process. If redline Customs must verify the particulars of the application, or be satisfied of any matter that may be relevant to approval of the refund.

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If required by Customs, the applicant must deliver to Customs the commercial documents relating to the application that are in the applicant's possession or under the applicant's control, or information (of a kind specified in a notice about the goods) that is within the knowledge of the applicant or that the applicant is reasonably able to obtain.

A documentary requirement to deliver documents or information relating to an application must be given to the person by whom, or for whom, the application was made, be in an approved form and include the information required by the form.

A computer requirement to deliver documents or information relating to an application must be transmitted electronically to the person who made the application, and include information required by an approved statement.

Customs may ask the applicant, or if another person made the application for the applicant, that other person, questions about the application.

Customs may require the applicant to verify the information in the application by declaration or by the production of documents.

In accordance with subregulation 128AAA(8) an application may be considered only on the information available to Customs if any of the following requirements are not complied with within 30 days of the requirement being made:

- a requirement to deliver documents or information;
- a requirement to answer a question; or
- a requirement to verify information.

If a person delivers a commercial document to Customs, Customs must deal with the document and then return the document to that person.

Customs will aim to process any refund application within 30 calendar days of receipt of all necessary information. The applicant will have 30 calendar days to provide any information requested by Customs during which Customs processing of the application will be placed on hold. At the end of this period, Customs will make a decision to approve or reject the application.

**Rejection of a refund claim:**

A refund application will be rejected if:

- it does not include adequate and correct information, including if it does not contain the refund reason type claimed: and
- the applicant fails to supply information as requested by Customs.

**Cancellation of a refund claim:**

If an applicant further amends the initial import declaration or SAC declaration, before the refund has been paid or rejected, the refund application will be cancelled by this action. A new refund application is made as a result of the further amended declaration.

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**Withdrawal of a declaration:**

Applicants for refunds may withdraw an import declaration before the goods are dealt with in accordance with the declaration, under section 71F of the Customs Act. Valid reasons for withdrawing an import declaration include:

- duplicate import declaration finalised in the ICS; or
- owner wishes to utilise another broker.

**Review and Appeal:**

*Internal:* Where an applicant for a refund is dissatisfied with Customs decision, the applicant may contact the decision maker to discuss their concerns.

Following that discussion, if the applicant remains dissatisfied with the decision made by Customs, the applicant may request that the decision be reviewed. (A Customs officer other than the original decision maker and at least one level senior must undertake the review of the decision.)

An application for a review of a refund decision must be in writing, must fully address the reasons why the decision is disputed, and should include any information not previously provided with the initial application for the refund.

*External:* In accordance with paragraph 273GA(1)(haaa) of the Customs Act, if the claimant does not accept the decision of Customs, then the claimant may appeal the decision to the Administrative Appeal Tribunal (AAT). An application for an AAT review of a decision must be made to the Tribunal within 28 days after the day on which the person is notified of the reviewable decision: section 29(2) of the *Administrative Appeals Tribunal Act 1975*.

**RELATED INSTRUCTIONS AND GUIDELINES**

*Processing of Refunds – ICS Standard Operating Procedures*  
Australian Customs Notice 2000/73.

**RELATED POLICIES AND REFERENCES**

*Customs Drawback Procedures Practice Statement*  
*Customs Act 1901*  
*Customs Regulations 1926*  
*Transfer Pricing Practice Statement*

**KEY ROLES AND RESPONSIBILITIES**

Revenue Analysis Section

**CONSULTATION****External Consultation:**

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This Practice Statement reflects existing policy previously available to external stakeholders; it will be placed on the Customs website for public comment and feedback on its accessibility, clarity, and presentation.

**Internal Consultation:**

The following internal stakeholders have been consulted in the development of this Practice Statement:

- Regional Refund Officers;
- Tariff Concessions Section;
- Trade Measures Branch;
- Compliance Division;
- Cargo Division (Policy and Industry Engagement and User Services);
- Financial Services Division; and
- Customs Legal Unit.

Approval

Approved on *(date)* by:

*(issuing ND)*

**ENDORSED**

Endorsed on *(date)* by:

DCEO

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