Regulatory Impact Statement

Customs and Excise Act Review: Excise duty: Remissions, Permits and Timeframes

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the New Zealand Customs Service (Customs).

It provides an analysis of options to address issues associated with the collection of excise duty in New Zealand.

The following are constraints on the analysis:

- there is a lack of quantitative information in some areas. For example, Customs does not know the exact cost of complying with the current remission procedures. In some instances quantitative information was also not provided through the consultation process. This RIS therefore makes assumptions and uses anecdotal evidence and comparative information in some areas where data is not available.
- some of the analysis is based on subjective judgments about the likelihood of events occurring. This is due to the lack of real examples of these events occurring and the inability to reliably predict the potential of these issues arising.
- the impacts, including the financial impacts, of some options in this RIS are estimated based on material provided in submissions and examples provided by the sectors during consultation.

The impacts discussed in this paper are primarily on alcohol manufacturers and Customs in its role of managing the collection of excise.

Signed by Michael Papesch on 15 September 2015

Michael Papesch
Group Manager Policy, Legal and Governance 15 September 2015

Executive summary

1 Excise is a tax or duty on the domestic manufacture of tobacco, fuel and alcohol. Excise is applied to all forms of manufactured tobacco and consumable alcohol, including beer, spirits, wine (fruit wine and cider) and ethanol. Total excise revenue collected in 2014/15 was $4.2 billion ($2.2 billion in excise and $2 billion in excise-equivalent duty[1]). Approximately $910 million of excise and excise equivalent was collected from alcohol in 2014/15. Approximately $1.506 billion of excise and excise equivalent was collected from tobacco in 2014/15 and approximately $1.789 billion of excise and excise equivalent was collected from fuel in 2014/15.

2 The majority of domestically produced alcohol is exported. No excise applies to exported goods. There is a system in place to collect excise from manufacturers that sell to the domestic market. Strong controls are in place around the manufacturing and storage processes for excisable products to ensure that no goods are released to the market without excise being paid. These controls are underpinned by:

- a combination of Customs control of the goods in a Customs Controlled Area (CCA) – excisable products must be manufactured in a Customs controlled Licensed Manufacturing Area (LMA), with excise due when the goods are released from the LMA
- a compliance assurance trust based approach which relies on licensees submitting accurate excise returns and paying the appropriate excise due.

3 In recent years there has been an increase in the number of manufacturers selling to the domestic market, particularly through the growth in the boutique beer industry.

4 There are two tobacco manufacturers (one large and one small). The large tobacco manufacturer produces for the domestic and export markets.

5 The review has found that overall; the excise filing and payment system for alcohol products is functioning well and meets the objective of Customs collecting the appropriate amount of revenue. Customs' controls around alcohol and tobacco are designed to ensure there is minimal revenue leakage and no leakage of goods into the black market. The system is underpinned by a combination of Customs control of the goods in a CCA and a trust based approach which relies on licensees submitting accurate excise returns and paying the appropriate excise due. Excisable products must be manufactured in a LMA. There are currently 615 alcohol LMAs. Once finished goods are released from the LMA, excise is due unless the business meets the requirements for off-site storage.

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[1] Excise equivalent duty is the excise charged on imports.

6 While overall the current system for collecting excise on these products is functioning adequately, the review has indicated that in some areas excise collection can be streamlined and simplified to reduce costs for excise payers and Customs, while maintaining revenue. There are also some areas where the system can be strengthened. This Regulatory Impact Statement (RIS) provides analysis of options to ensure that:

- the system for managing excise supports modern business practices and business growth, while ensuring the appropriate amount of revenue is collected without imposing unnecessary costs on business and Customs.

7 The recommendations in this RIS are to amend the regulations to:

Streamline and simplify the excise system

- remove the need for a manufacturer (alcohol and tobacco) to apply for remission if goods have not been released for home consumption if records of the damage or loss are kept by the excise filer and the damage or loss reflected in the excise return

- remove the need to apply for a permit (alcohol and fuel) to move goods between Customs Controlled Areas (including Licensed Manufacturing Areas)

Strengthen the excise system

- tighten the provisions for remission of duty (alcohol and tobacco) so that domestically manufactured product withdrawn from the market and exported claiming drawback cannot claim remission when reimported for destruction

- tighten the timeframes for excise returns and payment of alcohol excise for new licensees until they demonstrate compliance as well as enabling Customs to shorten the return and payment periods in certain circumstances.

Section A: Streamlining excise control processes

Part 1: Remissions process (alcohol and tobacco)

Status Quo

8 The excise liability commences from the start of the manufacturing process. Excise is due (an excise return is filed and payment made) when the goods are released for home consumption. If anything goes wrong during the manufacturing process including if product goes off, or when a decision is made for sample product not to be released for home consumption, remission (release) by Customs from the excise liability can be applied for. The business has to apply to Customs indicating the reason why they seek remission.

9 Regulations 60 to 63 of the Customs and Excise Act set out the conditions under which remissions can be made. These include where goods which are under Customs control are:

- damaged or deteriorated in condition
- destroyed, pillaged or lost
- diminished in value
- of faulty manufacture.

10 In considering the application, the chief executive must take a number of factors into account including being satisfied that the damage or deterioration was not caused by the wilful act or negligence of the:

- importer or licensee of any Customs controlled area where the goods had been stored
- or of any of the employees, or persons acting on behalf of the importer or licensee.

11 Under the current excise system, manufacturers have to apply to Customs for excise to be remitted on losses of goods before they are released for home consumption. Losses occur through breaks, spillage, samples, accidents or other cause. For example, if a valve is left on through being knocked by a forklift, manufacturers have to prove that it was not negligent. If bottles of product are broken, then the neck with the cap still on must be kept in a bin for inspection by Customs. Tobacco product that is manufactured and not fit for purpose prior to release for home consumption, is required to be stored and then destroyed under Customs supervision.

12 Once Customs has agreed to the remission application the product can be destroyed. Excisable product is required to be destroyed under Customs supervision. In recent times, given the increased number of applications and Customs staff being required for other duties, a Customs officer may not always be in attendance. In 2014 Customs undertook approximately 210 supervised destructions.

13 The alcohol sector has evolved significantly in recent years and now has a much more horizontal manufacturing system, with multi layered distribution frameworks, with fully integrated warehouse management and accounting systems that trace data and movement of stock.

Problems

14 Current procedures and practices for remission of loss in the manufacturing process are based on regulations that were developed when there were few manufacturers; they had fully integrated production models; little or no automation of stock management records; and Customs officers were available to supervise much of the processes. The remission provisions were relevant in a time when

Customs had full control of the production and storage sites and was responsible for the security of the site. However, Customs no longer has day to day involvement in the running of CCA's and the security of excise goods during manufacture and transport are the responsibility of the owner of the goods.

15 The system is based on outdated unnecessary procedures and processes requiring:

- evidence of loss which is based on physical sight rather than business stock records eg manufacturers are required to keep the bottle neck with the cap on to prove breakage of bottles until Customs inspects the evidence. Compiling and keeping physical evidence is a health and safety hazard for business and for Customs (when required to examine and view evidence. In some situations photographs are also able to be used as evidence

- time intensive and resource intensive approval process for losses in the manufacturing process

- Customs officers to decide whether the conditions for release from excise liability are met is subjective and is subject to variation across the country.

16 The regulations result in unnecessary compliance costs for business and unnecessary costs for Customs. The [redacted] largest alcohol excise manufacturers estimate that the cost of complying with current remission procedures is close to a combined cost to them of $500,000 per annum. Customs does not routinely collect data on numbers of remission applications and current systems make it difficult to collate this information. Customs is developing mandatory electronic processes for excise, with automated excise entries being introduced through the Joint Border Management System in mid-2016.

Problem from a business perspective

17 Submitters noted that the assumption is that in destroying a product a manufacturer is seeking to avoid excise. This ignores the significant costs involved in manufacturing product. Businesses claim no consideration is given to whether the goods are of a suitable standard for consumption as the driver for Customs is to treat excise as a revenue stream that must be maximised. For example, when a new beer product is made for trial and a decision is made not to supply the product to market, Customs have to agree that the product can be dumped and excise liability be remitted. This can mean product is required to be kept in the LMA until a decision is made, taking up storage space within the LMA. This is more of a problem for beer manufacturers who do not have access to off-site storage. For example, in developing a new product, a beer manufacturer may make a number of brews before finding the one that will go to market. Application for remission is required for all those brews.

18 There are 105 LMAs who complete a return for beer, most of which are small operations. In some cases, in order to meet the criteria under the regulations, Customs may require the product to be kept in the LMA until it reaches its 'best before' date. When product is to be dumped, Customs are required to be on site to supervise destruction (although this is not always possible or necessary).

19 These practices while possibly suitable in 1996 are no longer efficient and the sector sees them as conveying a lack of trust by Government. They are also not good use of Customs resources which have to be focussed on such activities of a mainly voluntarily compliant sector rather than being able to be allocated to where there is non-compliance.

20 The accountable losses are not a significant excise liability for any individual firm. They do create a compliance burden for business in terms of disclosures, discussions, meetings and delayed accounting and administrative costs for Customs.

Objectives

21 The objective is to ensure that the system for managing excise supports modern business practices and business growth, while ensuring the appropriate amount of revenue is collected without imposing unnecessary costs on business.

22 Customs used the following criteria to assess the options:

- **Consistency:** The rules for remission are consistent with modern business practice and are consistently applied.
- **Effectiveness:** The system collects the appropriate amount of revenue.
- **Costs:** Costs are proportionate to the benefits or less than the benefits.

23 Options that meet these criteria are likely to address the problems that have been identified. The criteria have been accorded different weights when analysing the options. The criteria are listed in order of importance.

Options and impact analysis

24 Customs considered the following regulatory options:

Option one: status quo: Manufacturers are required to submit an application to Customs for remission of excise where product manufactured by them will not be released to market, physical evidence of loss required, and Customs required to supervise destruction

- Manufacturers are required to submit an application to Customs for remission of excise where product manufactured by them will not be released to market. Physical evidence of the loss or damaged stock such as the bottle neck with the top on must be kept for inspection by Customs. An application is approved by Customs if it meets the criteria in regulations 60-63. The product is then destroyed under Customs supervision, although in some situations Customs will allow the product to be destroyed without them present or for the complete time to destroy the goods Excise liability is applied to unaccounted losses and theft of excise goods.
- All businesses keep records of their manufacturing processes as they are required for accounting and compliance with other regulatory regimes. The

alcohol industry is characterised by a more horizontal manufacturing system than in the past, with multi layered distribution frameworks and fully integrated warehouse management and accounting systems that trace data and movement of stock. [redacted] has strong stock management and accounting systems. Customs uses these records as well as the applications for remission when undertaking an audit of the manufacturer.

Option two: No application for remission of excise, using business records to verify liability ***(preferred option)***

- Under this option the regulations would be amended to provide that a manufacturer does not need to apply for remission of excise where product manufactured by them will not be released to market if suitable records of the damage or loss are kept by the excise filer and reflected in the excise return. If the manufacturer does not have a suitable system or is non-compliant, supplementary evidence of losses would be required. Excise liability will continue to be applied to unaccounted losses and theft of excise goods.

- This option would remove all the unnecessary costs for the manufacturers associated with the status quo and require reliance on the modern data collection systems that are standard in most businesses. The [redacted] excise alcohol manufacturers have said this would result in savings of approximately $0.5 million per annum. There would be a small additional compliance cost for business as they would need to provide a record of the damage or loss in their excise return. While this cost has not been quantified, businesses indicated it would only mean copying the detail from their records to the excise return. The industry supports this proposal.

- Costs for Customs will be reduced as applications will not need to be processed, evidence verified, and an officer will not have to attend destruction of the goods. Customs will be able to undertake risk analysis from the time the return is filed. Customs will use the business records when undertaking an audit to verify correct revenue has been collected.

Option three: *Application for remission of excise required supported by business records and photographic evidence*

- Manufacturers would be required to submit an application to Customs for remission of excise where product manufactured by them will not be released to market. Physical evidence of loss of product would not be required. The manufacturer would be required to keep photographic evidence of the loss as well as business records. A Customs officer would not supervise destruction of the goods. When undertaking an audit, Customs would use the business records as well as the photographic evidence to verify the loss and tie it to the application.

- Under this option, a business would still incur the cost of submitting an application for remission of excise duty if product they have manufactured is not going to be released to market. As evidence, the business would be required to keep photographic evidence as well as their standard business records for Customs to verify the goods would not go to market as for example they had been damaged or destroyed as not marketable.

- Businesses would continue to incur costs associated with having to apply for remission and keep photographic evidence to indicate the lost product. There would be a small reduction in cost for the manufacturer, as the physical evidence such as the bottle necks with lids or the brew that was not of sufficient quality for market, would not be required to be kept for Customs inspection.

- Customs would incur fewer costs than the status quo but additional costs than under option two. This is because they would not need to inspect goods that are not going to be released to market and be present when the goods are destroyed. Customs would still need to process each application for remission and undertake an audit to verify the correct excise had been collected.

25 The following table sets out a summary analysis of the options.

Key: ✓✗ Partially meets the criteria.

✓✓ Meets the criteria.

✗✗ Does not meet the criteria.

Criteria	Status quo: Manufacturers are required to submit an application to Customs for remission of excise where product manufactured by them will not be released to market. Physical evidence of the loss or damaged stock must be kept for inspection by Customs. An application is approved by Customs if it meets the criteria in regulations 60-63. The product is then destroyed under Customs supervision. Excise liability is applied to unaccounted losses and theft of excise goods.	Option one: Amend the regulations to provide for automatic remission for goods not released to market. Manufacturers must keep records of losses and reflect them in the excise return	Option two: Application for remission still required for goods not released to market, physical evidence and supervision requirements replaced by photographic evidence and records
Consistency: the rules for remission are consistent with modern business practice and are consistently applied.	✗✗ Rules for remission are outdated and do not take account modern business practices for example stock management systems.	✓✓ Consistent with modern business practice (reliance on records) and opportunities for inconsistent application are reduced.	✓✗ More consistent with modern business practice than the status quo but still requires approval on a case by case basis, leading to risk of inconsistency. Having to keep photographic evidence would be an unnecessary cost given modern warehouse and accounting systems that trace data and movement of stock.
Effectiveness: system collects appropriate amount of revenue	✓✓ Appropriate amount of revenue collected.	✓✓ More reliant on voluntary compliance. Declaration of losses on excise return will allow Customs to monitor risk.	✓✓ More reliant on voluntary compliance. Customs can assess risk on application for remission. Appropriate amount of revenue collected.

		Appropriate amount of revenue collected.	
Costs: Costs are proportionate to the benefits or less than the benefits.	✗✗ Costly and time consuming process for both industry ($0.5m) and Customs (210 supervised destructions per annum).	✓✓ Reduced costs and time saved for both industry and Customs. System will use data already available saving time for business and Customs. For industry approximately $0.5m per annum based on [redacted] alcohol excise payers. Customs officers will not need to supervise destruction of goods (about 210 destructions per annum). Customs will not need to inspect evidence of loss or damage.	✓✗ Small reduction in costs for industry as physical evidence not required to be kept. Some time-saving for Customs as inspection of evidence not required (other than photographic) and officers do not need to supervise destruction of goods.
Conclusion	Meets some criteria.	**Meets criteria. Preferred option.**	Meets some criteria.

Impacts

26 The preferred option would have the following impacts for alcohol manufacturers and Customs.

	Preferred option:
Impact on alcohol manufacturers	**Positive** Streamlined control processes are consistent with modern business practice. Reduces unnecessary costs and saves time.
Impact on Customs	**Positive** Reduces unnecessary costs and saves time.

Recommended option: Amend the regulations to provide for automatic remission for goods not released to market (alcohol and tobacco). Manufacturers must keep records of losses and reflect them in the excise return.

Implementation plan

27 If these proposals are accepted, Customs will consult and work with industry to ensure they are able to be implemented with the least cost possible for business and Customs. Industry has indicated they are keen to work with Customs. Customs will also engage with industry to publicise the changes and ensure business understand the new requirements and know how to comply. This will likely include the co-development of guidance material to assist voluntary compliance with the new requirements.

28 Customs will need to review its operating policies and procedures and ensure all staff understand the new requirements. No system changes are needed but there will be some small changes to the audit process. The proposals have been designed to minimise compliance costs and encourage voluntary compliance, thereby minimise enforcement requirements.

Monitoring, evaluation and review

29 An evaluation and review process will be established by Customs after a period of implementation of the legislative amendments. Customs will establish a process for engaging with industry to ensure ongoing evaluation and review of the requirements from a business perspective. Monitoring will be built into normal reporting and assurance (including audit) functions. Customs will be able to monitor from routine reporting from the Joint Border Management System on excise payees/amounts paid. Standard audit procedures will check the validity of the return.

Part 2: Moving goods between LMAs (alcohol)

Status Quo

30 Section 47 (1)(c) of the Act 1) provides that goods that are subject to the control of the Customs must not be delivered or removed from a Customs controlled area except—

(c) pursuant to a permit or other authorisation granted by the chief executive in respect of those goods, subject to such conditions as the chief executive may determine;

31 Modern business practice is for the manufacturing process to take place across multiple LMAs, for example wine is made in one LMA and then bottled and labelled in another LMA. A permit is required to move the goods. If the wine LMA has off-site storage it will also require a permit to move the goods.

32 The Procedure Statement[2] provided to licensees sets out the details of the records that need to be kept for each CCA. In instances where transfers between CCAs is a common and standard part of a LMAs business, Customs has included these types of transfers within Procedure Statements issued with some licences. LMAs can only obtain a permit if they meet conditions set by Customs.

Problems

33 The requirement to obtain permit's or authorisation to move goods between CCAs, where they are not being released for home consumption, generates costs for business and Customs and may not be necessary. As most manufacturers have a continuing movement permit for moving goods between specific CCAs, the magnitude of the problem for business is not large. While not a large use of resource for Customs, it does involve resources to issue and audit permits.

Objectives

34 The objective is to ensure that the system for managing excise supports modern business practices and business growth, while ensuring the requirements on business support collection of the appropriate amount of revenue, while avoiding unnecessary costs.

35 Customs used the following criteria to assess the options:

- **Effectiveness:** The option helps to reduce the risk of revenue leakage.

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[2] A Procedure Statement records the terms and conditions that the LMA must comply with as part of the issuing of the licence.

- **Costs:** Reduced costs for business.

36 Options that meet these criteria are likely to address the problems that have been identified. The criteria have been accorded different weights when analysing the options. The criteria are listed in order of importance.

Options and impact analysis

37 Customs considered the following regulatory options:

Option One: Status quo: Goods moved between CCAs require a permit from Customs

- A permit is required for the manufacturer to move goods between LMAs and in the case of wine with off-site storage, to the storage CCA. This means an LMA has to apply to Customs for the permit and Customs assess the application. This control is aimed at reducing the risk of revenue leakage by ensuring Customs knows where the goods are.

- Where transfers between CCAs is a common and standard part of a LMAs business, Customs has included these types of transfers within Procedure Statements issued with some licences. LMAs can only obtain a permit if they meet conditions set by Customs. Customs also incurs costs from having to process permit applications and audit them. Stock movements are also part of the normal audit process.

*Option two: No permit for moving goods between CCAs **(preferred option)***

- Under this option, the regulations will be amended to remove the requirement to apply for a permit. All blanket permissions for moving goods will be noted in the LMA's Procedure Statement or Alcohol Excise Plan.

- Business identified the permit process as an unnecessary cost for them when they have fully integrated warehouse management and accounting systems that trace data and movement of stock. These management and accounting systems will be used in conjunction with blanket permissions in the LMA Procedure Statement or Alcohol Excise Plan. This will reduce the risk of revenue leakage. Customs will continue to audit movement as part of its normal business audit.

- Business support this option.

- Customs will not incur costs from having to process and audit permit applications.

38 The following table sets out a summary analysis of the options.

Key: ✓✗ Partially meets the criteria.

✓✓ Meets the criteria.

✗✗ Does not meet the criteria

Criteria	**Status quo:** **Goods moved between CCAs require a permit from Customs.**	**Option one:** **Amend the regulations to remove the requirement to apply for a permit. All blanket permissions for moving goods will be noted in LMA's Procedure Statement or Alcohol Excise Plan.**
Costs: **Reduce costs for business.**	✗✗ Unnecessary costs imposed on business and Customs.	✓✓ Reduces cost as business does not need to apply for a permit. Normal business records will be used to indicate stock movement. Customs do not need to process and audit permit applications.
Effectiveness: **Helps to reduce the risk of revenue leakage.**	✓✓ More information for Customs about movement of goods helps Customs control revenue leakage.	✓✓ Blanket permissions for moving goods will be noted in the LMA's Procedure Statement or Alcohol Excise Plan. Information available for Customs use during audit.
Conclusion	Meets some criteria.	Meets all criteria. **This is the preferred option.**

Impacts

39 The preferred option would have the following impacts for alcohol manufacturers and Customs.

	Preferred option:
Impact on alcohol manufacturers	**Positive** Removal of the requirement for a permit to move goods will reduce costs for business but it will be a small impact on alcohol manufacturers.
Impact on Customs	**Positive** Removal of the requirement for a permit will be a small impact on Customs. Customs will not need to process permit applications. Customs will need to check stock movement records during an audit.

Recommended option: Remove the need to apply for a permit to move goods (alcohol and fuel) between CCAs.

Implementation plan

40 These proposals require amendment to the Customs and Excise Regulations 1996. If these proposals are accepted, Customs will consult and work with industry to ensure they are able to be implemented with the least cost possible for business and Customs. Industry has indicated they are keen to work with Customs. Customs will also engage with industry to publicise the changes and ensure business understand the new requirements and know how to comply. This will likely include the co-development of guidance material to assist voluntary compliance with the new requirements. Customs will need to review its operating policies and procedures and ensure all staff understand the new requirements. No system changes are needed. The proposals have been designed to minimise compliance costs and encourage voluntary compliance, thereby minimise enforcement requirements.

Monitoring, evaluation and review

41 An evaluation and review process will be established by Customs after a period of implementation of the legislative amendments. Customs will establish a process for engaging with industry to ensure ongoing evaluation and review of the requirements from a business perspective. Monitoring will be built into normal reporting and assurance (including audit) functions. Customs can monitor from routine reporting from the Joint Border Management System on excise payees/amounts paid, and standard audit procedures will check the validity of the return.

Section B: Strengthening the Excise System

Part 1: Payment timeframes for alcohol manufacturers

Status Quo

42 Across the whole of the excise system, businesses with an obligation to pay excise are required to submit returns and pay excise within timeframes set in accordance to their annual excise liability as outlined in the table below. The monthly return and payment period applies to all of the fuel companies, all tobacco manufacturers and the large alcohol manufacturers. The other payment periods only apply to small and medium sized alcohol manufacturers and some fuel blenders.

Excise liability (p.a.)	<$50,000	$50,000 - $100,000	>$100,000
Return and payment period	Annually	Six-monthly	Monthly

43 Businesses can elect to make payments more frequently, but cannot make payments less frequently.

44 No return needs to be filed if no excise is payable. The issues and recommendations about the current lack of nil returns are outlined in the paper 'Regulatory Impact Statement Customs and Excise Act Review: Excise duty on alcohol products'.

45 The payment system was designed to free up cash flow for smaller businesses. The intention was that less frequent excise payments would give businesses more flexibility to choose how to allocate their business capital. However in some circumstances Customs has found that due to infrequent payment requirements, smaller businesses become unable to meet excise payments due to funds being used elsewhere.

Problems

46 Overall, the excise filing and payment system for alcohol products is functioning well and meets the objective of Customs collecting the appropriate amount of revenue. This regulation was designed to assist small and medium size excise manufacturers. For some, especially the smaller ones it seems to pose some risks.

47 A small number of businesses are unable to meet their excise payment obligations due to mismanagement of funds as they use the cash flow required to meet their excise liability to meet other costs, and then find themselves unable to make the payment when it is due. Customs does not view this as a large problem. At the end of December 2014 there were 6 of a total of 97 six monthly payers, and 15 of 323 annual payers, still in arrears. The debt involved was $823,000. Another factor is the current payment system does not align with other business payment cycles.

The current payment timeframes do not support some businesses to voluntarily comply with their obligations to pay excise.

48 New businesses have a lot of obligations and processes to learn in the early years following start up. Infrequent 6-monthly or yearly payment periods do not help new businesses to understand their excise requirements.

49 In addition, currently Customs does not have the ability to manage the frequency of payments in situations when businesses face financial difficulty. For example, Customs does not have the ability to require a small business, with an excise liability of less than $50,000, to pay excise monthly instead of annually when it is in financial difficulty.

Objectives

50 The objective is to support small and medium size businesses to meet excise obligations while enabling business growth, and to give Customs more flexibility to manage effective collection of excise.

51 Customs used the following criteria to assess the options:

- **Effectiveness:** The option helps to ensure that the appropriate amount of excise is collected by Customs.
- **Supports business growth:** The option supports business growth.
- **Supports voluntary compliance:** The option supports businesses to voluntarily comply with their obligations regarding excise.
- **Costs:** The costs are proportionate to the benefits or less than the benefits.

52 Options that meet these criteria are likely to address the problems that have been identified. The criteria have been accorded different weights when analysing the options. The criteria are listed in order of importance.

Options and impact analysis

53 Customs considered the following regulatory options:

Option one: status quo: Three payment periods based on the business excise liability

- There are three set payment periods, depending on the annual excise liability of a business: annually (>$50,000), six-monthly ($50,000 - $100,000), monthly (<$100,000).
- Customs cannot reduce the payment period when a business finds itself unable to meet its excise obligations.

Option two: ***reduce payment periods from 1, 6, and 12 months to 1, 2, and 6 months, respectively, depending on the annual excise liability of a business***

- Under this option, the payment periods would be reduced from 1, 6, and 12 months to 1, 2, and 6 months respectively depending on the annual excise liability of a business.
- This option would assist with ensuring the correct amount of revenue is collected as the businesses currently paying 6 and 12 months are less likely to have used the money elsewhere in the business and are therefore more likely to be in a position to meet their excise obligations.
- This option would mean all 6 and 12 monthly payers would be affected including those who have used the deferred payment to grow their business as well as manage to meet their excise obligation.
- Customs would still not be able to reduce the payment period when a business finds itself unable to meet its excise obligations.

Option three: Monthly payment cycle for all new alcohol licensees until they demonstrate sufficient understanding of their excise obligations and have sufficient systems in place

- Under this option, every new alcohol licensee, regardless of their excise liability, would start on a monthly payment cycle. Licensees would need to earn the right to a deferral period (of 6 or 12 months according to their annual excise liability). Alcohol licensees earn the right to deferred payment by demonstrating to Customs that they have the appropriate systems and processes in place and sufficient knowledge of the system to comply.

Option four: Monthly payment cycle for all new alcohol licensees until they demonstrate sufficient understanding of their excise obligations and have sufficient systems in place. Customs able to reduce payment period when business cannot meet excise obligations ***(preferred option)***

- As under option three, under this option, every new alcohol licensee, regardless of their excise liability, would start on a monthly payment cycle. Licensees would need to earn the right to a deferral period (of 6 or 12 months according to their annual excise liability). Alcohol licensees earn the right to deferred payment by demonstrating to Customs that they have the appropriate systems and processes in place and sufficient knowledge of the system to comply. Customs also has the ability to shorten the return and payment periods in certain circumstances.
- Business support this option.

Option five: Three payment periods based on the business excise liability with Customs able to reduce payment period when business cannot meet excise obligations

- Under this option, there would be no change to the current three set payment periods, depending on the annual excise liability of a business: annually (>$50,000), six-monthly ($50,000 - $100,000), monthly (<$100,000).

54 Customs would be able to reduce the payment period when a business finds itself unable to meet its excise obligations.

55 Customs used a multi-criteria analysis framework to assess the options. The following table sets out a summary analysis of the options.

Key: ✓✗ Partially meets the criteria.

✓✓ Meets the criteria.

✗✗ Does not meet the criteria.

Criteria	Option one: status quo: Three set payment periods, depending on the annual excise liability of a business: annually (>$50,000), six-monthly ($50,000 - $100,000), monthly (<$100,000).	Option two: Similar to the status quo but reduce payment periods from 1, 6, and 12 months to 1, 2, and 6 months, respectively, depending on the annual excise liability of a business.	Option four: Monthly payment cycle for all new alcohol licensees until they demonstrate sufficient understanding of their excise obligations and have sufficient systems in place	Option four: Every new alcohol licensee, regardless of their excise liability, starts on a monthly payment cycle. Licensees earn the right to a deferral period (of 6 or 12 months according to their annual excise liability). Alcohol licensees earn the right to deferred payment by demonstrating to Customs that they have the appropriate systems and processes in place and sufficient knowledge of the system to comply. Customs also has the ability to shorten the return and payment periods in certain circumstances.	Option 5 Three payment periods based on the business excise liability with Customs able to reduce payment period when business cannot meet excise obligations
Effectiveness: The option helps to ensure that the appropriate amount of excise is collected by Customs.	✓✗ Does not enable Customs to manage and tailor payment cycles for businesses in financial difficulty.	✓✗ More effective than the status quo in collecting appropriate amount of revenue because businesses are required to make excise payments more regularly, thereby encouraging businesses to pay excise rather than allocating funds elsewhere.	✓✗ Will assist new licensees to understand their excise obligations and to get appropriate systems in place to support them. Customs able to assist them in this process. Customs cannot assist	✓✓ Will assist new licensees to understand their excise obligations and to get appropriate systems in place to support them. Customs able to assist them in this process. Enables Customs to tailor	✓✗ More effective than the status quo in collecting appropriate amount of revenue because it enables Customs to tailor payment cycles depending on the payment history of the alcohol licensee.

		Customs cannot assist business to make payments on normal business cycle to assist them to remain viable.	business to make payments on normal business cycle to assist them to remain viable.	payment cycles depending on the payment history of the alcohol licensee. More likely to ensure appropriate amount of revenue is collected.	
Supports business growth: **The option supports business growth.**	✓✓ Annual or six monthly payment cycles give medium and small businesses flexibility with cash flow.	✓✗ Small and medium sized businesses have less flexibility with cash flow than the status quo.	✓✗ Current small and medium size businesses have flexibility with cash flow. New businesses have less flexibility in first year or until they can demonstrate compliance.	✓✗ New businesses have less flexibility with cash flow than the status quo, Current small and medium size businesses have flexibility with cash flow.	✓✓ Annual or six monthly payment cycles give medium and small businesses flexibility with cash flow.
Supports voluntary compliance: **The option supports businesses to voluntarily comply with their obligations regarding excise.**	✗✗ Payment cycles are not aligned with other business cycles. Infrequent payment cycles do not support consistent management of excise payments.	✓✗ This option is more effective than the status quo at supporting voluntary compliance, because payment periods are more frequent.	✓✗ This option is more effective than the status quo at supporting voluntary compliance for new business, because payment periods are more frequent. It does not assist current businesses to comply especially when they are in financial difficulty.	✓✓ The settings support voluntary compliance because payment periods are tailored depending on the payment history of the alcohol licensee. This option supports new licensees to comply.	✓✗ The settings support voluntary compliance for current excise payers because payment periods are tailored depending on the payment history of the alcohol licensee. Does not assist new licensees to understand their excise obligations and to get appropriate systems in place to support them to comply.
Costs: **The costs are proportionate to the benefits or less than the**	✓✗ Costs for business are not proportionate to those of the Crown to ensure the appropriate amount of excise	✓✗ Marginally higher costs for business due to more frequent payment periods.	✓✗ Marginally higher costs for new business due to more frequent payment periods.	✓✗ Initially new alcohol licensees will face marginally higher costs than under current settings due to more frequent	✓✗ Costs to excise payers would be the same unless they are in financial difficulty. Costs to Customs are less

benefits.	is collected.			payment periods. Over time if the business has a satisfactory record of meeting excise payment requirements, the cost will reduce and will be equal to the status quo. Costs to Customs are less than under the status quo as less resource would be required to collect revenue from those businesses in financial difficulty.	than under the status quo as less resource would be required to collect revenue from those businesses in financial difficulty.
Conclusion	Meets some criteria.	Meets some criteria.	Meets some criteria.	Meets some criteria, and those criteria have more weight than the criteria met by the status quo. **This is the preferred option.**	Meets some criteria.

Impacts

56 The preferred option would have the following impacts for alcohol manufacturers and Customs.

	Preferred option: **Every new alcohol licensee, regardless of their excise liability, starts on a monthly payment cycle. Licensees then earn the right to a deferral period (of 6 or 12 months according to their annual excise liability). Alcohol licensees earn the right to deferred payment by demonstrating to Customs that they have the appropriate systems and processes in place and sufficient knowledge of the system to comply. Customs also has the ability to shorten the return and payment periods in certain circumstances.**
Impact on alcohol manufacturers with an excise liability of more than $100,000	Neutral No impact on large alcohol manufacturers.
Impact on alcohol manufacturers with an excise liability of $50,000-$100,000	Neutral No change to current medium size alcohol manufacturers who comply with their excise obligations. This change will impact medium-sized alcohol manufacturers entering the market. Marginal increase in compliance burden due to more regular payment periods than current settings. Compliance burden will reduce over time for those businesses that develop a history of consistent excise payments.
Impact on alcohol manufacturers with an excise liability of $0-$50,000	Neutral No change to current small size alcohol manufacturers who comply with their excise obligations. This change will impact small alcohol manufacturers entering the market. Marginal increase in compliance burden due to more regular payment periods than current settings. Compliance burden will reduce over time for those businesses that develop a history of consistent excise payments.
Impact on Customs	Positive Customs has a greater ability to tailor payment requirements on a case-by-case basis. Reduced cost for Customs given they can assist new licensees to comply in the first year or until they illustrate compliance. Less cost on Customs as businesses in financial difficulty can be put on monthly payments rather than Customs having to use resource to follow-up non-payment. This will help enable Customs to better manage the excise system.

Recommended option: Every new alcohol licensee, regardless of their excise liability, starts on a monthly payment cycle. Licensees then earn the right to a deferral period (of 6 or 12 months according to their annual excise liability). Alcohol licensees earn the right to deferred payment by demonstrating to Customs that they have the appropriate systems and processes in place and sufficient knowledge of the system to comply. Customs also has the ability to shorten the return and payment periods in certain circumstances.

Implementation plan

57 If these proposals are accepted, Customs will engage with industry to publicise the changes and ensure business understand the new requirements and know how to comply. The proposals have been designed to minimise compliance costs and encourage voluntary compliance, thereby minimise enforcement requirements

58 Customs will ensure its systems are able to indicate when a business might be finding it difficult to meet their excise obligations and work with them to assist with compliance. As part of this process, Customs will be able to produce data to show how many new excise payers are on monthly payments, and how many current payers it has moved to monthly payments.

Monitoring, evaluation and review

59 From the systems Customs will set up, Customs will be able to record how long a new licensee is on monthly payments and why, as well as how many and how long current licensees are moved to monthly payments. An evaluation and review process will be established by Customs after a period of implementation of the legislative amendments to assist with determining the effectiveness of the system and what if any changes might be required. This will be part of an early intervention under Customs debt management strategy. Monitoring will be built into normal reporting and assurance (including audit) functions.

Part 2: Remission on import for goods previously exported on which drawback has been granted

Status Quo

60 Refunds of excise are not available on unsold stock released for home consumption by a manufacturer. The excise system only permits a refund of duty after goods are released for home consumption if those goods are of faulty manufacture. In all other circumstances there is no refund available. This is because excise is a tax on manufacture and not a sales tax.

61 A refund (drawback) can be applied for and approved by Customs if a manufacturer exports any unsold stock that has been released for home consumption. If a firm withdrew stock from the market and exports it, receiving drawback of the excise paid (a refund), then reimports that same stock for destruction, then it is arguable that Customs has to remit the excise liability. Export in this situation does not require the goods to enter another country; the goods would only need to leave New Zealand waters.

62 New Zealand is a signatory to the Kyoto Convention. Under this convention, drawback (refund) is approved where duty has been paid on goods that are subsequently exported.

Problem

63 There is a loophole in the law that could result in product that is exported claiming drawback then seeking remission of excise when the same stock is re-imported for destruction. The higher the rate of excise the more cost effective it would be to circumvent the controls in the excise system in this manner. This loophole undermines the principle that excise is a tax on manufacture rather than consumption.

64 While this is a loophole at present [redacted] has recently asked Customs whether it can do this.

Objectives

65 The objective is to ensure that the appropriate amount of revenue is collected.

66 Customs assessed the options against the following criteria;

- **Consistency**: The law is applied consistently across excise goods.
- **Effectiveness**: The excise system collects the appropriate amount of revenue.

- **International standards**: The legislation aligns with current international standards.

Options and impact analysis

67 Customs considered the following regulatory options:

Option one: status quo: drawback is available for domestic manufactured stock (alcohol and tobacco) withdrawn from market and exported. This stock can be re-imported for destruction and arguably, remission of excise is available

- Under this option, excisable product not sold domestically can be exported and a refund of excise obtained and then re-imported for destruction and arguably, remission of excise is available.
- If remission of excise on the product re-imported for destruction was available, this would undermine the principle that excise is a tax on manufacture rather than consumption. This would make excise a tax on consumption.
- Crown revenue due on excisable product manufactured and released to market would be lost.

*Option two: domestically manufactured product (alcohol and tobacco) withdrawn from the market and exported claiming drawback cannot claim remission when reimported for destruction (**preferred option**)*

- Under this option domestically manufactured product (alcohol and tobacco) withdrawn from the market and exported claiming drawback cannot claim remission when reimported for destruction (likely expired stock).
- This option would support the principle of the system that excise is a tax on manufacture rather than consumption.
- This option would encourage domestic manufacturers of these products to take responsibility for the quantity of goods produced and released to market.
- Drawback would still be available for exporters who needed to take product on the market back to export. Drawback provisions would be consistent with Kyoto Convention.
- Under this option there would be clarity that goods claiming drawback are not entitled to remission. This would reduce any potential legal costs for business and Customs and provide certainty.
- All revenue would be protected.

Option three: allow refund (alcohol and tobacco) on unsold stock manufactured in New Zealand

- This option would undermine the principle that excise is a tax on manufacture rather than consumption.
- This option would not encourage domestic manufacturers of these products to take any responsibility for the quantity of goods produced.
- This would make excise a tax on consumption.
- If this provision was not extended to imported excisable goods, New Zealand manufacturers would have a significant competitive advantage over their competitors who import product. This would be more of an issue in the tobacco sector where a larger percentage of the domestic market is supplied by imported product.
- Crown revenue would be reduced.

Option four: remove the ability to claim drawback on excisable products (alcohol and tobacco)

- This option would protect Crown revenue.
- While the drawback provisions would likely be consistent with the Kyoto Convention, as under the Convention New Zealand can restrict drawback on goods that have paid domestic excise duty. This option would be detrimental to those New Zealand exporters who currently remove goods from the market to fulfil an export order and claim a refund on the excise they have paid. Under this option they would not be able to get a refund of the excise paid. This option would impact more on boutique beer brands who have their beer produced by contract manufacturers, and excise is paid by the manufacturer as they have the liability.

68 The following table sets out a summary analysis of the options.

Key:
- ✓✗ Partially meets the criteria.
- ✓✓ Meets the criteria.
- ✗✗ Does not meet the criteria.

Criteria	Status quo: drawback is available for domestic stock withdrawn from market and exported. This stock can be re-imported for destruction and arguably, remission of excise is available	Option one: tighten the provisions for remission, no remission on goods on which drawback has been claimed	Option two: allow refund on unsold stock	Option three: remove ability to claim drawback on excisable goods
Consistency: law applied consistently across excise goods	✗✗ Inconsistent, loophole available for those prepared to incur the expense of exporting goods to get refund. It is arguable that the excise has to be remitted to that firm.	✓✓ Consistent, no mechanism for remission of excise duty when goods (likely expired stock) had claimed drawback.	✓✗ Domestically manufactured stock would have a competitive advantage over imported goods.	✓✗ Consistent, no mechanism for refund of excise duty on unsold goods
Effectiveness: system collects appropriate amount of revenue	✓✗ Available loophole could allow revenue avoidance.	✓✓ Loophole closed, appropriate revenue collected. Clarity that goods claiming drawback are not entitled to remission. Reduce potential for legal costs for business and Customs. Provide certainty.	✗✗ Appropriate revenue would not be collected if all unsold domestically manufactured stock was able to claim a refund.	✓✓ Loophole closed, appropriate revenue collected
International standards: the legislation meets current international standards	✓✓ Drawback provisions consistent with Kyoto convention	✓✓ Drawback provisions consistent with Kyoto Convention	✓✓ Drawback provisions consistent with Kyoto Convention	✓✗ Drawback provisions likely consistent with Kyoto Convention, but would be detrimental to NZ manufacturers and exporters
Conclusion	Meets some criteria.	Meets the criteria. **Preferred option**	Meets some criteria.	Meets some criteria.

Impacts

69 The preferred option would have the following impacts for alcohol and tobacco manufacturers and Customs.

	Preferred option:
Impact on alcohol and tobacco manufacturers	Neutral Customs has no evidence that this loophole had been used by industry but it does remove an excise duty avoidance strategy. There is evidence [redacted] Reduces potential legal costs. Provides clarity of the law.
Impact on Customs	Positive Closes a loophole and ensures the appropriate amount of revenue is collected. Reduces potential legal costs. Provides clarity of the law.

Recommended Option: tighten the provisions for remission (alcohol and tobacco), no remission on goods on which drawback has been claimed.

Implementation plan

70 Removing the entitlement to remission for goods on which drawback has been granted will require an amendment to the Customs and Excise Regulations.

71 If these proposals are accepted Customs will engage with industry to publicise the changes and ensure business understand the new requirements and know how to comply. The proposals have been designed to minimise compliance costs and encourage voluntary compliance, thereby minimise enforcement requirements.

Monitoring, evaluation and review

72 An evaluation and review process will be established by Customs after a period of implementation of the legislative amendments. Monitoring will be built into normal reporting and assurance (including audit) functions.

Consultation

73 Public consultation on the proposals was undertaken from March to May 2015 with 33 of the 89 submissions received commenting on excise. Improving the process for remission of excise was one of the three key areas identified by excise

submitters under the review. During the industry workshops stakeholders indicated support for the preferred options. Between March and June Customs undertook more in-depth consultation with a range of alcohol manufacturers and the alcohol industry associations. A number of workshops enabled industry input into the development of final recommendations on legislative change.

74 Public consultation was not undertaken on the proposal to tighten the provisions for remission of duty (alcohol and tobacco) when drawback has been claimed as [redacted]

75 Customs established a Senior Officials Advisory Group and the Stakeholder Reference Group in early 2014. These Groups met regularly during the review and consulted on the issues and recommendations in this paper.[3]

Correction: New Zealand Food & Grocery Council; Fonterra including Anchor Ethanol Limited

76 In addition to the public consultation the following private sector organisations have been involved in the review process: New Zealand Winegrowers; Brewers Association of Australia and New Zealand Inc; Brewers Guild; Spirits NZ; New Zealand Food and Grocery Council; Russell McVeagh; Constellation Brands New Zealand; Pernod Ricard Winemakers; Lion; DB Breweries Ltd; Blackburn Croft & Co; Wineworks; Fruit Wine & Cider Makers New Zealand; Fonterra including Anchor Alcohol.

77 The following government agencies were consulted on the contents of this Regulatory Impact Statement: The Treasury; Inland Revenue and the Ministry of Business, Innovation and Employment.

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[3] Members of the Senior Officials Advisory Group include: the Ministry for Primary Industries, the Ministry of Business, Innovation, and Employment, New Zealand Police, the Ministry of Transport, Inland Revenue and the Department of the Prime Minister and Cabinet. The Stakeholder Reference Group included representatives from the Importers' Institute, NZ Shippers' Council, Port CEO Forum, New Zealand Airports Association, Business New Zealand / Export New Zealand, Board of Airline Representatives NZ, International Container Lines Committee, Customs Brokers and Freight Forwarders Federation of NZ, the Conference of Asia Pacific Express Carriers, and Shipping New Zealand.