

IMPORTERS AND GST INPUT TAX DEDUCTIONS

PUBLIC RULING - BR Pub 06/03

[**Note** (not part of ruling): This ruling is essentially the same as Public Ruling BR Pub 97/10, published in *Tax Information Bulletin* Vol 9, No 11 (November 1997) which replaced Public Ruling BR Pub 95/9, published in *Tax Information Bulletin* Vol 7, No 7 (January 1996). Public Ruling BR Pub 97/10 was extended by *Gazette* notice until 31 March 2005 and published in *Tax Information Bulletin* Vol 12, No 5 (May 2000). This Ruling is to apply for an indefinite period.]

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Law

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of section 20(3) and the definitions of “invoice” and “document” in section 2.

The Arrangement to which this Ruling applies

The Arrangement is the importing of goods into New Zealand by registered persons for the purposes of making taxable supplies, the levying of GST on those goods by the New Zealand Customs Service under the Customs and Excise Act 1996, and the subsequent claiming of input tax deductions on that GST.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

A registered person who accounts for GST on an invoice basis may support a claim for a GST input tax deduction under section 20(3) for GST levied by the New Zealand Customs Service on goods imported into New Zealand with:

- the New Zealand Customs Service Electronic Entry document; or
- a Deferred Payment of Duty Statement or a Cash Statement.

The period for which this Ruling applies

This Ruling will apply to claims for input tax deductions on GST levied by the New Zealand Customs Service on goods imported into New Zealand on and following 1 April 2005 for an indefinite period.

This Ruling is signed by me on the 19th day of June 2006

Susan Price
Senior Tax Counsel

COMMENTARY ON PUBLIC RULING BR Pub 06/03

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 06/03 (“the Ruling”).

The subject matter of the Ruling was previously considered in Public Ruling BR Pub 95/9 published in TIB Vol 7, No. 7 (January 1996). After the New Zealand Customs Service moved to a partly electronic system for lodging and clearing imports Public Ruling BR Pub 97/10 was published in TIB Vol 9, No 11 (November 1997) to replace the earlier ruling. It was extended by *Gazette* notice until 31 March 2005 and published in TIB Vol 12, No 5 (May 2000). This Ruling replaces Public Ruling BR Pub 97/10.

Background

In December 1995, following the Court of Appeal decision *Shell New Zealand Holding Co. Ltd. v CIR* (1994) 16 NZTC 11,163, Public Ruling BR Pub 95/9 was issued and published in TIB Vol 7, No 7 (January 1996). It provided that:

A registered person may use either a Customs Import Entry Form or a Deferred Payment of Duty Statement to support a claim for a GST input tax deduction under section 20 of the Goods and Services Tax Act 1985 for GST levied by New Zealand Customs on goods imported into New Zealand.

When that ruling was made the Customs Act 1966 was in force. On 1 October 1996 the Customs and Excise Act 1996 came into effect, repealing and replacing the Customs Act 1966. The Customs and Excise Act 1996 specifically provided for an electronic entry system (referred to as the Electronic Direct Import system in the previous ruling). Under this system an entry is made electronically by the agent and sent, electronically, either over the internet or using Electronic Data Interchange (“EDI”) software, to the New Zealand Customs Service where the entry is confirmed and cleared and delivery given. Once the import entry is cleared, an electronic message is sent back to the agent, along with a delivery order. The agent can then print out the electronic documents for the importer. From 1 March 2004, every entry is required to be lodged electronically, either over the internet or through the EDI software.

Legislation

Section 2 of the Goods and Services Tax Act 1985 defines “invoice” as meaning:

A document notifying an obligation to make payment:

Section 2 also defines “document” as including:

Any electronic data, computer programmes, computer tapes, and computer discs.

Section 12 imposes GST on the importation of goods into New Zealand. It states:

- (1) Notwithstanding anything in this Act, a tax to be known as goods and services tax shall be levied, collected, and paid in accordance with the provisions of this section at the rate of 12.5 percent on the importation of goods (not being fine metal) into New Zealand, being goods that are—
- (a) Entered therein, or delivered, for home consumption under the Customs and Excise Act 1996; or
 - (b) Entered for delivery to a manufacturing area licensed under section 12 of the Customs and Excise Act 1996; or
 - (c) Before their entry, or delivery, for home consumption or, as the case may be, entry for delivery to a manufacturing area licensed under section 12 of the Customs and Excise Act 1996, dealt with in breach of any provision of the Customs and Excise Act 1996,—
- by reference to the value of the goods as determined under subsection (2) of this section.
- ...
- (3) Subject to this section, tax levied under subsection (1) of this section shall be collected and paid in accordance with the Customs and Excise Act 1996.

Section 20(3) states:

Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period—

- (a) In the case of a registered person who is required to account for tax payable on an invoice basis pursuant to section 19 of this Act, the amount of the following:
 - ...
 - (ii) Input tax invoiced or paid, whichever is the earlier, pursuant to section 12 of this Act during that taxable period.
 - ...

Section 2 of the Customs and Excise Act 1996 defines “duty” as:

A duty, additional duty, tax, fee, charge, or levy imposed on goods by any of the provisions of this Act, and includes—

- ...
- (d) A duty or tax imposed by section 12 of the Goods and Services Tax Act 1985

Under section 39 of the Customs and Excise Act 1996, goods to be imported must be entered in a prescribed form (including by electronic means):

Entry of imported goods—

- (1) Subject to any regulations made under section 40 of this Act, goods that are imported or that are to be imported must be entered by the importer—
- (a) In such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
 - (b) Within such time as may be prescribed or such further time as the Chief Executive may allow.
- ...

Section 86(1) of the Customs and Excise Act 1996 states:

Duty on imported goods a Crown debt—

- (1) The duty on all goods imported constitutes, immediately on importation of the goods, a debt due to the Crown.
 - (2) Such duty is owed by the importer of the goods, and, if more than one (whether at or at any time after the time of importation) then jointly and severally by all of them.
 - (3) Subject to this Act, such debt becomes due and payable when—
 - (a) Goods have been entered in accordance with section 39 of this Act and the entry has been passed for home consumption; or
 - (b) Goods have been entered in accordance with section 39 of this Act for removal to a manufacturing area; or
 - (c) Goods have been wrongfully landed or otherwise wrongfully dealt with without having been entered pursuant to section 39 of this Act; or
 - (d) An offence has been committed against this Act in respect of the goods.
 - (4) Such debt is recoverable by action at the suit of the Chief Executive on behalf of the Crown.
- ...

Under section 88 of the Customs and Excise Act 1996, an entry for goods is deemed to be an assessment for the purposes of that Act:

Assessment of duty—

- (1) An entry for goods made under this Act is deemed to be an assessment by the importer or licensee, as the case may be, as to the duty payable in respect of those goods.
 - (2) If the Chief Executive has reasonable cause to suspect that duty is payable on goods by a person who has not made an entry in respect of the goods, the Chief Executive may assess the duty at such amount as the Chief Executive thinks proper.
 - (3) The person liable for the payment of the duty shall be advised of the assessment by notice in writing.
- ...

Application of the Legislation

Section 12 provides that GST shall be levied and paid on goods imported into New Zealand. Section 2 of the Customs and Excise Act 1996 defines the GST on imported goods as a duty and section 86 of the Customs and Excise Act 1996 provides that this duty is a debt due to the Crown and is recoverable under the Customs and Excise Act.

Under section 20(3)(a)(ii), registered persons who account on an invoice basis are permitted to claim input tax at the earlier of invoicing or payment. Registered persons who account on a payments basis are not affected by the subject matter of the Ruling. Unlike other claims for input tax deductions, section 20(3)(a)(ii) only requires the importers to hold invoices to support their claims rather than tax invoices. This is because the New Zealand Customs Service does not make any supplies when it is levying GST on goods imported into New Zealand, and so is not required to issue tax

invoices under section 24 of the Act. Given the electronic entry procedure, the question arises as to what documentation issued by the New Zealand Customs Service is acceptable as an “invoice” for the purposes of the Act.

The Court of Appeal in *Shell New Zealand Holding Co. Ltd v CIR* considered the issue of when an importer could claim an input tax deduction for GST levied on goods imported into New Zealand. The Court of Appeal noted that an “invoice” is defined in section 2 of the Goods and Services Tax Act as “a document notifying an obligation to make payment”. The Court held that when the goods are entered, this constitutes the duty as a debt due to the Crown. Therefore, at the point that the Customs Import Entry Form was signed by the Customs Officer, the Court considered this to be notice to the importer of the obligation to make payment. As a result, the Customs Import Entry Form, which stated the total duty, total GST and the total amount payable, fell within the GST definition of “invoice”. BR Pub 95/9 confirmed that an importer could use a Customs Import Entry Form to support a claim for a GST input tax deduction.

As of 1 March 2004, all commercial entries are now required to be lodged and cleared electronically. The issue is whether the electronic entry used is an invoice sufficient to support a claim for input tax deduction claims.

The electronic entry is cleared by the New Zealand Customs Service when the “Lodgement” and “Delivery” numbers are issued, rather than being signed by a Customs Officer. The debt due to the Crown is created when the entry is confirmed in this way and consequently the clearing of the entry can be considered equivalent to the previous procedure of the signing and stamping of a manual import entry. When the agent receives the electronic entry document they are notified of the total duty and GST owing on each entry.

The information received on the electronic version of an import entry has not changed materially from that of the manual entry. The electronic entry document shows the total duty, total GST, and total payable. It identifies the supplier and the recipient of the goods and services, describes the goods supplied with a detailed coding system, and quantifies the consideration for the supply. Therefore, the electronic entry document contains the information thought necessary by the Court of Appeal in *Shell New Zealand Holding Co. Ltd v CIR* to establish and identify the customs duty and GST owed by the importer to the Crown. Therefore, the electronic entry document constitutes an “invoice” for GST purposes so as to trigger the time of supply and the resulting input tax entitlement for GST invoice-based importers under section 20(3).

The New Zealand Customs Service also operates an optional deferred payment scheme for importers, under which it issues a Deferred Payment of Duty Statement for the duty owed by importers on all the goods they import during a particular month. The Deferred Payment Scheme has four billing cycles within a one-month period. Payment is deferred for 21 working days from the end of an importer’s allocated billing cycle. The Deferred Payment of Duty Statement is created from the information contained in the electronic entry document and so is also acceptable documentation to support a GST input tax deduction claim.

If an agent is not on the Deferred Payment Scheme, the New Zealand Customs Service issues Cash Statements. Under the Cash Statements scheme, the duty owed must be paid before the imported good is released. Again, the Cash Statement is created from the information contained in the electronic entry document and so is also acceptable documentation to support a GST input tax deduction claim.

Example

A taxpayer imports and sells European cars. She is registered for GST, accounts for tax payable on an invoice basis, and files GST returns on a two-monthly basis. The taxpayer imports cars worth \$300,000 on 28 September. Her agent enters the details of the cars she has imported and their values into the correct electronic entry form and sends it electronically to the New Zealand Customs Service. Within a few minutes the New Zealand Customs accepts the import entry as correct, issues lodgement and delivery numbers, and electronically sends the cleared entry and a delivery order back to the taxpayer's agent stating the total duty, total GST, and total amount payable on the importation of those cars. The taxpayer's agent prints out copies of the electronic entry document and delivery order and gives them to the taxpayer. The taxpayer retains these for evidentiary purposes.

The taxpayer is on the Deferred Payment Scheme operated by the New Zealand Customs Service, and receives a Deferred Payment of Duty Statement on 23 October. The payment is deferred for 21 working days. The statement lists all the goods she has imported for the period 23 September to 23 October, and states the total amount of duty and GST payable.

The taxpayer's taxable period ends on 30 September. She is required to furnish her GST return for the months of August and September, stating the amount of GST she has to return for those two months. The taxpayer will include in her GST return for that taxable period an input tax deduction claim for the GST levied on the cars imported on 28 September.

The taxpayer only needs an invoice to substantiate her claim for an input tax deduction for the GST that the New Zealand Customs Service has levied on the imported cars. The taxpayer may claim the input deduction in the taxable period ending 30 September, because the electronic entry document contains all the necessary details to constitute an invoice for the purposes of the Goods and Services Tax Act 1985. She does not need to delay the claim until the period in which she receives the Deferred Payment of Duty Statement.