

Customs and Excise Act review

– what will this mean
for your business?

March 2015

Customs special
In this publication:

- ▶ **Objectives of the review**
- ▶ **The discussion document – what is new?**
- ▶ **Impact on supply chain**
- ▶ **Way forward**
- ▶ **Exporters/ importers issues**
- ▶ **How does the discussion document measure up?**



Objectives of the review

New Zealand prides itself on having one of the more progressive Customs services in the world. This is evident in the proactive approach undertaken by the New Zealand Customs Service over the years to ensure our Customs legislation remains relevant and up-to-date and that it does not hamper the growth and development of New Zealand business.

Since the Customs Law Act 1908, the Customs legislation has been reviewed and updated numerous times. The last review, almost 20 years ago, resulted in the enactment of the Customs and Excise Act 1996 (CEA). The CEA was the product of a decade long consultation process revising the 1966 legislation, and it introduced landmark changes. Some of these changes included the introduction of simplified import entry procedures and Customs Controlled Areas (CCAs), establishment of an independent Customs Appeal Authority and the introduction of various administrative penalties. However, the 1996 review did not replace all of the Customs provisions and many rules from the 1966 legislation were retained.

While the 1996 review was undertaken with businesses in mind and was intended to propel the Customs framework into the 21st century, the current legislation has become highly prescriptive and is not user friendly. The New Zealand business environment has evolved dramatically since 1996 with the digitalisation and globalisation of trade and travel, including changes in global business models and practices. The CEA lacks the flexibility and agility required to keep pace with this new business environment.

The increase in volumes of trade¹, developments in supply chains and computing and data storage advances all pose challenges to the framework underpinning the CEA. As trade becomes increasingly borderless and changes at pace, it's important for the Customs framework to keep moving with the times.

The review is an excellent opportunity

The review is an excellent opportunity to design a modern Customs framework that promotes operational efficiency, supports the competitiveness of New Zealand businesses and helps create economic value for New Zealand. This is especially important if New Zealand is to meet the Government's Business Growth Agenda, which aims to increase exports from 30% to 40% of GDP by 2025.

Public consultation – a two-month window

Public consultation is an important part of the review process. With New Zealand's two-way trade at \$131 billion (as at June 2014) and growing, the Customs framework and role of the New Zealand Customs Service is crucial to the economy.

We strongly encourage businesses to consider the review's impact on them – particularly exporters, importers, freight forwarders, Customs brokers and businesses considering changes to their supply chains. For those who fit any of these categories, this is your opportunity to have your say. Submissions close on 1 May 2015.

Matters outside the scope of the review

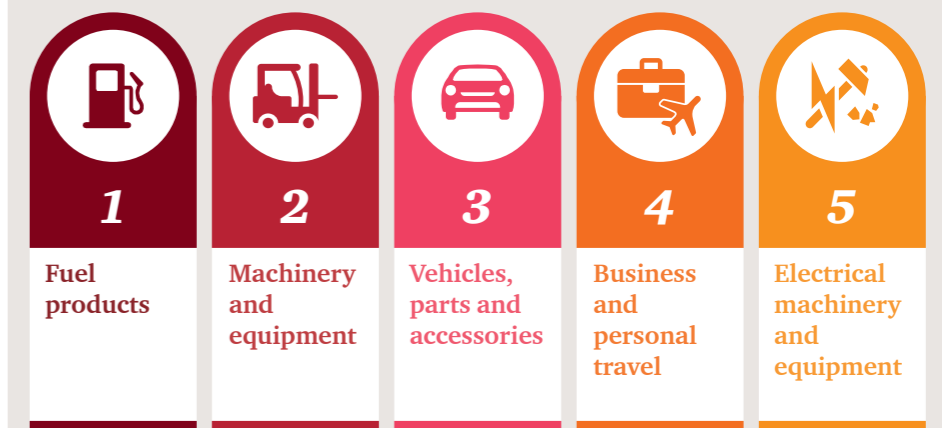
The proposals in the discussion document do not represent Government policy and the Government will need to make decisions after the consultation process.

The scope of the review does not cover the collection of GST and duty on low-value goods and the setting of low-value thresholds.

New Zealand's top five exports



New Zealand's top five imports



We strongly encourage businesses to consider the review's impact on them – particularly exporters, importers, freight forwarders, Customs brokers and businesses considering changes to their supply chains.

For those who fit any of these categories, this is your opportunity to have your say. Submissions close on 1 May 2015.

With New Zealand's two-way trade at \$131 billion (as at June 2014) and growing, the Customs framework and role of the New Zealand Customs Service is crucial to the economy.

¹ Customs processed a total of 10.3 million import (7.8 million) and export (2.5 million) transactions for the 2013 year. This is an increase from 2012 where a total of 9.7 million transactions were processed (6.2 million of import and 3.5 million of export).

The discussion document – what is new?

In a positive development, the New Zealand Customs Service wishes to undertake a complete overhaul of the legislative framework to ensure it is both progressive and user friendly. The key focus for Customs is to have a legislative framework that provides flexibility for operational and technological changes in the future and ensuring New Zealand has a world-class border management system.

In particular, Customs is looking for a legislative framework that makes compliance easy to do but hard to avoid; provides high assurance but is light touch; provides effective and efficient facilitation and protection; and supports New Zealand's international competitiveness.

Given the breadth and scope of Customs' functions a wide number of issues are covered. In our view, two areas stand out as key ingredients in ensuring the rewrite is a success.

Principles-based legislation

Customs wants the legislative framework to have more flexibility so that it can easily be adapted to any future operational, technological and business changes. It is proposing a streamlined principles-based Act with supporting Customs rules. This is a positive development. The Goods and Services Tax Act 1985 is an excellent example of principles-based legislation that is not prescriptive – it has served both businesses and Inland Revenue well for almost 30 years.

We welcome the fresh approach to the legislative framework. The current CEA is disjointed, unnecessarily prescriptive, outdated in parts and is difficult to update. The proposals seek to provide a better framework and will need to ensure the supporting Customs rules are clear, practical and can be updated quickly. The current CEA contains in excess of 350 sections but there are only 100 regulations – these proportions need to be reversed.

GST at the border

Customs is aware that the GST payment and return dates for Customs and Inland Revenue do not always coincide and this can cause cash flow issues. Although the majority of business importers are on the deferred payment scheme, many importers still experience cash flow issues particularly in respect of large one-off imports. Customs is willing to explore this if businesses can demonstrate the nature and extent of any difficulties.

Given that import GST is paid to Customs but can be claimed from Inland Revenue, there is a strong case to remove GST at the border for GST-registered businesses. We canvassed various solutions in our March 2015 edition of GST Direct.

Removing GST issues at the border would also avoid unnecessary and costly disputes about Customs valuation. We are aware of matters that have been taken to the Customs Appeal Authority (CAA) where the sole tax at stake was GST, which was ultimately claimed from Inland Revenue.

Other important matters for businesses

- **Business records** – The CEA currently requires business records to be kept in New Zealand. We welcome proposals to store records offshore e.g. via cloud-based storage for digital information. Customs is considering an approval process, which would be aligned with the procedure in the Tax Administration Act 1994 (TAA).
- **Extension of administrative penalties to all exports** – Customs is exploring the possibility of extending the administrative penalties to cover all export entries (note: currently, administrative penalties apply to all import entries but only some export entries e.g. in relation to drawback of duty).

We consider this area needs careful consideration and there is a case for the status quo to be retained. We are concerned that unnecessary time and cost may be incurred in resolving whether penalties apply to export entries.

- **Valuation of goods** – Customs is considering several valuation issues relating to duty on imports:
 - Whether to include or exclude freight and insurance costs (FOB or CIF value) when considering the Customs value of imported goods. The main difference is that tariff duty is determined using 'Free on Board' (FOB) value (i.e. excluding freight and insurance costs) while GST is determined using the 'Costs, Insurance, Freight' (CIF) value.
 - Customs' preference is to continue using the 'Free on Board' value to calculate any tariff duty. It would be useful for commercial importers to submit on whether the two different values create additional compliance costs. Most goods are subject to GST only. In our view, there is merit in aligning Customs value and GST value as this would make compliance easier.

- Define 'sale for export' - The concern is that where there is a series of sales, an importer can choose the sale for export for valuation purposes as long as the sale can be evidenced. Using an earlier sale could result in a lower Customs value for the goods resulting in lower tariff duties.
- Improve the drafting of the related parties' valuation provisions.
- **Refunds, remissions and drawback** – Customs has identified two potential issues concerning refunds and drawbacks. They relate to an importer's inability to claim a refund of duties when returning undamaged goods (e.g. wrong size) and their inability to receive a drawback when selling duty-free goods to international travellers.

These proposals are an improvement as they will give business the opportunity to claim a refund/receive a drawback in more situations.

- **Excise and CCA rules** – in order to improve the existing rules, Customs is considering the following key changes to the Excise and Customs area rules:
 - Expand the off-site storage rules to more alcohol manufacturers and not just those in the wine industry;
 - Reduce the excise return and payment deferral periods to one, two and six months. This will align the rules to fit GST filing periods and enable Customs to shorten the periods if excise filers fall behind in their obligations;
 - Review the requirements for permits for movement of goods between CCAs;
 - Review processes and evidence concerning remission of excise duty;
 - Revise the definition of 'manufacture' to reduce ambiguity and consider a standardised definition of licensed manufacturing area.

Other matters covered:

- Information sharing with other Government agencies, outside Government and with overseas agencies. There are recognised synergies in some of these areas but it will be important to consider appropriate safeguard measures and transparency.
- Timeframes for providing information to Customs – given modern technology and speed of trade Customs is considering resetting some of the timeframes on imports, exports and incoming/outgoing reports or notices.
- Improving the rules relating to Customs areas and CCAs to enhance efficient business practices.
- Reviewing duty assessment procedures.
- Proposal to give the Comptroller of Customs the discretion to make management decisions around the collection of tax revenue similar to the powers in the TAA.
- General review of the sanctions regime.
- Proposals to extend additional duty to all payments to Customs, refunds/drawbacks found to be in error and duty shortfalls.
- Managing digital goods at the border. The tax issues relating to digital goods are not discussed and this will be an important consideration in the future.

To ensure the rewrite is a success, we would like to see more coverage of the following areas:

- Formalising transfer pricing (TP) and Customs adjustments procedures and methodology. Due to the issues experienced in this area, there is a need to consider improvements and to provide more flexibility. Customs could consider amending the valuation schedules to allow the Comptroller the ability to rely on APAs or TP documentation.
- Clarifying when a number of packages are treated as one importation for Customs purposes.
- Broader review of disputes escalation procedures. The current system involves objecting to reassessments by appealing to the CAA within 20 working days and paying the tax due in advance. There is a need to consider a fresh and improved disputes review process.
- Broader review of the Customs ruling regime. Consideration should be given to extending the regime to valuation issues and assessment of duty.

We encourage businesses to consider how the review will impact them and submit by 1 May 2015.

Impact on supply chain

The discussion document recognises that an improved and more efficient Customs framework is required. Businesses will need to consider what the new framework means for them.

New Zealand businesses will need to be more agile

In a world where barriers to trade are lower, transaction costs are lower, and classification and clearance faster, those companies that understand the changing competitive landscape are likely to be winners. Ultimately this will manifest itself through achieving lower product or service pricing than competitors through reduced cost to serve or lower product price. In practice, this will mean identifying new sources of international supply for key input products or indeed sourcing more complex finished goods and importing them more easily.

New Zealand businesses may have to look further afield to define their competitive landscape

Making it easier for NZ based importers to bring goods into the country will also benefit international companies. For example, it is already possible to order goods from Marks & Spencer that are fulfilled out of a warehouse in the North of England and shipped directly to your door in New Zealand with no visible courier fee for the consumer (given a modest minimum spend). Similarly for an order from Next which is fulfilled out of South East Asia, again with 'free delivery in 5 days'. International competition for the New Zealand dollar will likely intensify as our market is seen as attractive. This is not because of the size of the market, but because the structural issues of a small population dispersed widely has led to relatively higher prices for goods compared to prices overseas. Additional competition is always a great thing for the Kiwi consumer, but it may be a threat for NZ businesses that have not developed a compelling direct route to market that transcends bricks and mortar real estate, lowering cost to serve and giving wider access to consumers.

New Zealand businesses will have to re-organise themselves to take advantage of the available efficiency improvements

To take advantage of the anticipated efficiency gains, New Zealand businesses will need to undertake reviews of how they are organised in terms of people, processes and systems. Some of this focus will be on-shore in New Zealand corporate operations, but it will also flow through to their international focus. Should they seek overseas supply chain partners to guide and assist them in international economies rather than establishing expensive remote sourcing or supply chain functions. Businesses will need to consider taking advantage of the benefits that the CEA rewrite offers them.

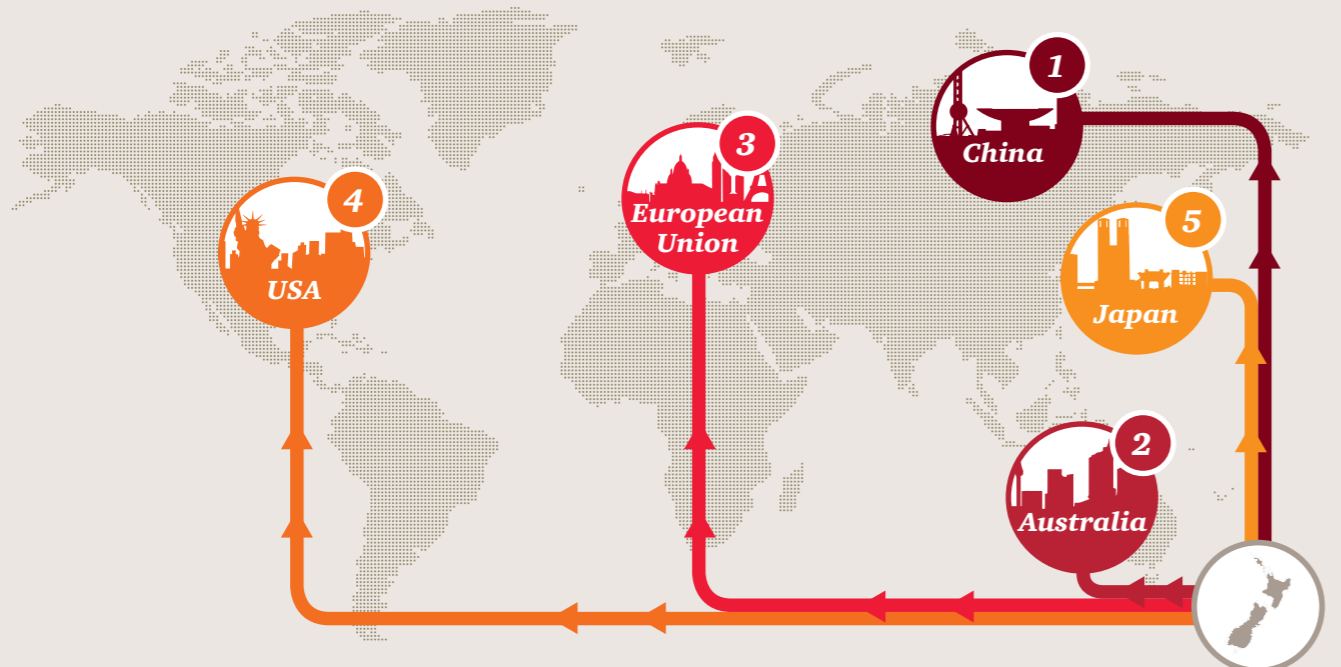
New Zealand businesses should review their export plans to determine newly attractive market places

The lower barriers to importers will apply to exporters from New Zealand meaning that there will be new and more attractive opportunities for New Zealand companies to enter overseas markets. While New Zealand commodities have been in high demand over the water for years, the potential impact of these legislative changes is that it will become easier and cheaper to export a wider range of products, particularly ones that are part of the digital economy where existing customs interactions have not kept pace with the rate of change.

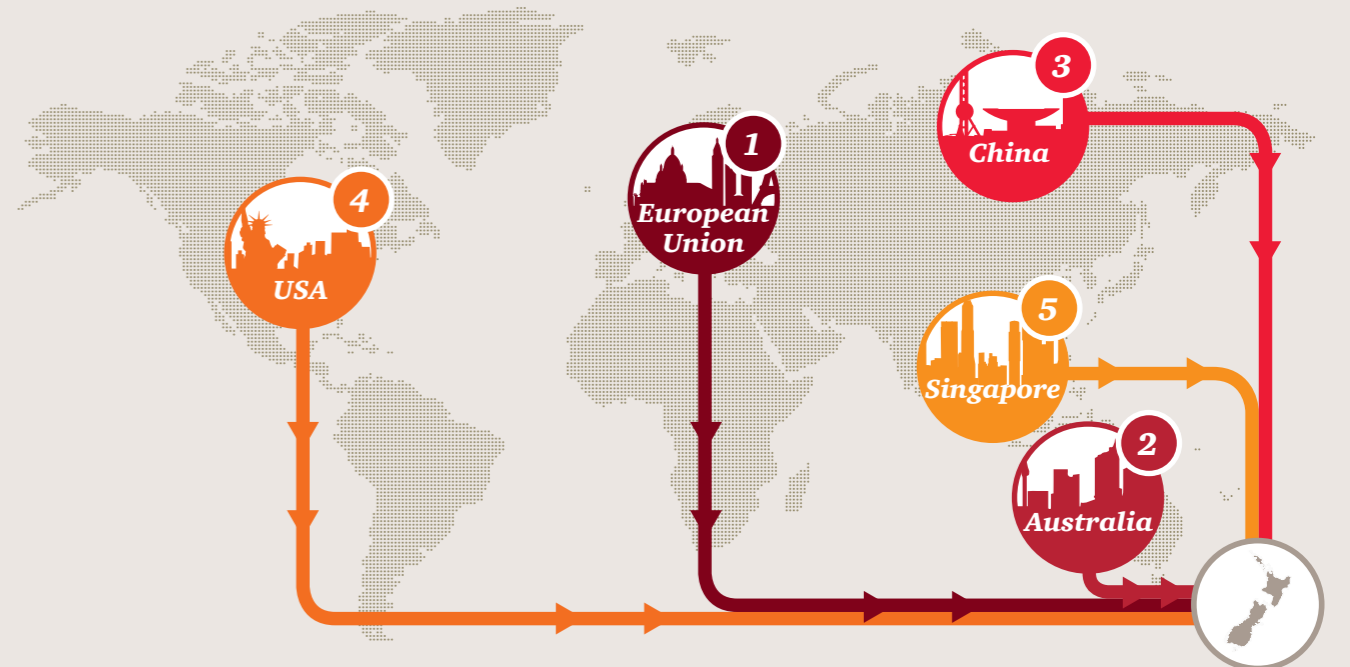
International competition for the New Zealand dollar will likely intensify as our market is seen as attractive.

Businesses will need to consider taking advantage of the benefits that the CEA rewrite offers them.

New Zealand's top five export market



New Zealand's top five import market



Way forward

From a business perspective, the discussion document is a welcome development as it is seeking to create a better Customs framework. The framework proposed looks to be more flexible in meeting the demands of the increasing digitalisation and globalisation of international trade. Although the devil will be in the legislative and operational detail and there are several issues to work through, the intention is right – rules to help promote efficiency, clarity and support for businesses. We expect the rewrite will have a significant impact on the way New Zealand businesses trade.

The deadline for submissions is 1 May 2015. We therefore encourage businesses to consider the impact of the proposals – particularly exporters, importers, freight forwarders, Customs brokers and businesses considering changes to their supply chains.

Seminars

Attend seminars on the impact of the rewrite for businesses in Wellington on 31 March 2015 at 10.30am – 12.00pm and Auckland on 1 April 2015 at 4.00pm – 5.30pm. If you wish to attend please register [online now](#), or are interested in further information on the rewrite please contact us on email: tax@nz.pwc.com or contact GST and Customs Partner Eugen Trombitas on eugen.x.trombitas@nz.pwc.com.

The framework proposed looks to be more flexible in meeting the demands of the increasing digitalisation and globalisation of international trade.



Key issues for importers:

- Revised timeframes for information exchanges with Customs
- Business records may be held outside New Zealand
- GST at the border: Review of cash flow issues for importers in regard to non-alignment of GST payment and return dates for Customs and Inland Revenue
- Review of security/bond arrangement for temporary imports
- Review of Customs valuation rules, including whether CIF or FOB value should be the basis for customs valuation and whether 'sale of export' should be clarified
- Proposal for new fee for adjustments to or cancellations of import entries due to an importer's error
- Revised rules on refunds, remissions and drawbacks of duty
- Proposal for additional duty on:
 - all payments to Customs, including cash payments
 - refunds and drawback paid to businesses by Customs and later found to be in error
 - payments for a shortfall in duty as a result of a Customs audit



Key issues for exporters:

- Revised timeframes for information exchanges with Customs
- Business records may be held outside New Zealand
- Proposal to extend administrative penalties to cover all export entries
- Proposal for new fee for adjustments to or cancellations of export entries due to exporter's error
- Review of CCA rules, including new provision for Customs approved areas for storing exports

How does the discussion document measure up?

In our March 2015 edition of GST Direct we reported on issues that we considered would be important to business. In the below table we assess how the discussion document measures up.

In summary, we consider good progress has been made to address matters important to business. There are still several issues to work through and we expect businesses will submit on these matters through the public consultation process. It is important to bear in mind that Customs has requested submissions to develop their own thinking on the issues – the intention is to create a better and more practical framework.

Issue	Confirmed	Not included	Work in progress	Comments
1 Reduce the volume of primary legislation and have compliance light Customs rules	✓			This is a positive approach to the new Customs framework.
2 Ensure new CEA is progressive legislation that keeps pace with digitalisation and modern business supply chains	✓			This a great opportunity to create a unique and global leading Customs framework.
3 Clarify the term 'Enter the commerce of another country' and how this affects the application of preferences under Free Trade Agreement for imports		✓		We believe some clarity is required on this issue and could be dealt with in the Customs rules.
4 Record keeping – allow businesses to keep records outside New Zealand	✓			
5 Align Customs valuation methods with current tax/TP valuation methods			✓	This area needs more work. The discussion document is a step in the right direction as it proposes to clarify the rules concerning transaction value when the sale is between related parties.
6 Formalise TP adjustment procedures and methodology		✓		We consider this area warrants further consideration.
7 Consider if import GST (that can be claimed from Inland Revenue) should not be charged on the importation of goods by GST-registered importers Options here are: a) Removing import GST completely from these imports (i.e. ensuring they are outside the scope of Customs collection), b) Applying a zero-rating (or offset) mechanism, or c) Licensing of importers (i.e. licensed importers would not have to pay import GST)			✓	Proposed review of cash flow issues for importers in regard to non-alignment of GST payment and return dates for Customs and Inland Revenue. However, the discussion document does not commit to the possibility of removing import GST for GST-registered businesses and we believe this should be considered.
8 Clarify when a number of individual packages are treated as one importation for Customs purposes (relevant for the low value import threshold)		✓		More guidance is required and could be included in the Customs rules.
9 Expand current Customs Ruling regime to also cover, for example, valuation issues and assessment of duty		✓		This issue is not covered in detail but there is a proposal to review the duty assessment process.
10 Ensure that rules concerning CCAs are fit for purpose and do not impose unnecessary compliance burdens	✓			Proposal to expand the purposes of CCAs to increase flexibility and to review the requirement for permits to move goods between CCAs.
11 Refund schemes - Ensure that the three types of refund schemes that NZ Customs manages (refunds, remissions and drawbacks) are consistent and well understood	✓			Proposal to review the refund schemes in relation to goods recalled by the manufacturer and in relation to imported goods on which duty has been paid and then sold duty-free to incoming passengers.
12 Consider the merit of other procedures to resolve or escalate Customs disputes beyond the current system of objecting to assessments in the Customs Appeal Authority			✓	The current disputes process should be reviewed and a streamlined version of the TAA disputes procedures considered.
13 Ensure valuation rules are easy to work with and Schedule 2 (valuation) is reviewed	✓			The discussion document does not propose a comprehensive review of Schedule 2. The proposals cover reviewing whether: <ul style="list-style-type: none"> • FOB or CIF value should be the basis for Customs valuation • the 'sale for export' should be clarified • some of the existing ambiguities for related party transactions can be removed.

Get in touch

Auckland



Eugen Trombitas
Partner
T: +64 9 355 8686
E: eugen.x.trombitas@nz.pwc.com



Mike Bignell
Partner
T: +64 9 355 8060
E: michael.j.bignell@nz.pwc.com



Peter Chambers
Director
T: +64 9 355 8113
E: peter.x.chambers@nz.pwc.com

Wellington



Grant Dennis
Partner
T: +64 4 462 7048
E: grant.a.dennis@nz.pwc.com



Ian Rowe
Director
T: +64 4 462 7274
E: ian.rowe@nz.pwc.com



Sandy Lau
Manager
T: +64 4 462 7523
E: sandy.m.lau@nz.pwc.com

Waikato



Brent Goldsack
Partner
T: +64 7 838 7729
E: brent.j.goldsack@nz.pwc.com

Hawkes Bay



Giles Pearson
Partner
T: +64 6 833 3725
E: giles.a.pearson@nz.pwc.com

Taranaki



Brent Hulbert
Partner
T: +64 6 768 3820
E: brent.hulbert@nz.pwc.com

Christchurch



Maurice Noone
Partner
T: +64 3 374 3102
E: maurice.noone@nz.pwc.com

Dunedin



Julie Rickman
Partner
T: +64 3 470 3647
E: julie.e.rickman@nz.pwc.com

Attend our seminars on the impact of the rewrite for businesses

Wellington – 31 March 2015 at 10.30am – 12.00pm

Auckland – 1 April 2015 at 4.00pm – 5.30pm

If you wish to attend please register [online now](#).

