

# Tax Tips Alert

## The new Customs and Excise Act 2018 – a landmark development

June 2018



The Customs and Excise Act 2018 (the Act) was passed into law earlier this year and is a landmark development. The new law is the product of sound vision, much hard work by the New Zealand Customs Service (NZCS) team, and an extensive consultation phase with affected stakeholders. For the most part, the Act will apply from 1 October 2018.

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 NZCS 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. This, as well as NZCS's desire to have a world class border management system, provided the backdrop to the rewrite of the 1996 legislation.

### *A fresh start*


The Act entirely replaces the Customs and Excise Act 1996. The 1996 legislation was out of date and did not completely update the older 1966 version of the legislation - some of the earlier law was enacted at the turn of the 20th century. While the 1996 review was undertaken with businesses in mind, and was intended to propel the Customs framework into the 21st century, the reality was that over time the 1996 legislation became highly prescriptive and was 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 increase in the volume of trade, developments in supply chains, and computing and data storage advances all pose challenges to the framework underpinning the Customs legislation. As trade becomes increasingly borderless and changes at pace, it's vital for the Customs framework to keep moving with the times.

In a positive development, NZCS undertook a complete overhaul of the legislative framework. The key focus for NZCS was to have a legislative framework that provides flexibility for future operational and technological changes and to make sure New Zealand has a world class border management system. In particular, NZCS was motivated to produce 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.

Two features stand out in the new Act:

1. principles-based legislation, and
2. several new and updated business-oriented measures.



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## Principles-based legislation

NZCS wanted the legislative framework to have more flexibility so that it can be easily adapted to any future operational, technological, and business changes. This approach assisted the Government in enacting a streamlined principles-based Act with supporting Customs regulations and rules. This is a positive development.

The Act is divided into 6 parts and 9 schedules. It has a logical layout and is easy to follow. If Customs or rule changes are required in the future, it will be easier to make these as the principles are logically laid out in the Act and any changes can be made much more quickly by amending the Regulations and the Customs rules (rather than the Act). As a matter of statutory drafting, the Act adopts an informative and helpful approach by setting out a purpose provision (section 3) and an overview of the Act (section 4). Readers of the Act can quickly find their feet by reading the layout of the Customs landscape in sections 3 and 4.

We welcome the fresh and modern approach to the legislative drafting as well as the ‘look and feel’ of the Act.



## Impact on business

As with any rewritten legislation, there will be changes for businesses but most of these will be positive. In some cases, teething-issue fixes and systems changes will be required.

*Key changes for businesses are:*



A new **compensatory interest and late payment penalties** scheme replaces the “additional duty” regime, and will apply in the same way to all importers and producers of excisable goods.



A new “provisional values” regime applies for **importers who cannot establish the Customs value of goods on importation**. Replaces the “uplift” scheme.



Importers will be able to request a binding **valuation ruling** from NZCS.



Customers will be able to request NZCS to conduct a formal “**administrative review**” of any decision, providing a low-cost initial avenue of appeal.



For importers using “transaction values”, the legislation clarifies that the last sale in a supply chain is the relevant “**sale for export to New Zealand**”.

NZCS has used the new legislation as an opportunity to improve its services and website. It will also shortly be releasing various guides on some of these areas such as the provisional value regime, valuation rulings, and disputes on its website.

We set out below further detail on the key changes and how they will impact businesses.

## 1. Provisional values for imports

The new regime will allow importers, who cannot establish the Customs value of goods at the time of importation, to declare a Provisional Value at the time of import and later declare the final value of the goods once all required information has been obtained. The importer must declare the final Customs value within 12 months of the end of the importer's financial year.

The provisional value scheme will end the current uplift programme, where the importer must request NZCS to accept post-importation valuation adjustments by filing a voluntary disclosure or reconciliation. The new rules specify the following instances when importers will automatically qualify to use provisional values. These are:

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### Transfer pricing agreements

If the importer is a party to a transfer pricing agreement for the supply of their imported goods and has a binding ruling in place with Inland Revenue, and this inhibits the importer from determining the final value of the goods at the time of importation.

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### Transaction value method and further adjustments

If the Customs value of the imported goods is determined under the Transaction Value Method, and at the time of importation there is insufficient information to determine the following amounts which must be added to the value:

- *royalty or licence fees payments* that the buyer must pay (directly or indirectly) as a condition of sale of the goods for export to New Zealand; or
  - proceeds of any *subsequent resale, disposal or use of the goods by the buyer that are* to accrue to the seller.
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If importers do not automatically qualify to use provisional values, they will need to request NZCS to exercise its discretion to allow them to apply the scheme. It remains to be seen how NZCS will exercise this discretion. However, the Act provides NZCS with the ability to give approval to a particular importer in relation to specific goods or a class of goods, or to a class of importer and/or class of goods, subject to appropriate terms and conditions.

A provisional Customs value must be a *reasonable estimate* of the final Customs value, based on the information available to the importer at the time of importation. If NZCS has reasonable grounds to believe a person has not complied with this requirement, or does not enter a final value as required, NZCS may suspend the person from the provisional values regime for a definite or indefinite period. NZCS can also unilaterally amend a provisional value or assess a final value (subject to statutory time limits).

In practice, importers who need to adjust declared Customs values after importation will still need to monitor final valuations and disclose these to NZCS in a similar way to the current uplift regime.

Essentially the Act now acknowledges the commercial reality that certain importers cannot fully determine the Customs value at the time of importation. The main benefit of the rules is that, in the context of a new compensatory interest and late payment penalties regime (see below), a provisional value will be deemed to be the Customs value, so that interest and penalties will not apply to the difference between provisional values and final values.

*Importers who are either:*

- not granted permission to enter provisional values (if they do not automatically qualify to do so), or
- who fail to enter a provisional value (if they are eligible to do so)

will need to file voluntary disclosures for any increase to the declared Customs value. However, they will be exposed to interest and penalties. Any importers in this category will need to carefully monitor their valuations and promptly deal with variances.

If the final value of the goods is less than the provisional value, NZCS must refund the difference in duty payable. Interest is not payable by NZCS on overpayments, so importers should be careful to not overstate provisional values within the bounds of the "reasonableness" requirement discussed above.



## 2. Valuation

A new and improved Schedule 4 of the Act deals with valuation matters. The new valuation schedule is more logical and easier to follow. In addition, some further guidance is provided in relation to ‘related party’ transactions. The importer will need to have evidence that demonstrates that the relationship between the buyer and the seller did not influence the price paid or payable for the goods, including (without limitation) evidence of-

- a. how the buyer and seller organise their commercial relations, and
- b. how the price paid or payable for the goods was determined.

The evidence may include the following information: the nature of the goods being valued; the nature of the industry that produces the goods being valued; the season in which the goods being valued are imported; whether a difference in values is commercially significant; the trade levels at which the sales take place; the quantity of the sales; as well as certain other matters and charges that are incurred as between unrelated parties or are not incurred as between related parties.

## 3. Valuation rulings – more certainty for businesses

Currently, Customs rulings can be obtained for tariff and excise classifications of goods, the origin of goods, and the interpretation of a tariff classification. Rulings could not be obtained for valuation matters under the old law. The Act now allows importers to request a binding valuation ruling from NZCS (for a fee) on how to establish the Customs value of their goods. Each ruling will need to be issued within 150 days of the application, giving increased certainty to businesses choosing to exercise this option under the new rules.

## 4. New definition of “sold for export to New Zealand”

The “transaction value” is the primary valuation method used to determine the Customs value of goods imported into New Zealand. The transaction value is the “price paid or payable” for the goods when “sold for export” to New Zealand. There has been some uncertainty under the law as to which sale, in a chain, is the sale for export. The Act now includes a definition of “sold for export to New Zealand”. The definition clarifies that when there are multiple sales in a supply chain, the sale that determines the value of goods is the last sale that occurs prior to the importation of goods into New Zealand.

Importers that apply the “transaction value” method should review their methodologies to ensure that they correctly identify the last sale prior importation of the goods.

## 5. New disputes procedures - administrative reviews

The Act gives customers the ability to request NZCS to conduct a formal review of any decision (including duty or penalty assessments), avoiding the need to apply to the Customs Appeal Authority or High Court. This process provides a low-cost initial avenue of appeal and an efficient means of resolving small value disputes.

An applicant still has the option to lodge an appeal with the Customs Appeal Authority if the outcome is not satisfactory.

## 6. Storing business records - modernising operations

The new ability to store records offshore or in the cloud meets the needs of modern business practices and aligns with Inland Revenue’s rules. A customer must apply to be authorised to do this or must store their records with an authorised third party.



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## 7. A fairer sanctions and penalties regime

The old rules operated inconsistently and were often regarded as onerous and unfair. The new Act introduces more consistency, fairness, and clarity in relation to sanctions and penalties. Below is a summary of the changes and their effect on businesses.

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### Compensatory interest and late payment penalties

Currently, additional duty applies to shortfalls of excise on locally manufactured goods and deferred payment account payments. It involves an immediate initial 5% charge followed by a monthly charge of 2% until the duty is paid.

The new compensatory interest and late payment penalties scheme replaces the additional duty regime and applies in the same way to both importers and producers of excisable goods. Compensatory interest is based on Inland Revenue's use of money interest rules. Late payment penalties will involve a 1% charge on the first day after the due date and a further 4% penalty on any amount outstanding on the eighth day after the due date. After that, no further late payment penalties will apply.

NZCS provides concessions to remit or reduce late penalties or interest charges in specific circumstances.

The additional duty regime was onerous and heavy penalties could build up very quickly. The new rules should be much fairer.

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### Administrative penalties

Administrative penalties currently apply to errors in the entry of goods. Rates are either 20%, 40% or 100% of the shortfall depending on the level of culpability, with a maximum penalty of \$50,000.

The Act clarifies the level of penalties and the circumstances when a penalty will apply, with reduced maximum penalties for the 20% and 40% penalty levels. The penalties have been extended to include export entries. Overall, the regime should operate more fairly.

To encourage compliance, administrative penalties are currently not applied when a person makes a voluntary disclosure, and this should continue to be the case.

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### Infringement Notices

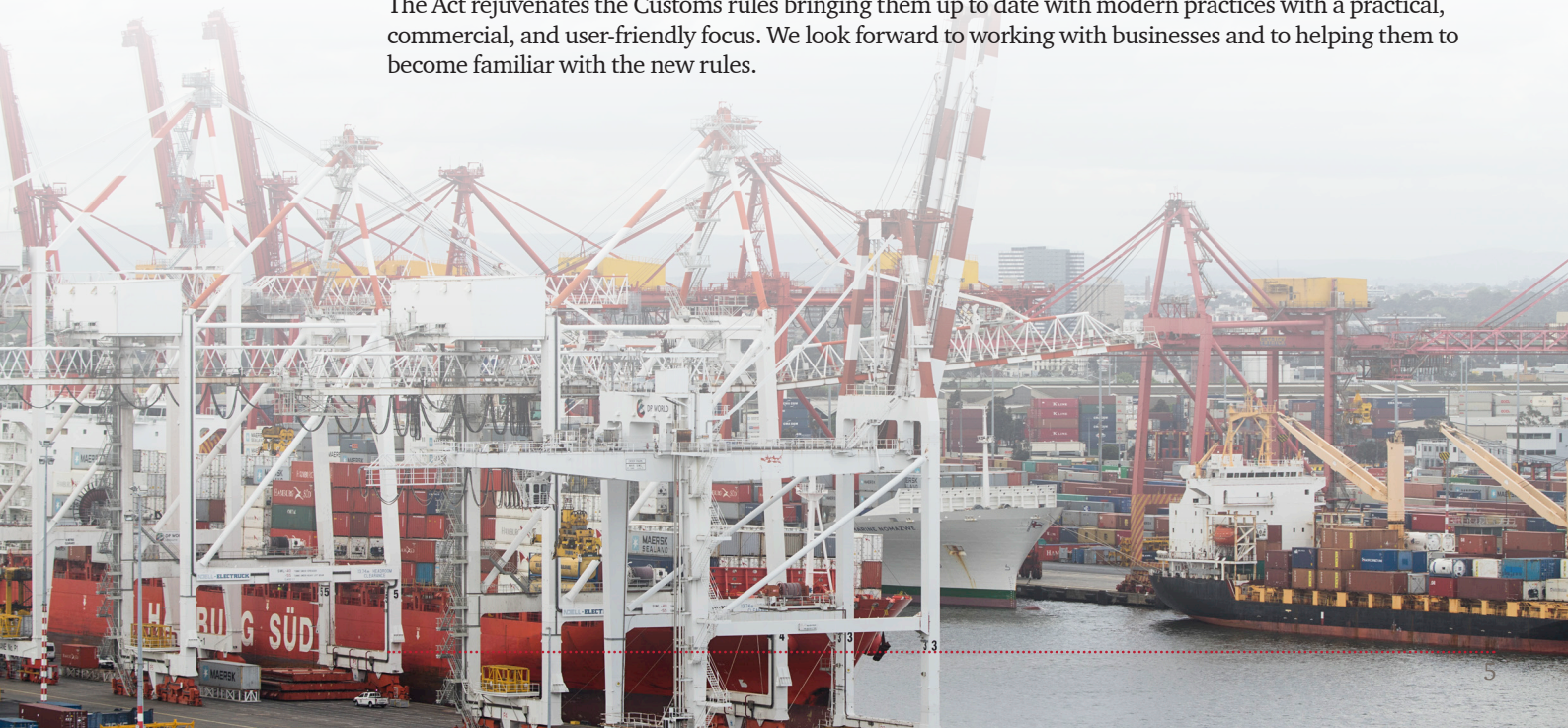
The old 'petty offences' regime will end on 1 October 2018. The Act brings a new infringement scheme for *minor offending*. The new scheme has been designed to more efficiently deal with deliberate non-compliance.

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## 8. Excise changes

There have been a number of beneficial changes to the excise rules, with a goal of greater efficiency and fairness.

The Act rejuvenates the Customs rules bringing them up to date with modern practices with a practical, commercial, and user-friendly focus. We look forward to working with businesses and to helping them to become familiar with the new rules.





# Let's talk

Please get in touch to discuss how these changes may affect your business.

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