

# **Excise Equivalent Goods Administration**

Legislation and Policy Better Regulation Ministerial  
Partnership

Consultation paper

August 2012

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## FOREWORD

The Government is continuing to work towards improving the efficiency and effectiveness of the excise equivalent goods administrative framework. Following the successful completion of a previous Better Regulation Ministerial Partnership (Partnership) which enacted the transfer of the majority of functions required to administer excise equivalent goods (EEGs) to the Australian Taxation Office (ATO), the Government is undertaking a new Partnership to examine options to further streamline the legal and administrative framework for EEGs.

Excise duty is a tax on locally manufactured petroleum, fuel, tobacco and alcohol (excluding wine) products. The equivalent goods imported into Australia are known as Excise Equivalent Goods and are subject to customs duty. Under a previous Partnership, responsibility for the majority of functions relating to warehoused EEGs, including licensing of customs warehouses and administration of warehoused imported EEGs, was transferred from the Australian Customs and Border Protection Service (Customs) to the ATO on 1 July 2010.


Industry has benefited from these changes through reduced compliance costs and a single point of contact for customs and excise obligations. Industry feedback on the transition to the new arrangements has been predominantly positive; however, further reductions in compliance costs may be achieved through legislative and/or administrative reform.

The Government has responded to industry feedback by commissioning the Partnership to conduct a review and make recommendations on options to streamline arrangements and reduce costs to business, including:

- transferring EEGs into the excise regime;
- reviewing the point at which excise duty is imposed on imported EEGs;
- consolidating the collection and administration of excise goods and EEGs within the ATO;
- reviewing the control of duty free stores, providores and catering bonds, whilst maintaining border integrity and the efficiency and effectiveness of current border controls;
- examining whether the administration of excise goods and EEGs should be consolidated under the one administrator; and
- revising the import declaration requirements for EEGs intended to be used in excise manufacture.

In assessing options for Government consideration, the Partnership will have regard for:

- the need to ensure that the ATO has the necessary powers for the effective and efficient administration of the excise and customs legislation;
- the need to ensure that the revenue is adequately protected from unintended loss of customs and excise duties;
- the need for excise and customs legislation to comply with Australia's constitutional law and international obligations;

- 
- the objective of reducing regulation, rather than shifting the burden of regulation to another point;
  - seeking consistent treatment between the importation and exportation of EEGs and other goods; and
  - seeking consistent treatment between EEGs and excisable goods.

It is not within the scope of this Partnership to address the rate, scope or incidence of excise or customs duty.

## **PURPOSE OF THIS CONSULTATION PAPER**

This paper outlines the current administrative and legislative arrangements governing excisable goods and EEGs, and provides a summary of differences in the treatment of these goods. The paper seeks views from industry and community stakeholders on further opportunities to improve the efficiency and effectiveness of the EEGs regime and likely impacts of any proposed reforms. Information that stakeholders provide will be used to assist in the development of options for Government consideration.

You may wish to:

- comment on options to introduce further legislative and/or administrative changes to the current arrangements governing the treatment of excisable goods and EEGs; and
- provide qualitative and/or quantitative information to support your views.

## HOW TO MAKE A SUBMISSION

The Government invites comments on the issues raised in this discussion paper from organisations and individuals with an interest in the EEGs administrative framework. Comments may address any one or more of the questions which appear throughout the discussion paper or any other matters relevant to administration of EEGs, and may be made in writing to:

Manager  
Indirect Tax Unit  
Indirect, Philanthropy and Resource Tax Division  
The Treasury  
Langton Crescent  
Parkes ACT 2600  
Email: [exciseconsultation@treasury.gov.au](mailto:exciseconsultation@treasury.gov.au)

Submissions are requested no later than **31 August 2012**.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Comments and queries about the EEGs project can also be emailed to [exciseconsultation@treasury.gov.au](mailto:exciseconsultation@treasury.gov.au) or sent to the address above.

## NEXT STEPS

Comments received in response to this discussion paper will inform the development of options to further improve the legal and administrative framework for excise equivalent goods. A final report including recommendations will be prepared for Government by the end of 2012 following consideration of submissions received through the consultative process.

## OVERVIEW OF THE EXCISE EQUIVALENT LEGISLATIVE FRAMEWORK

The Partnership recognises that the development of options must be considered in the context of the constitutional law that governs excise and customs. In particular, the Government must adhere to the requirements of section 55 of the Constitution, which states:

*'[...] Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.'*

Therefore, by virtue of section 55 of the Constitution, a customs duty and an excise duty cannot be imposed in the same Act and the imposition of customs and excise duties must remain separate in law. However, there is no corresponding constitutional limitation in relation to the administration and collection of customs and excise duties.

Furthermore, there are restrictions on the imposition of duties of excise on imported goods, as distinct from duties of customs. In order for a tax on imported goods to be a duty of excise, it must be imposed on a step in the distribution of goods that takes place after importation of the goods is complete and before consumption, unless consumption is as an input into the manufacture of further goods.

### Excise

The excise system is implemented through three key pieces of legislation:

- *Excise Act 1901*;
- *Excise Tariff Act 1921*; and
- *Excise Regulations 1925*.

The *Excise Act 1901* (Excise Act) regulates the administration, collection and enforcement of excise. It regulates the issuing of licences to manufacturers and producers, the conditions of licences, the payment of excise duty, the entitlements to remissions, refunds, rebates and drawbacks, and penalties.

The *Excise Tariff Act 1921* imposes excise on excisable products, provides definitions for excisable products and sets out the rates of excise in the Schedule.

The *Excise Regulations 1925* are made under the *Excise Act 1901* and provides additional regulation in relation to a range of matters for the purpose of giving effect to the provisions of the Excise Act.

Excise duty is a tax on alcohol (other than wine), tobacco, fuel and petroleum products (including gaseous fuels<sup>1</sup>) produced or manufactured in Australia. These products are referred to as excisable goods.

<sup>1</sup> Gaseous fuels include liquefied petroleum gas (LPG), liquefied natural gas (LNG) and compressed natural gas (CNG).

## Customs

Corresponding with excise legislation, the customs system is implemented through three key pieces of legislation:

- *Customs Act 1901*;
- *Customs Tariff Act 1995*; and
- *Customs Regulations 1926*.

The *Customs Act 1901* (Customs Act) regulates the administration, collection and enforcement of customs duty. In relation to EEGs, it contains provisions relating to the customs controls, regulation of their importation and exportation, and other special provisions.

The *Customs Tariff Act 1995* imposes duties of customs. It comprises Schedules which outline countries whose originating goods may receive a preferential rate of duty, interpretative rules, and lists of tariff classifications. It provides for imported excise-equivalent customs duties equal to the excise duty on domestic excisable goods.

The *Customs Regulations 1926* are made under the *Customs Act 1901* and provide additional regulation in relation to a range of matters for the purpose of giving effect to the provisions of the Customs Act.

Customs duty is imposed on imported goods. Where the imported goods are the equivalent of locally manufactured goods that are subject to excise, then customs duty equivalent to the excise duty is imposed on the imported goods. This is to ensure that imported goods are treated consistently with local goods. In particular these goods are imported alcohol (other than wine), tobacco, and fuel and petroleum products.

### Objective of current regulation and risks of less regulation

Excise and customs duty forms a significant component of the overall retail value of excisable goods and EEGs respectively. Licensing, permissions and other regulatory controls in the Excise Act and Customs Act<sup>2</sup> are aimed at reducing the risk that the correct amount of duty will not be paid.

Recommendations to improve the legal and administrative framework for EEGs, including the possibility of transferring EEGs into the excise regime need to maintain the same level of confidence that the correct amount of duty will be paid.

<sup>2</sup> In relation to EEGs; other controls in the Customs Act are aimed at other matters.

## Options for reform

Following the successful completion of the previous Partnership, responsibility for the majority of functions relating to warehoused EEGs, including licensing of customs warehouses and administration of warehoused imported EEGs, was transferred from Customs to the ATO. However, the Government is prepared to consider further opportunities to reduce costs to business and streamline administrative and/or legislative arrangements governing the treatment of excisable goods and EEGs. This approach is consistent with the industry feedback, received following the implementation of the previous Partnership, that there is the potential to pursue additional cost reductions for industry by considering further alignment of EEG and excise obligations through legislative reform.

Further improvements to administrative arrangements could reduce the compliance costs and administrative burden on business while not affecting the integrity of the EEGs framework. Similarly, legislative changes could eliminate overlaps between the excise goods and EEGs regimes and reduce the frequency of interactions between business and Government agencies.

Any reforms will need to ensure that consistent treatment between EEGs and excisable goods is maintained and that the Commonwealth preserves the necessary powers to effectively and efficiently administer the regime governing the treatment of excisable goods and EEGs.

### *Questions*

*How do the differences in the legal and administrative treatment of excisable goods and EEGs affect your business?*

*How could compliance costs to business be reduced while ensuring the Government revenue is adequately protected from loss of customs and excise duties?*

*What opportunities do you see to improve the legislative and administrative arrangements to reduce difficulties or inefficiencies?*



## **ADMINISTRATION OF EXCISE EQUIVALENT GOODS**

On 30 November 2009, the Government announced a Better Regulation Ministerial Partnership to transfer administration of the customs warehouse licences and warehoused EEGs from Customs to the ATO. The Partnership was implemented in two phases over 18 months between 1 January 2010 and 30 June 2011.

Phase 1 was implemented between 1 January and 30 June 2010 to transfer administration of the following Customs functions to the ATO:

- licences for Customs warehouses that store EEGs; and
- imported EEGs that are warehoused, including permissions for periodic (weekly) settlement, permissions to move goods, remissions of duty on warehoused EEGs and compliance activities associated with warehoused EEGs.

The ATO commenced administering these functions from 1 July 2010. In effect, the ATO administers customs warehouse licences for warehouses that store EEGs, and regulates EEGs stored in customs warehouses.

Phase 2 of the Partnership integrated EEGs administration fully into the ATO's administrative system, including alignment of administrative policies and practices, forms and other requirements (where legislation permitted) to reduce the administrative burden on business.

Extensive industry consultation occurred throughout the transition of EEGs administration to the ATO and positive feedback was received from industry on the 'seamless transition' and levels of engagement throughout the Partnership. However, industry also indicated that there is potential to pursue additional cost reductions by considering further alignment of EEGs and excise obligations through legislative reform.

The changes made under the previous Partnership did not eliminate the need for business to lodge returns and make duty payments to both Customs and the ATO when acquitting their customs or excise duty liability respectively. Industry interactions with Customs and the ATO for warehoused EEGs are described at Appendix I.

### **Administrative Alignment**

The key focus in the initial transfer of EEG administration from Customs to the ATO was to reduce costs of compliance for industry by alignment where possible, of the administrative policies, practices, forms and other requirements for excisable goods and EEGs, including:

- establishment within the ATO of a single telephony entry point to support business enquiries with a licensing officer who can assist with both EEG and excise enquiries. Key clients have also been assigned a dedicated Client Relationship Manager who oversees their excise, GST and customs affairs;
- applications for licences and permissions (settlement and movement) for excisable goods and EEGs are assessed, processed and approved by the ATO; and
- centralising compliance activities for excisable goods and EEGs within the one agency.

## Specific Administrative Functions

Customs is responsible for the administration of the Customs Act. On 1 July 2010, the CEO of Customs delegated to the staff of the ATO, responsibility for administering EEGs imported into Australia and warehoused in a customs warehouse.<sup>3</sup>

The responsibilities delegated to the ATO include:

- Administering the warehouse licensing regime for EEG warehouse clients, including non-EEG warehouses operated by those clients but not duty free stores, catering bonds and providores. This includes the granting, renewal, variation, suspension and cancellation of warehouse licences.
- Issuing permissions to move goods between warehouses that are administered by the ATO.
- Issuing permissions allowing clients to pay duty/lodge returns for EEGs on a periodic basis.
- Approving remissions of duty.
- Managing the destruction of goods within warehouses administered by the ATO.
- Undertaking compliance activities at warehouses dealing in EEGs.

The responsibilities retained by Customs include:

- All import, export and Integrated Cargo System (ICS) transaction related inquiries from clients and brokers including requests for advice.
- Administration of the reporting, arrival, discharge and movement of goods to the point they are received at a warehouse in accordance with a warehouse declaration.
- Administration of EEGs that are entered directly for home consumption on an import declaration rather than being warehoused.
- Processing all entries including entries for goods delivered directly into home consumption, entries for goods transferred to a customs warehouse and entries for goods delivered into home consumption from a customs warehouse or transferred to the excise system.
- Collection of all excise equivalent customs duty payable on EEGs.
- Approving refunds and drawbacks of duty.

Duty-free stores, catering bonds or providores dealing in excisable goods, and EEGs deal with the ATO for their excisable goods and Customs for their EEGs and customable goods.

## Importation of excise equivalent goods

Importers of EEGs continue to use Customs' ICS<sup>4</sup> to acquit their obligations under the Customs Act.

<sup>3</sup> Section 79 of the Customs Act deals with Customs warehouse licences.

<sup>4</sup> Electronic system for recording and reporting import and export activities to Customs and Border Protection.

Clients that warehouse EEGs and use those EEGs in the manufacture of excisable goods while subject to Customs control are required to lodge documents with both the ATO and Customs and returns/entries must be lodged with both agencies when the EEGs are used in the manufacture of excisable goods and cleared for home consumption. They are also required to hold a warehouse licence under the Customs Act and manufacturer licence under the Excise Act.<sup>5</sup>

Industry feedback on the initial transition of the EEGs administration from Customs to the ATO raised the issue that changes need to be made to the point of excise control for warehoused EEGs. The view was expressed that the link between the wharf/airport and the customs warehouse should be removed and that goods should move straight into an excise place and be under excise control.

**Questions**

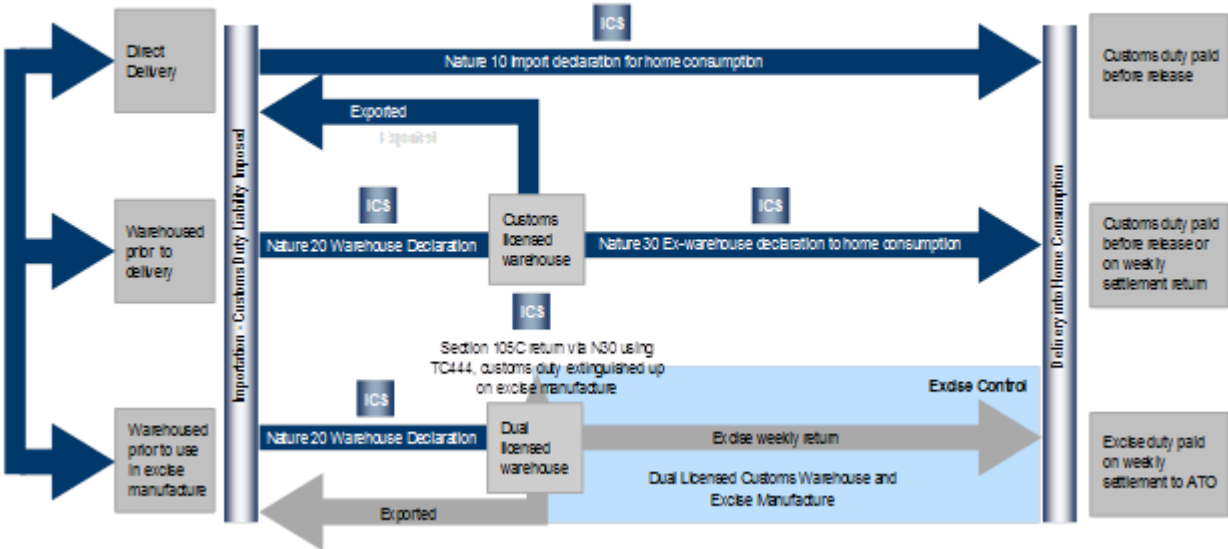
*How can reporting requirements for EEGs be streamlined or improved to make it easier for you to comply?*

*Do you have any comments on the import declaration requirements in the Customs Integrated Cargo System for warehoused EEGs including EEGs intended to be used in excise manufacture?*

*Do you have any comments on the System described above?*

**Figure 1: Import Pathways**

**Excise Equivalent Goods Pathway**



<sup>5</sup> See Part VAA of the Customs Act.

Before EEGs can be delivered to a warehouse; the warehouse must be licensed under the Customs Act.

By storing EEGs in a licensed warehouse, the importer or owner of the EEGs can defer the payment of customs duty until the EEGs are delivered into home consumption. Customs duty is not payable on EEGs that are exported from a customs warehouse. Goods stored in a warehouse are often referred to as 'underbond'.

Private warehouse<sup>6</sup> operators administered by the ATO deal with the ATO for all their obligations for licensing, movement of goods, settlement permissions and remissions of duty for both EEGs and non-EEGs. All payments of customs duty and the lodgement of the ex-warehouse declarations (Nature 30s) are made to Customs. Refunds of duty for EEGs are also processed by Customs.

The ATO is also responsible for administering general warehouses<sup>7</sup> in which EEGs are stored.

Customs administers all clients that operate warehouses that do not store EEGs.

If an importer or owner of EEGs intends to deliver the goods into a warehouse that is not already licensed as a customs warehouse then they need to apply to the ATO for:

- a customs warehouse licence, and if the imported EEGs will be used in the manufacture of excisable goods, they will also need to hold an excise manufacturer's licence;
- a single or continuing movement permission if they intend moving EEGs between customs licensed warehouses and/or for export;
- a periodic settlement permission to allow for the delivery of EEGs into home consumption prior to lodging a customs declaration and payment of duty; and
- remissions of duty on warehoused EEGs.

Customs ICS is used to:

- acquit customs and indirect tax obligations for imported goods;
- lodge the appropriate customs declarations for imported goods;
- lodge the appropriate declarations for exports;
- pay any customs duty owing on the EEGs including any GST and any ad valorem<sup>8</sup> amount that applies to imported alcohol; and
- claim refunds and/or drawbacks of customs duty on EEGs.

If imported goods are to be used in the manufacture of excisable goods, including blending them with like excisable goods or other imported EEGs, while subject to Customs control, the goods must be cleared with Customs. This is done by lodging an ex-warehouse import declaration quoting the relevant treatment code and paying any relevant ad valorem customs duty at this point. The excise equivalent customs duty is extinguished and the manufactured goods are by definition excisable and dealt with in the excise system.

<sup>6</sup> Private warehouse – the licence holder is the owner of the goods.

<sup>7</sup> General warehouse – the licence holder is storing goods on behalf of other owners.

<sup>8</sup> Some imported spirits are subject to an ad valorem duty component as well as the excise equivalent duty.

## Licences

A licence is an approval or authorisation to enable an entity to undertake the activities specified in the licence.

It is unlawful to manufacture excisable goods without an appropriate excise licence. An excise storage licence allows a person to store excisable goods on which excise duty has not been paid. A customs warehouse licence allows a person to store imported EEGs<sup>9</sup> on which customs duty has not been paid. If the EEGs are to be used in the manufacture of excisable goods then this can only occur at a site that is licensed to manufacture excisable goods. Licences are issued to specific entities and impose significant obligations for the control and documentation of excisable goods and EEGs being held by the licence holder. Although issued to the entity the licence applies to the physical site that is the subject of the licence. Obligations and controls include:

- Regulatory control – all excisable goods and warehoused EEGs are under the control of the ATO until delivered for home consumption or for export. Goods must not be intentionally moved, altered or interfered with, without permission from the ATO. Delivery includes consumption within an area licensed for excise purposes.
- Stock control – licence holders are responsible for the excisable goods and EEGs in their possession, custody or control. If a licence holder cannot account for the goods to the satisfaction of the ATO, the licence holder will be required to pay an amount equal to the duty payable as if the goods had been entered for home consumption on the day the ATO asks for payment.<sup>10</sup> The licence holder must also conduct regular stocktakes and account for any short falls.
- Access to premises – ATO officers are provided with complete access at all times to every part of the premises specified in an excise licence or customs warehouse licence.<sup>11</sup>

The ATO is responsible for issuing excise licences to manufacture or store excisable goods. The ATO is also responsible for issuing customs warehouse licences for premises that deal with EEGs whether packaged or bulk.

To apply for an excise licence or a customs warehouse licence (EEGs) an entity typically:

- calls the ATO to discuss the licensing circumstances;
- completes the relevant licence application forms and provides the information requested, including submitting a number of original documents (or certified copies of same) with the licence applications; and
- completes and signs a consent to obtain information – company form if required, and the consent to obtain information – individual form which must be completed by the applicant and everyone who participates in the management or control of the business.

The diagram below lists the types of licences that an entity can apply for. An entity that deals with excisable goods and EEGs will need to hold both excise and customs licences. They may also need to hold multiple excise and customs licences for their excisable goods and EEGs, for example, where the entity stores excisable goods and EEGs in several different locations.

<sup>9</sup> Other imported goods can be stored in a customs warehouse; however, this paper focuses on EEGs.

<sup>10</sup> Section 60 of the Excise Act and Section 35A of the Customs Act.

<sup>11</sup> Section 86 of the Excise Act and section 91 of the Customs Act.

**Table 1: Licence applications**

Licence	Tobacco	Alcohol	Fuel & Petroleum products	Duty Free Stores, catering bond and provedore
<b>*Excise Manufacture Licence</b>	For domestic manufacture only	For domestic manufacture only	For domestic manufacture only	No
<b>Excise Storage Licence</b>	For domestic product only	For domestic product only	For domestic product only	For domestic product only
<b>Customs Warehouse Licence (EEGs)</b>	For imported product only	For imported product only	For imported product only	For imported product only

\*Note if you hold a licence to manufacture excisable goods then you do not need a licence to store excisable goods for the same site.

**Questions**

*How could the current licensing system be improved?*

*Is there any duplication between the processes for excise and customs warehouse licences that could be simplified or other suggestions that could improve the process?*

**Movement Permissions**

A movement permission is required from the ATO to move excisable goods or EEGs before they are delivered for home consumption or for export (excisable goods only). There are four types of movement permission:

- Single movement permission – a permission to move excisable goods or EEGs from one specified place to another specified place (effective for one movement).
- Continuing movement permission – a permission to move excisable goods or EEGs of a kind specified from one specified place to another specified place (effective for multiple movements).
- Single movement permission (export) – a permission to move excisable goods to a place of export (effective for one movement).
- Continuing movement permission (export) – a permission to move excisable goods to a place of export (effective for multiple movements).

A movement permission (export) is not an authority to export. The authority to export is obtained from Customs using the ICS. Further discussion on exports is below.

## Returns and settlement permission

Before an entity can deliver excisable goods or EEGs for home consumption,<sup>12</sup> an authority to do so is required. This authority can be granted in one of two ways:

- the entity needs to enter the goods on the approved form, pay the relevant duty and receive an authority to deliver the goods; or
- the entity can be granted a permission to deliver goods into home consumption without an entry, known as a periodic settlement permission (PSP).

Under a PSP, the entity must lodge a return specifying the goods delivered during the settlement period and pay the relevant duty on those goods.

An excise return can only be lodged on a paper form and must be faxed or mailed to the ATO by the time specified in the PSP. Excise duty can be paid to the ATO by EFT or by mail.

The Customs declaration (entry) can be made on a paper form or electronically with Customs in the ICS. Customs duty is paid to Customs either electronically via the ICS or in person at a Customs client services counter.

Dual licence holders have lodgement and payment obligations with both the ATO and Customs.

### *Questions*

*What impact do the current requirements and processes for permissions have on your business?*

*How can these requirements and processes be improved to reduce compliance costs or administrative burden?*

## Remissions

An application can be made to the ATO for a remission (or waiver) of excise duty or customs duty in certain prescribed circumstances.<sup>13</sup>

This includes when excisable goods or EEGs:

- have been or will be destroyed while subject to ATO or Customs control;
- are no longer fit for human consumption; or
- have deteriorated or been damaged or destroyed while in a warehouse or excise place and while still subject to ATO or Customs control.

To ensure the excisable goods and EEGs subject to remission do not find their way into the Australian domestic market, the ATO may inspect or supervise the disposal of goods. If the

<sup>12</sup> That is into the Australian domestic market as opposed to for export.

<sup>13</sup> Customs manage remission applications for EEGs for duty free stores, providores and catering bonds.

goods are to be destroyed at another licensed site, a movement permission must be obtained to move them from the licensed premises to the place of destruction.

The application for a remission of excise duty or customs duty is a paper form and can be faxed or mailed to the ATO.

## Drawbacks

An application for a drawback of customs duty paid on EEGs can be made where those EEGs have been imported and the relevant customs duty paid and then:

- the goods are exported unused since importation; or
- the goods are treated, processed, or incorporated in other goods that are exported.

An application for drawback of customs duty is lodged electronically with Customs in the ICS.

In contrast, an application for drawback of excise duty for duty paid on excisable goods that are exported is in hardcopy and must be faxed or mailed to the ATO.

## Refunds

Refunds of excise duty on excisable goods or customs duty on EEGs are allowed in certain circumstances. Claims for refunds of excise duty are made by paper form to the ATO. Claims for refunds of customs duty on EEGs are made electronically through the ICS if the original entry or return was made electronically.

The circumstances in which refunds are payable are not consistent between the two regimes. This seems particularly evident in relation to cigarettes and tobacco products. A refund of excise duty is available where excisable goods are returned to the manufacturer and either destroyed or mixed in with other tobacco. No such circumstance exists in relation to customable goods or EEGs. To achieve the same revenue result entities can export the EEGs or the goods and claim a drawback.

### *Question*

*Do you see any opportunities to improve the way remissions, drawbacks and refunds are administered?*

## Summary of differences in the treatment of excisable goods and EEGs

Industry consultation held after the initial transfer of administrative functions of EEGs from Customs to the ATO indicated that there are still opportunities for further reform to address remaining issues with duplication of processes and legislative misalignment.

The following table provides a summary of the main areas where there is duplication and differences in the treatment of excisable goods and warehoused EEGs. Also refer to Appendix I that contains a reference guide for EEG interaction with the ATO and Customs.



**Table 2: Summary of different administrative treatments of excisable goods and EEGs**

	Excisable Goods	Customable Goods EEGs	Excisable goods and EEGs (Dual Licence)
<b>Licence requirements</b>	Excise manufacture or storage licence	Customs warehouse licence	Excise Manufacture or Storage Licence and Customs Warehouse Licence
<b>Licence fees</b>	No fees applicable	\$7,000 application fee \$4,000 renewal fee Unless dealing in fuel where it is \$1,000 and nil for renewal	Excise – No fees Customs Warehouse- \$7,000 application and \$4,000 renewal
<b>Licence renewal periods</b>	When first issued the licence is valid until 30 September two years after the anniversary of the day it is granted then it is renewed for 3 years	When first issued the licence is valid until 30 June following the granting of the licence, then it is renewed for 12 months	3 years for Excise and 12 months for Customs warehouse
<b>Licence renewal dates</b>	3 years – 30 September	1 year – 30 June	The Excise licences are renewed in September and the Customs Warehouse licences are renewed in June
<b>Reporting</b>	Paper based – mail or fax	Electronic – ICS	Paper based – ATO Electronic – ICS
<b>Legislation</b>	Excise Act, Excise Tariff Act, Excise Regulations	Customs Act, Customs Tariff Act, Customs Regulations	The relevant legislation applies to the relevant goods. ATO officers administering the Customs legislation operate under delegation from the CEO of Customs

## Export of goods

The ATO is responsible for all goods released from an ATO administered warehouse for export up to the receipt of the goods at a place of export. This includes issuing single or continuing movement permissions to move excisable goods to a place of export.<sup>14</sup>

<sup>14</sup> Wharf, airport or depot.

All excisable goods or EEGs intended to be exported from Australia must be declared on an export declaration through the ICS to Customs.

Customs is responsible for all real time monitoring of export declarations prior to goods being released from a warehouse (including those administered by the ATO) for export and the control of those goods from the point of receipt of the goods at the place of export.

Customs is also responsible for the control of goods for export including activities at wharfs and airports including export verification activities.

### *Questions*

*Are there inefficiencies in the current administrative arrangements for the export of excisable goods and EEGs and how do these affect your business?*

*Could export related compliance requirements be further streamlined?*

## **DUTY FREE STORES**

Duty free stores hold a customs warehouse licence and have been granted permission by Customs to sell goods to 'relevant travellers' at the retail level free from customs duty. Duty free stores may sell goods to 'relevant travellers' free of GST and Wine Equalisation Tax (WET) in accordance with the relevant legislation. Customs is responsible for the administration of duty free stores' legislative obligations under the Customs Act.

Duty free stores that store excisable goods are required to have a licence under the Excise Act and be granted permission by the ATO to sell goods free of excise duty. The ATO is responsible for the administration of duty free stores' obligations under the Excise Act.

For *outwards duty free* purposes, a 'relevant traveller' is classed as a person who intends to make an international flight or voyage, whether as a passenger on, or as a pilot or member of the crew of an aircraft or ship.

For *inwards duty free* purposes a 'relevant traveller' is classed as a person who has arrived in Australia on an international flight, whether as a passenger on, or as the pilot or member of the crew of an aircraft and, has not yet been cleared through the entry control point.

Before any duty free sale can be made, the buyer is required to produce a ticket and passport, as proof that the buyer is a genuine relevant traveller. For outward bound travellers, this documentation is also needed to prove that the goods will be exported within the legislated time periods.

Types of duty free stores:

- **'Airside' inwards duty free stores:** These stores are permitted by Customs to sell goods duty and tax free to relevant travellers arriving on international flights prior to clearing customs.
- **'Airside' outwards duty free stores:** These stores are located in the airside departures area and are permitted to sell goods duty and tax free to relevant travellers leaving Australia.

- **'Landside' outwards duty free stores:** These stores are located either in the general airport environment, or away from the airport and are permitted to sell goods duty and tax free to relevant travellers no earlier than 30 days before their departure from Australia.

Duty free stores must:

- have a computerised bond register that can show the receipt, location, movement and final acquittal of all goods within the warehouse;
- have a perpetual stock control system that is capable of providing a precise tally of all stock in the warehouse at any time;
- conduct a full stock take of all underbond goods at least once a year; and
- keep records of the receipt or purchase of all goods moving in and out of the store for the last five years and provide them to Customs when required.

In addition, duty free stores that hold excisable goods and are licensed under the Excise Act must keep detailed records of business operations for the last five years and provide them to the ATO when requested. This includes keeping records of quantity manufactured, quantity stored, sale, loss or wastage, and movement of goods.

## **The Docket Retrieval Scheme for export verification**

All goods sold from landside duty free stores are sold in 'sealed bags' under the condition that the goods will be exported within 30 days of purchase. The docket retrieval scheme monitors the export of these goods.

Landside duty free stores are required to have an arrangement in place with a docket collection agency. After a relevant outward bound traveller purchases their duty free goods, the goods are placed into a sealed bag. This sealed bag has a sales invoice within the bag and attached outside the bag. The bag is not permitted to be tampered with before departure.

Upon arrival at the departure section of the airport, the bag is to be presented to a docket collection agent who will remove the sales invoice from outside the bag ('pluck the docket') and report the invoice number to the relevant duty free store. The duty free store is required to keep a record of all 'plucked dockets' in order to account for the export of the goods. A 'Missed Docket Return', detailing the invoice numbers of all dockets prepared for goods intended for export, which were not retrieved, must be lodged by the duty free store to Customs, or the ATO as required, within 21 days of the end of each month.

Where it is determined that a sales invoice has not been collected or that the bag has been tampered with; the goods are determined to have been 'entered for home consumption', and the duty free operator is then liable to pay the applicable duty or excise, GST and/or WET. The traveller could also be liable for a penalty.

### ***Question***

***How could the administrative framework governing duty free stores be improved to reduce your administrative and compliance costs?***

## CATERING BONDS AND PROVIDORES

Catering bonds operate in the air transport environment and provide a commercial service to international airlines to supply aircraft stores<sup>15</sup> to be used during flights. Some of these stores are dutiable or excisable such as alcohol; some are not, for example food. Where flights operate internationally those stores are duty and tax free.

Providores operate in the sea transport industry and provide ships undertaking international transport with duty and tax free ship stores to be used during the international journey. As with catering bonds some of these products are dutiable or excisable and some aren't.

Catering bonds and providores that store excisable goods are required to be licensed under the Excise Act. The ATO is responsible for the administration of catering bonds' and providores' obligations under the Excise Act.

Sections 127 to 130C of the Customs Act describe the provision for and treatment of ship and aircraft stores. Customs officers conduct checks on ship and aircraft stores to verify that all cargo reported on manual forms (for example Form 43 – Application to take on board ship's stores) and in the ICS as 'ships stores' or 'aircraft stores' are actually taken on the vessel or aircraft for use on board.


In conducting compliance activity on providores supplying ship stores, Customs use an intelligence-led, risk-based approach in determining which ships to check. This compliance activity includes verifying manual forms (Form 43 – Application to take on board ship's stores) with corresponding electronic records in the ICS. The ship's physical bond is checked to verify that all stores in the approval were taken on board as per the application by conducting a full stocktake. This takes into account any stores already in the bond as verified by the boarding officers (if undertaken), and includes all stores listed on the approved application. If any discrepancies are identified, further investigation and copies of ship's documents are obtained to determine the location and/or circumstances relating to any missing or surplus goods. Compliance checks are also undertaken at the warehouse to verify goods arriving at and leaving the warehouse, and being unloaded from the ship are correctly accounted for.

Customs officers board international aircraft and conduct a stocktake of all aircraft stores loaded on a risk assessment basis. These goods are compared to records kept to show what goods left the corresponding catering bonds. All aircraft stores leaving the catering bond are required to be recorded on the warehouse's bond register.

The current legislation provides support to a comprehensive compliance program of activities to ensure the risk to the revenue, as well as threats to the border and Australian community such as smuggling, diversion and organised criminal activity, is minimised.

Given that Customs operate and maintain a presence in the areas in which duty free stores, providores and catering bonds are located, the objectives of the legislation are acknowledged

<sup>15</sup> S130C of the Customs Act defines 'aircraft stores' as stores for the use of passengers or crew of an aircraft, or for the service of an aircraft. This section of the Customs Act also describes ship's stores as being stores for the use of the passengers or crew of a ship, or for the service of a ship.



and achieved. Any lessening of the regulatory framework would see a heightened risk of revenue leakage which would need to be mitigated through an increased and structured compliance intervention program.

***Questions***

*Are there any differences in the legal and administrative treatment of EEGs and excisable goods that affect the catering bond or providore industries?*

*Can you outline any difficulties or inefficiencies that these differences cause for these industries?*

*Do you have any suggestions that would lead to reduced administrative costs?*

## APPENDIX I

### REFERENCE GUIDE FOR EEG INTERACTIONS WITH ATO AND CUSTOMS


	Type of operator		
	General warehouse operator	Private warehouse operator	Importer or owner
	<p>Either:</p> <ul style="list-style-type: none"> <li>- stores EEGs or both non-EEGs and EEGs at that warehouse</li> <li>- stores only non-EEGs in that warehouse but holds another warehouse licence or permission that relates to EEGs.</li> </ul>	<p>Either:</p> <ul style="list-style-type: none"> <li>- imports and stores own EEGs or non-EEGs and EEGs at that warehouse</li> <li>- stores only non-EEGs at that warehouse but holds another warehouse licence or permission that relates to EEGs.</li> </ul>	<p>Imports EEGs or both non-EEGs and EEGs and stores them in a general warehouse.</p>
<b>EEG interactions</b>	Who you will interact with		
<b>Licensing</b> Apply, amend and renew	ATO	ATO	N/A
<b>Lodging import declarations</b> N20 and N30	N/A	Customs (using ICS)	Customs (using ICS)
<b>Permissions</b>  Apply, amend or cancel:  - periodic settlement - single movement - continuing movement.  See Notes on permissions for more information.	N/A	ATO	ATO

<b>Paying</b> Customs duty or indirect taxes if applicable.	N/A	<b>Customs</b>	<b>Customs</b>
<b>Seeking advice</b>  Including:  - tariff advice - non precedential and administrative advice - technical advice - imported goods origin advice - status of imports - ICS support - advice on refund and drawback circumstances.  Advice on licensing and permissions	<b>Customs</b>          <b>ATO</b>	<b>Customs</b>          <b>ATO</b>	<b>Customs</b>          <b>ATO</b>
<b>Lodging refunds and drawbacks claims</b> Customs duty	N/A	<b>Customs</b> (using existing systems to claim drawbacks and ICS to claim refunds)	<b>Customs</b> (using existing systems to claim drawbacks and ICS to claim refunds)
<b>Seeking remissions</b> Customs duty	<b>ATO</b>	<b>ATO</b>	<b>ATO</b>
<b>Compliance</b> Post transaction verification for stored goods	<b>ATO</b>	<b>ATO</b> – for EEGs  <b>Customs</b> - for non-EEGs	<b>ATO</b> – for EEGs  <b>Customs</b> - for non-EEGs

#### Notes on permissions

If you operate a private warehouse that the ATO administers, you can contact the ATO for your non-EEG movement and settlement permissions.

Importers or owners can apply to either the ATO or Customs for single permissions to move non-EEGs.



If you are in the duty-free, providore or catering bond industries and want to move goods from your warehouse, you must apply to Customs. If your supplier is moving goods from an ATO licensed warehouse, they will apply to the ATO for a movement permission. If your supplier is moving goods from a Customs licensed warehouse, they will apply to them.