



ACN 000 151 100



ACN 004 694 428



ACN 088 148 681

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Manager
Indirect Tax Unit
Indirect, Philanthropy and Resource Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

SUBMISSION TO THE TREASURY CONSULTATION ON EXCISE EQUIVALENT GOODS ADMINISTRATION

Legislation and Policy Better Regulation Ministerial Partnership

British American Tobacco Australia (BATA), Philip Morris Limited (PML) and Imperial Tobacco Australia (ITA) (together “the Industry”) appreciate the opportunity to contribute to the Treasury’s efforts to “improve the efficiency and effectiveness of the excise equivalent goods administrative framework”. The Industry has already seen the benefits of the Better Regulation Ministerial Partnership which streamlined the administration of excise equivalent goods (EEG’s) to the Australian Taxation Office (ATO). As outlined in this submission, the Industry believes there are additional opportunities to further simplify the process and, by doing so, reduce compliance costs.

Issue 1: One administration of two taxes

While section 55 of the Constitution clearly outlines the requirement for an excise tax and a customs duty to remain separate in law, there are opportunities to streamline the implementation of these two taxes through one administration. This essentially requires a continuation of the work done as part of the Better Regulation Ministerial Partnership. The Industry notes that up until it gets past the border, Customs is responsible for enforcement activities, but that once the product gets past the border, there is a lack of clarity as to which agency is responsible for enforcement and a deficit of relevant laws and penalties. The Industry would like to see one agency with all in-market enforcement responsibility.

Recommendation 1: *The Industry believes that the administration of the Customs and Excise systems should be aligned within the ATO taking into account the various recommendations outlined in this submission. The Industry would like a single agency to have all in-market enforcement responsibility.*

Issue 2: Importation of EEG's

PML imports tobacco leaf for the purposes of manufacturing finished tobacco products into a licenced leaf storage warehouse. Under the current regime, PML does not pay Customs duty on tobacco leaf imported for manufacture where the requirements of section 105B of the *Customs Act 1901* are met, but pays excise for tobacco products once they are released from under-bond into home consumption. PML incurs significant compliance costs in managing the leaf store, notwithstanding that no excise or customs is ever incurred on tobacco leaf directly.

Recommendation 2: *The Industry fully supports the industry view outlined on page 11 of the consultation paper 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. Any concerns about the changed timing of the GST taxing point can be addressed by widening the eligibility of the Deferred GST Scheme to both monthly and quarterly remitters. The Industry further notes that any mechanism used should not prevent Customs from stopping illegal tobacco imports and prosecuting offenders, including seeking fines and custodial sentences of up to 10 years in jail.*

Issue 3: Licences

Tobacco leverages significant taxes for the government; there is no doubt that its movement and storage needs to be tightly controlled. In managing the taxes for imported leaf and finished tobacco products sold into the market, PML – as an importer of tobacco leaf, manufacturer of tobacco products and an exporter of tobacco products – currently holds the following licenses:

Customs licences	PML	BATA	ITA
	Customs Warehouse licences (issued by ATO)	Customs Warehouse licences (issued by ATO)	Customs Warehouse licences (issued by ATO)
	Domestic continuing permission (issued by ATO)	Domestic continuing permission (issued by ATO)	Domestic continuing permission (issued by ATO)
	Weekly settlement permission (issued by ATO)	Weekly settlement permission (issued by ATO)	Weekly settlement permission (issued by ATO)
	Permission to import unmanufactured tobacco leaf (issued by ATO)	Permission to import unmanufactured tobacco leaf (issued by ATO)	Export continuing permission

ATO licences	PML	BATA	ITA
	Domestic continuing permission	Domestic continuing permission	Domestic continuing permission
	Weekly settlement permission	Weekly settlement permission	Weekly settlement permission
	Export continuing permission	Export continuing permission	Export continuing permission
	Excise storage licence	Excise storage licence	
	Dealer licences	Dealer licences	
	Manufacturing licence	Manufacturing licence	

Each of the above licences requires valuable time to prepare and administer, which results in ongoing compliance costs. The Industry is required to apply to the ATO for two licences in most instances for both customs and excise purposes, with the majority of the information provided in each licence application being the same. Apart from the entity represented on the licence, there are duplicate requirements and permissions, usually administered by the same person within the ATO.

A further contributor to high compliance costs are the various licence periods (ranging from one year to three years), differing renewal dates and varying licence fees.

Recommendation 3: *The Industry recommends that entity licences be issued by the ATO to cover importation, exportation, manufacturing, movement and storage of imported and domestically manufactured tobacco leaf and finished products. The entity licence should be issued for a period of not less than three years with a nominal licence fee. The Industry also recommends that the option of applying for, updating and renewing licences using online functionality be investigated.*

Issue 4: Returns and settlement permission

PML is currently required to lodge a weekly Customs Return with Customs, and a weekly Excise Return with the ATO, in order to comply with separate weekly Settlement Permissions. PML lodges the Excise Return via facsimile to the ATO, but is required to lodge the Customs Return via an external customs broker as the Nature 30 entry must be lodged using the Customs ICS system. This inconsistency results in increased compliance costs.

ITA has access to the Customs ICS System and lodges the Nature 30 through the system on a weekly basis. On a practical level, it is noted that the Customs ICS system has minimal security due to the lack of differing levels of access and authority (i.e. the person raising the Nature 30 can also approve and pay). Varying necessary levels of authority throughout the process would assist in creating a security of process.

It should also be noted that the Customs ICS system requires the duty payer to purchase and manage security certificates through a 3rd party ("Verisign"). The Customs security certificates expire after 2 years and have to be repurchased generating additional cost to the duty payer, however, the ATO 'on line' BAS lodgment system uses security certificates but there is no cost to the tax payer.

PML also incurs additional compliance costs associated with the maintenance of two separate Continuing Permissions which are jointly administered by the ATO. Significant time and effort is undertaken when updating Continuing Permissions including the need to submit two separate forms (one for the Customs Continuing Permission and another for the ATO Continuing Permission) to the same area in the ATO.

Recommendation 4: *The Industry recommends that the Excise Return and Customs Return lodgment requirements are streamlined so that a combined return can be lodged. The Industry further recommends that a single Continuing Permission covering both excisable tobacco products and EEG's, with a single form required for any updates. The Industry also recommends that the option of lodging returns, and applying for and renewing permissions, using online functionality be investigated.*

Issue 5: Remissions, drawbacks and refunds

There is also an inconsistency in the treatment of excise and customs refunds and drawbacks. Both excise and customs duties are designed to be imposed on products that are consumed in Australia. Refunds on returned goods should be equally applied for excise and customs for unsalable duty paid products.

From time to time, tobacco manufacturers may need to recall product from retailers, or have product returned due to packaging damage or deterioration, the product may reach the end of its shelf life or need to destroy product (for example, product that is no longer compliant with government regulations such as can be anticipated during the changeover to plain packaging leading up to and following 1 December 2012). In these cases, excise and duty has already been paid on these products, but the product has not been sold to the end consumer, and therefore has not been consumed.

Locally produced products can be destroyed locally once ATO approval is obtained, and a refund of the excise paid is claimed. There is no equivalent process for imported products, which are required to be re-exported in order to claim duty drawback, rather than destroyed locally. Excisable and EEG's should both be eligible for a refund of duty at the point of destruction, which should be in Australia.

Existing requirements are an unnecessary exercise in red-tape compliance. Accordingly, we seek a streamlined arrangement whereby duty is refunded on imported unsalable duty paid products in the same way that excise is refunded on domestically manufactured unsalable duty paid products.

***Recommendation 5:** The Industry recommends that the excise and duty refund, drawback and remission requirements are aligned for both domestically manufactured and imported products, with local destruction available for both excisable tobacco products and EEG's.*

Export of goods

The Industry has no comment on this.

Duty free/Catering bonds and providores

The Industry has no comment on this.

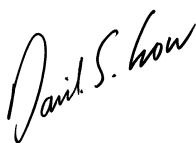
Conclusion

The Industry believes there are additional opportunities to further streamline the process of excise and EEG's through the continuation of the Better Regulation Ministerial Partnership. The Industry has offered a series of recommendations in support of this argument, as summarised below.

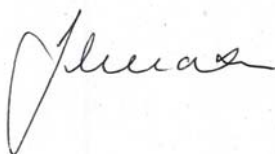
- **Recommendation 1:** The Industry believes that the administration of the Customs and Excise systems should be aligned within the ATO taking into account the various recommendations outlined in this submission. The Industry would like a single agency to have all in-market enforcement responsibility.
- **Recommendation 2:** The Industry fully supports the industry view outlined on page 11 of the consultation paper 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. Any concerns about the changed timing of the GST taxing point can be addressed by widening the eligibility of the Deferred GST Scheme to both monthly and quarterly remitters. The Industry further notes that any mechanism used should not prevent Customs from stopping illegal tobacco imports and prosecuting offenders, including seeking fines and custodial sentences of up to 10 years in jail.

- **Recommendation 3:** The Industry recommends that entity licences be issued by the ATO to cover importation, exportation, manufacturing, movement and storage of imported and domestically manufactured tobacco leaf and finished products. The entity licence should be issued for a period of not less than three years with a nominal licence fee. The Industry also recommends that the option of applying for, updating and renewing licences using online functionality be investigated.
- **Recommendation 4:** The Industry recommends that the Excise Return and Customs Return lodgment requirements are streamlined so that a combined return can be lodged. The Industry further recommends that a single Continuing Permission covering both excisable tobacco products and EEG's, with a single form required for any updates. The Industry also recommends that the option of lodging returns, and applying for and renewing permissions, using online functionality be investigated.
- **Recommendation 5:** The Industry recommends that the excise and duty refund, drawback and remission requirements are aligned for both domestically manufactured and imported products, with local destruction available for both excisable tobacco products and EEG's.


Yours sincerely,



David Crow
Area Director, Australasia &
Managing Director, Australia
British American Tobacco Australia Limited
(02) 9370 1500



John Gledhill
Managing Director
Philip Morris Limited, Australia
(03) 8531 1000



Melvin Ruigrok
General Manager Australasia
Imperial Tobacco Australia Limited
(02) 9881 0888