

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY

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QUESTIONS WE'VE BEEN ASKED

GST – Importers and recalculated GST

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This question we've been asked clarifies when importers can claim input tax deductions where they have overpaid GST to the New Zealand Customs Service (Customs).

Key provisions

Goods and Services Tax Act 1985 – ss 3A(1)(b), 12, and 20(3) and (3C)

Customs and Excise Act 2018 - ss 142 to 145

Question

Can an importer who overpays GST to the New Zealand Customs Service (Customs) claim an input tax deduction for the whole of the GST paid?

Answer

Yes. Customs is not allowed to refund overpaid GST where the importer is a registered person who can claim an input tax deduction. Therefore, for an importer that is a registered person to get a refund of overpaid GST, the proper mechanism to use is to claim an input tax deduction for the whole of the GST they paid to Customs.

Explanation

1. Customs collects GST on the importation of goods (not including fine metal) into New Zealand.
2. A registered person who enters goods for home consumption under the Customs and Excise Act 2018 is allowed an input tax deduction for GST that Customs collects, provided the imported goods are used for, or are available for use in, making taxable supplies, other than:
 - delivering the goods to a person in New Zealand; or
 - arranging or making it easier to deliver the goods to a person in New Zealand.
3. Customs has powers allowing it to refund a duty, including GST, in the following circumstances:
 - The chief executive is satisfied that duty has been paid in error, either of law or of fact.
 - An importer pays duty on goods based on a provisional Customs value and subsequently amends the assessment and the final Customs value results in a lower amount of duty being payable than the importer has already paid.
 - The importer has paid duty on imported goods and a lower rate of duty, or an exemption for the goods, is subsequently approved under the Tariff Act 1988.
 - The imported goods:
 - have been damaged, destroyed, pillaged or lost, or have diminished in value or deteriorated in condition, before they stopped being subject to the control of Customs; or

- are of faulty manufacture; or
 - have been abandoned to the Crown for destruction or any other form of disposal before they stopped being subject to the control of Customs.
4. However, Customs is not allowed to refund GST to any registered person for goods imported for the purpose of carrying on that person's taxable activity if the person is entitled to make an input tax deduction for the goods.
 5. Therefore, where a registered person has overpaid GST, the proper mechanism for the registered person to use is to claim an input tax deduction for the whole of the GST they paid to Customs.
 6. This issue will only arise if the registered person has actually paid GST to Customs. If, for example, GST has been wrongly calculated due to an error of law or fact, and the importer (or customs broker) discovers that error before making the payment, they should contact Customs to fix the error. In addition, this issue only arises for GST-registered importers who can claim an input tax deduction. If the importer cannot claim an input tax deduction, Customs is allowed to refund any overpaid GST along with any other duty.

Examples

7. The following examples illustrate the above points.

Example 1: Error of fact

Imports R Us Ltd imports a container of sports bags. It completes its Import Entry but makes a mistake in calculating the values, so as a result the values are much higher than they should have been. Imports R Us Ltd pays the Customs duties and GST based on the incorrect values. Subsequently, Imports R Us Ltd discovers the error and applies to have Customs amend the duties assessed.

Customs can refund the other duties that Imports R Us Ltd has overpaid. However, Customs is unable to refund the overpaid GST. Instead, Imports R Us Ltd needs to claim an input tax deduction for the whole of the GST it originally paid to Customs.

Example 2: Amended provisional values

Big Time Imports Ltd imports a consignment of big brand shoes. It completes its Import Entry based on the provisional Customs value for the shoes and pays the Customs duties and GST accordingly. Big Time Imports Ltd also claims an input tax deduction for the GST it paid to Customs.

At the end of the income year, Big Time Imports Ltd undertakes its annual transfer pricing calculations. These calculations lead to a decrease in the value of the shoes it imported. Big Time Imports Ltd can amend its assessment and request a refund from Customs for the overpaid duties. Customs is unable to refund the overpaid GST. However, as Big Time Imports Ltd has already claimed an input tax deduction for the full GST it paid, it does not need to make any further amendments for the GST paid.

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In draft form these items may not be relied on by taxation officers, taxpayers, and practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.

References

Legislative references

Customs and Excise Act 2018, ss 142 to 145

Goods and Services Tax Act 1985, ss 3A(1)(b), 12, 20(3) and (3C)

About this document

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