

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY

Deadline for comment: **10 May 2022**

Please quote reference: **PUB00439**

Send feedback to Public.Consultation@ird.govt.nz

Notes: The requirements for keeping records supporting input tax deductions and general recordkeeping are proposed to be changed in the Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Bill. This Bill is currently before Parliament. Once the final form of the legislation has been determined, this item will be updated to reflect any new terms and wording.

QUESTIONS WE'VE BEEN ASKED

GST – Customs brokers and GST levied by Customs

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This question we've been asked clarifies how customs brokers should treat the GST they pay to the New Zealand Customs Service (Customs) on behalf of their importer clients.

Key provisions

Goods and Services Tax Act 1985 – ss 3A(1)(b), 12, 20(3) and (3C), 26 and 60

Question

Can a customs broker treat GST they pay to the New Zealand Customs Service (Customs) on behalf of their importer clients as part of their taxable activity when accounting for GST?

Answer

No. GST a customs broker pays to Customs on behalf of an importer client relates to the importer's taxable activity, not the customs broker's taxable activity.

The customs broker cannot claim an input tax deduction for GST they pay to Customs on behalf of the importer client. This is because the customs broker did not acquire the imported goods for use in their own taxable activity.

The customs broker also cannot issue any documentation (for example a tax invoice) claiming to charge GST when they ask the importer to reimburse them for the GST they have paid to Customs. This is because the request for reimbursement is not a request for payment for a taxable supply the customs broker has made.

Explanation

1. Customs brokers (also referred to as customs agents) assist both importers and exporters in clearing their goods through Customs. Customs brokers may also be freight forwarders. A freight forwarder arranges transport for goods being imported or exported from New Zealand.
2. An importer would generally engage a customs broker to:
 - review documents relevant to the goods they are importing (including invoices and shipping documentation) to enable a Customs entry to be prepared;
 - as part of preparation of the Customs entry, help the importer assess their duty liability by calculating the Customs value of the goods, determining the classification of the goods under the Tariff and identifying any applicable duty concessions;
 - lodge the import entry;
 - act as the initial point of contact for the importer if further interaction with Customs regarding the goods is required; and

- in some cases, pay GST to Customs on behalf of the importer (often by way of the customs broker's deferred account).

Input tax deductions

3. Customs collects GST on the importation of goods (not including fine metal) into New Zealand.
4. 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.
5. It is the importer who enters the goods for home consumption and uses the goods in making taxable supplies. Therefore, it is the importer who can claim an input tax deduction for the GST paid to Customs.
6. The customs broker cannot claim an input tax deduction for GST they pay to Customs on behalf of an importer client, for the following reasons:
 - The customs broker does not pay the GST that Customs collects on their own account. They pay it on behalf of the importer.
 - The customs broker is not the person who enters the goods for home consumption. To the extent they arrange for this to happen, the customs broker is merely acting as an agent for the importer.
 - The customs broker does not use the goods for making their taxable supplies. To the extent that the customs broker is also a freight forwarder, the delivery of the goods is not considered a use in making taxable supplies.

Agency

7. Certain rules allow an agent acting for another person (the principal) to be treated as receiving the supply of goods or services in limited situations. These rules allow the agent, rather than the principal, to claim an input tax deduction.
8. While a customs broker acts as an agent for an importer, these provisions will not usually apply to a customs broker. This is because these rules apply only where an agent receives a supply of goods on behalf of someone else. A customs broker does

not act as agent for the importer for the supply of the goods. They merely act as agent for the importer in taking the steps necessary to clear the goods through Customs.

Charging GST

9. GST is charged on the supply in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity.
10. A customs broker will usually be a registered person carrying on a taxable activity in New Zealand. However, that does not mean that they can charge GST on all payments made to them.
11. A customs broker should charge GST on their supplies of customs broking services. However, when a customs broker requests reimbursement for the GST they paid to Customs on behalf of an importer, they do not charge GST to the importer. This is because the reimbursement for the GST they paid to Customs is not for a taxable supply that the customs broker made. The customs broker also cannot issue any documentation (for example a tax invoice) claiming to charge GST on the request for reimbursement.

Bad debts

12. A person who has issued a tax invoice for a supply, and returned the GST charged, is entitled to claim an input tax deduction where an amount owing in relation to that supply is written off as a bad debt.
13. However, this provision will not apply to allow a customs broker to claim an input tax deduction where an importer fails to reimburse the customs broker for GST they paid to Customs. This is because the GST they paid to Customs does not relate to the customs broker's taxable activity and the customs broker is only seeking reimbursement of the GST they paid to Customs. The customs broker is not, therefore, entitled to charge GST as if they have made a supply.

Example

14. The following example illustrates the above points.

Quick to Clear Ltd is a customs broker. It helps Hair Cuts R Us Ltd to clear a shipment of barber's chairs through Customs, including by arranging payment of the relevant levies and Customs GST of \$1,000.

Quick to Clear Ltd cannot claim an input tax deduction for the \$1,000 of GST it paid to Customs on behalf of Hair Cuts R Us Ltd. Hair Cuts R Us Ltd is the only person that is eligible to claim an input tax deduction for that amount.

Quick to Clear Ltd also cannot issue a tax invoice, or any other documentation, claiming to charge Hair Cuts R Us Ltd the \$1,000 of GST paid to Customs.

Instead, Quick to Clear Ltd issues an invoice as follows:

Tax invoice:

Customs broking services	\$75.00
Plus GST	<u>\$11.25</u>
Total fee	\$86.25

Disbursements:

Customs GST	\$1,000.00
Import Entry Transaction Fee (incl GST)	\$33.03
Biosecurity System Entry Levy (incl GST)	\$26.45

Total amount payable: \$1,145.73

Hair Cuts R Us Ltd can claim an input tax deduction for the GST charged by Quick to Clear Ltd for their brokerage services. Hair Cuts R Us Ltd can also claim an input tax deduction for the Customs GST, and for GST paid on the import entry transaction fee and the biosecurity system entry levy.

Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.

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

Goods and Services Tax Act 1985 - ss 3A(1)(b), 12, 20(3) and (3C), 26 and 60

About this document

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