

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY

Deadline for comment: **10 May 2022**

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

Notes: This item will need to be updated for the various changes to the tax invoicing terminology proposed in the Bill once that has been enacted.

PUBLIC RULING

Goods and Services Tax – Importers and input tax deductions

Issued: Issue date

Publication

This Public Ruling explains when an importer who accounts for GST on an invoice basis can claim an input tax deduction on GST collected by the New Zealand Customs Service (Customs). It also explains what documentation importers can use as an invoice to support the input tax deduction and associated record-keeping requirements.

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

1 July 2022 - Indefinitely

This Ruling applies to input tax deductions for GST collected by Customs on goods imported into New Zealand on and following 1 July 2022 for an indefinite period.

REPLACES

This is a reissue of [BR Pub 06/03](#). For more information about earlier publications of this Public Ruling see the Commentary to this Ruling.

Public Ruling BR Pub 22/xx: GST – Importers and input tax deductions

This is a public ruling made under s 91D of the Tax Administration Act 1994.

Taxation laws

This Ruling applies in respect of ss 20(3)(a)(ii), 75 and the definition of “invoice” in s 2 of the Goods and Services Tax Act 1985.

The Arrangement to which this Ruling applies

The Arrangement is the:

- importing of goods into New Zealand by registered persons for the purposes of making taxable supplies;
- levying of GST on those goods under s 12; and
- claiming of input tax deductions for that GST.

How the taxation laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- A registered person who accounts for GST on an invoice basis may use any one of the following documents issued by the New Zealand Customs Service (Customs) as an invoice to support a claim for a GST input tax deduction under s 20(3)(a)(ii):
 - an electronic import entry once the entry has been passed; or
 - a Deferred Payment Statement issued to an importer;
 - a cash statement; or
 - a manual invoice/statement.
- A registered person who accounts for GST on an invoice basis can claim an input tax deduction when an invoice is issued to them or when payment is made to Customs, whichever is earlier.
- A registered person who claims an input tax deduction based on one of the above types of invoice must keep the invoice as part of their record-keeping obligations under s 75(3).

- If the invoice does not include details of the imported goods, the registered person must also keep evidence of the imported goods (such as an import entry) as part of their record-keeping obligations under s 75(3).

The period or tax year for which this Ruling applies

This Ruling applies to input tax deductions for GST collected by Customs on goods imported into New Zealand on and following 1 July 2022 for an indefinite period.

This Ruling is signed by me on XX [Month] 2022.

Grant Haley

Tax Counsel Lead, Public Advice and Guidance

Commentary on Public Ruling BR Pub 22/XX

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Ruling BR Pub 22/XX (“the Ruling”).

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Summary

1. Customs collects GST levied under s 12 on goods imported into New Zealand. A registered person who accounts for GST on an invoice basis can claim an input tax deduction under s 20(3)(a)(ii) when an invoice is issued to them or when payment is made to Customs, whichever is earlier. This raises the question: which of the documents that Customs issues are invoices?
2. The Commissioner considers that an electronic import entry is an invoice once the entry has been passed.¹ In addition, the following documents are invoices when issued:
 - Deferred Payment Statements issued to an importer;
 - cash statements; and
 - manual invoices/statements.
3. A registered person who claims an input tax deduction based on one of the above types of invoice must keep the invoice as well as evidence of the imported goods to meet their record-keeping obligations.

Background

4. BR Pub 22/XX replaces "[BR Pub 06/03: Importers and GST input tax deductions](#)",² which will be withdrawn with effect from 30 June 2022. BR Pub 06/03 replaced "Public Ruling BR Pub 97/10: Importers and GST input tax deductions"³ which replaced "Public Ruling BR Pub 95/09: GST: Importers and input tax deductions".⁴
5. The Commissioner's view of how the Act applies, as set out in BR Pub 06/03, has not changed. However, changes to Customs and Excise legislation made it necessary to update BR Pub 06/03. The following are the main differences between BR Pub 06/03 and BR Pub 22/XX:

¹ The entry has been passed when Customs notifies the importer that the entry has been passed and allowed the goods to be released to the importer.

² "[BR Pub 06/03: Importers and GST input tax deductions](#)", *Tax Information Bulletin* Vol 18, No 6 (July 2006): 5.

³ "[BR Pub 97/10: Importers and GST input tax deductions](#)", *Tax Information Bulletin* Vol 9, No 11 (November 1997): 11.

⁴ "[BR Pub 95/09: GST: Importers and input tax deductions](#)", *Tax Information Bulletin* Vol 7, No 7 (January 1996): 15.

- BR Pub 06/03 applied to GST levied under the Customs and Excise Act (CEA) 1996. The CEA 2018 has now replaced the CEA 1996. BR Pub 22/XX applies to GST collected under the CEA 2018.
- The Commentary has been updated to reflect current systems and processes for lodging import entries.
- The Ruling now also covers:
 - situations where Customs issues a manual invoice/statement; and
 - record-keeping obligations.

Claiming input tax deductions for import GST

6. The following analysis briefly summarises the requirements for an importer to claim an input tax deduction for import GST. It then explains when each of the four types of documents from Customs meets the criteria to be an invoice.

Input tax deduction available when invoiced by Customs

7. GST is levied and paid on goods imported into New Zealand (s 12(1)). Registered persons who account on an invoice basis are permitted to claim input tax on GST levied under s 12 when an invoice is issued or payment is made, whichever occurs earlier (s 20(3)(a)(ii)).
8. Unlike other claims for input tax deductions, importers are not required to hold tax invoices to support their claims. This is because Customs does not make any supplies when it is levying GST on goods imported into New Zealand, and so is not required to issue tax invoices under s 24.
9. Registered persons who account for tax payable on a payments basis or a hybrid basis cannot claim an input tax deduction until they have paid the GST to Customs. Therefore, this Ruling does not affect them.

An invoice is a document notifying an obligation to pay

10. An "invoice" is a document notifying an obligation to make payment (s 2). "Document" is widely defined to include information in both physical and electronic forms (s 3 of the Tax Administration Act 1994). "Notify" has its ordinary dictionary meaning of "to give notice to –, to inform" (*Shell New Zealand Holding Co. Ltd v CIR*⁵).

⁵ *Shell New Zealand Holding Co. Ltd v CIR* (1994) 16 NZTC 11,163 (CA).

11. Four different types of documents issued by Customs can be used as “invoices” to claim an input tax deduction:
 - an electronic import entry once the entry has been passed; or
 - a Deferred Payment Statement issued to an importer; or
 - a cash statement; or
 - a manual invoice/statement.

An electronic import entry is an “invoice” when entry passed

12. The Court of Appeal in *Shell* considered whether an import entry is an “invoice” under s 2. The central issue in the case was whether an importer, with a deferred payment arrangement, could claim an input tax deduction when Customs passed the import entry⁶ or whether they had to wait until Customs sent a Deferred Payment Statement.
13. Under the law at the time, Customs entries were physical documents that a Customs officer stamped to pass the entry. The Court of Appeal noted that an “invoice” is “a document notifying an obligation to make payment”. The import entry form was prescribed by Customs and contained relevant information such as a description of the goods, various information relevant to determining the customs value of the goods, GST data, the “Total Value for Duty”, “Total Duty”, “Total GST” and “Total Payable”.
14. The court held that when the goods were entered, this constituted the duty as a debt due to the Crown. Therefore, the court considered the point at which the Customs officer signed the Customs import entry form to be notice to the importer of the obligation to make payment. A copy of the form was given to the importer when the entry was passed. It did not matter that an importer with deferred payment terms did not have to pay the debt immediately. As a result, the Customs import entry form satisfied the definition of “invoice” when the entry was passed.

An electronic import entry is analogous to the physical version

15. The nature of import entries has changed since *Shell* was decided. The Customs (Import Entry WCO Message) Rules 2013 require import entries to be lodged and cleared electronically.
16. GST on imported goods is a debt due to the Crown when goods are imported into New Zealand (s 100 and s 5, definition of “duty” of the CEA 2018). The importer makes

⁶ If Customs “passed” the entry, it deemed the goods to be entered and allowed the goods to be released to the importer.

an assessment of the GST payable on the goods when they make an entry for the goods (s 111 of the CEA 2018).

17. The payment obligation is triggered when Customs passes the entry for home consumption. For importers on deferred payment terms, passing the entry for home consumption debits the importer's deferred payment account (reg 24 of Customs and Excise Regulations 1996). For importers not on deferred payment terms, the GST becomes payable immediately (s 122 of the CEA 2018).
18. The information received on the electronic version of an import entry has not changed materially from the information received through the manual entry. The electronic entry shows the total duty, total GST and total payable. It identifies the supplier and the recipient of the goods and services, and describes the goods supplied with a detailed coding system. Therefore, the electronic entry document contains the information that the Court of Appeal in *Shell* thought necessary to establish and identify the Customs duty and GST that the importer owed to the Crown.
19. Customs notifies the importer or customs broker (as agent for the importer) when the entry is passed. This notification is the equivalent of a Customs officer signing and stamping a physical entry. When this notification occurs, the import entry meets the requirements for an "invoice" and the importer is entitled to claim an input tax deduction under s 20(3)(a)(ii). The importer or customs broker can access the import entry in Trade Single Window.⁷

A Deferred Payment Statement issued to an importer is an "invoice"

20. Customs operates an optional deferred payment scheme for importers. Under the scheme, Customs issues a Deferred Payment Statement for the duty importers owe on all the goods they import during a particular month. Payment is due on the 20th of the following month.
21. The Deferred Payment Statement is created from the information contained in the electronic entry. It itemises the GST payable for each entry as well as the total payable for the month. Consequently, a Deferred Payment Statement meets the definition of "invoice" and an importer can use it to support an input tax deduction.

⁷ Trade Single Window is an electronic channel for submitting information to, and receiving responses from, border agencies.

A cash statement is an “invoice”

22. If an importer is not on the deferred payment scheme (or is not using a customs broker's deferred account), Customs issues a cash statement when an entry has been passed. The importer must pay duty before the imported goods are released.
23. The cash statement is created from the information contained in the electronic entry document and includes the amount of GST payable for the entry. Consequently, a cash statement meets the definition of “invoice” and an importer can use it to support an input tax deduction.

A manual invoice/statement that Customs issues is an “invoice”

24. Sometimes Customs may issue an importer with a manually generated invoice/statement. This can occur, for example, when GST is payable on imported goods that do not require an import entry.
25. A manual invoice/statement includes the amount of GST payable to Customs for the imported goods. Consequently, a manual invoice/statement meets the definition of “invoice” and an importer can use it to support an input tax deduction.

Importers must meet their record-keeping obligations

Importers must keep invoices as part of their records

26. Section 75(3) requires registered persons to keep certain records for at least 7 years after the end of the taxable period to which they relate. “Records” include “invoices” (s 75(1)). As well as the specific records listed in s 75(2), a registered person must keep “records that are sufficient to enable ready ascertainment by the Commissioner or an officer authorised by the Commissioner of the registered person's liability to tax”.
27. Where an importer has claimed an input tax deduction based on the existence of an “invoice” from Customs, they must keep that invoice as a record under s 75(3). For an import entry, this can be stored electronically in Trade Single Window as long as the importer (or their agent) can access the import entry and provide it to Inland Revenue if requested. For importers using the services of a customs broker, it is not sufficient to keep an invoice or statement the broker has issued.

Importers must keep evidence of the imported goods

28. Deferred Payment Statements and cash statements do not include details of the imported goods. Therefore, importers using a Deferred Payment Statement or cash statement as an invoice will also need to keep the import entries or other records showing details of the imported goods.

Examples

29. The following examples show how the law applies.

Example 1: Electronic import entry

Riti's Fine Autos Ltd (RFAL) imports and sells European cars. It is registered for GST, accounts for tax payable on an invoice basis and files GST returns on a two-monthly basis. RFAL imports cars worth \$300,000 on 28 September. It uses the services of customs broker Zip It Through Ltd (ZIT) to import the vehicles. For each shipment of cars RFAL imports, ZIT enters the details of the cars, including their values, into Trade Single Window and submits an import entry to Customs.

Customs passes the entry and generates a delivery order message authorising release of the cars. Customs debits ZIT's deferred account for the amount of duty and GST owing. When this occurs, the cleared import entry in Trade Single Window becomes an invoice.

RFAL's taxable period ends on 30 September. It must provide a GST return for the months of August and September. RFAL will include an input tax deduction claim for the GST levied on the cars imported on 28 September.

RFAL only needs an invoice to substantiate the claim for an input tax deduction for the GST levied on the imported cars. It can claim the input deduction in the taxable period ending 30 September because the electronic import entry contains all the necessary details to be an invoice. RFAL does not need to delay the claim until ZIT receives its Deferred Payment Statement or pays the GST owing to Customs on RFAL's behalf.

Example 2: Deferred Payment Statement

Adam Muir imports vintage gramophones for sale in his antique shop in Epsom. He is registered for GST and accounts for tax payable on an invoice basis. Adam has a

deferred payment account with Customs. At the end of each month, Customs sends Adam a Deferred Payment Statement listing his import entries for the month and the GST payable for the goods in each entry.

Adam could have used the individual import entries as invoices. However, Adam can instead claim an input tax deduction under s 20(3)(a)(ii) when he receives the Deferred Payment Statement. He does not need to wait until the following month when payment is due.

Adam needs to keep both the Deferred Payment Statement and evidence of the imported goods to meet his record-keeping obligations under s 75.

Example 3: Manual invoice/statement

Sarah Fumar is a cigar retailer. She is registered for GST and accounts for tax payable on an invoice basis. During a recent trip to Cuba, Sarah found some unique cigars that she could not source in New Zealand. Sarah purchased two boxes of cigars for the equivalent of NZ\$300. She declared the goods to Customs at the airport when she returned to New Zealand. Customs issued Sarah with an invoice/statement showing GST payable of \$180 and took possession of the cigars until she could arrange payment.

Sarah can claim an input tax deduction under s 20(3)(a)(ii) when Customs issues the invoice/statement. She does not need to wait until she has paid for the cigars. Sarah needs to keep the invoice to satisfy her record-keeping obligations under s 75.

Legislation

Goods and Services Tax Act 1985

30. The relevant provisions in the Goods and Services Tax Act 1985 are as follows.

2 Interpretation

...

document means a document as defined in the Tax Administration Act 1994

...

invoice means a document notifying an obligation to make payment

...

3A Meaning of input tax

- (1) Input tax, in relation to a registered person, means—
- (a) tax charged under section 8(1) on a supply of goods or services acquired by the person:
 - (b) tax levied under section 12(1) on goods entered for home consumption under the Customs and Excise Act 2018 by the person:

...

12 Imposition of goods and services tax on imports

- (1) Notwithstanding anything in this Act, a tax to be known as goods and services tax shall be levied, collected, and paid in accordance with the provisions of this section at the rate of 15% on the importation of goods (not being fine metal) into New Zealand, being goods that are—
- (a) entered therein, or delivered, for home consumption under the Customs and Excise Act 2018; or
 - (b) entered for delivery to a manufacturing area licensed under section 59 of the Customs and Excise Act 2018; or
 - (c) before their entry, or delivery, for home consumption or, as the case may be, entry for delivery to a manufacturing area licensed under section 59 of the Customs and Excise Act 2018, dealt with in breach of any provision of the Customs and Excise Act 2018,—

by reference to the value of the goods as determined under subsection (2).

...

20 Calculation of tax payable

- (1) In respect of each taxable period every registered person shall calculate the amount of tax payable by that registered person in accordance with the provisions of this section.
- ...
- (3) Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period—
- (a) in the case of a registered person who is required to account for tax payable on an invoice basis pursuant to section 19, the amount of the following:

...

- (ii) input tax invoiced or paid, whichever is the earlier, pursuant to section 12 during that taxable period:

...

75 Keeping of records

- (1) For the purposes of this section, the term **records** includes books of account (whether contained in a manual, mechanical, or electronic format) recording receipts or payments or income or expenditure, and also includes vouchers, bank statements, invoices, tax invoices, credit notes, debit notes, receipts, and such other documents as are necessary to verify the entries in any such books of account.
- (2) Without limiting the generality of subsection (1), the records required to be kept and retained, pursuant to subsection (3), shall contain—
 - (a) a record of all goods and services supplied by or to that registered person showing the goods and services, and the suppliers or their agents, in sufficient detail to enable the goods and services, the suppliers, or the agents to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, and debit notes relating thereto; and
 - (b) the charts and codes of account, the accounting instruction manuals, and the system and programme documentation which describes the accounting system used in each taxable period in the supply of goods and services; and
 - (c) any list required to be prepared in accordance with section 19B(3) or section 78B(7).
- (3) Subject to subsections (4) to (7), every registered person must keep, for a period of at least 7 years after the end of the taxable period to which they relate, the records listed in subsection (2) and records that are sufficient to enable ready ascertainment by the Commissioner or an officer authorised by the Commissioner of the registered person's liability to tax.

...

Tax Administration Act 1994

31. The relevant provision in the Tax Administration Act 1994 is as follows.

3 Interpretation

...

document means—

- (a) a thing that is used to hold, in or on the thing and in any form, items of information:

- (b) an item of information held in or on a thing referred to in paragraph (a):
- (c) a device associated with a thing referred to in paragraph (a) and required for the expression, in any form, of an item of information held in or on the thing

...

Customs and Excise Act 2018

32. The relevant provisions in the Customs and Excise Act 2018 are as follows.

5 Definitions for Act

...

duty means any of the following:

...

- (e) a duty or tax imposed by section 12 of the Goods and Services Tax Act 1985:

...

75 Entry of imported goods

- (1) Goods that are imported, or are to be imported, must be entered by the importer—
 - (a) in the way prescribed by the chief executive's rules; and
 - (b) within the prescribed time or any additional time that the chief executive allows.

...

100 Duty on imported goods is debt owed to the Crown

- (1) The duty on all imported goods is a debt—
 - (a) due to the Crown immediately on importation of the goods; and
 - (b) owed by the importer or importers of the goods; and
 - (c) recoverable by the chief executive (on behalf of the Crown) in any court of competent jurisdiction.

...

111 Entry is assessment of duty by importer or licensee or owner

- (1) An entry for goods made under this Act is an assessment by the importer or licensee or owner (as the case may be) of the duty payable in respect of those goods.

...

122 Time for payment of duty on imported goods: general rule

- (1) Except as otherwise provided in this Act, the duty on imported goods must be paid to Customs when—
- (a) the goods have been entered in accordance with section 75 and the entry has been passed for home consumption; or
 - (b) the goods have been entered in accordance with section 75 for removal to a manufacturing area; or
 - (c) the goods have been wrongfully landed, or otherwise wrongfully dealt with, without having been entered in accordance with section 75; or
 - (d) an offence under this Act has been committed in respect of the goods.

...

Customs and Excise Regulations 1996

33. The relevant regulations in the Customs and Excise Regulations 1996 are as follows.

23 When entry of imported goods deemed to be made

An entry of goods to which section 75(1) of the Act applies is deemed to have been made for the purposes of the Act,—

- (a) in the case of an entry made by means of an electronic message, on the date and at the time that the JBMS (as defined in section 302(4) of the Act) generates a lodgement number in respect of the receipt of that message; and
- (b) in any other case, when the entry has been received by the Customs.

24 Passing of entry of imported goods

- (1) An entry of goods to which section 75(1) of the Act applies is deemed to have been passed in accordance with the Act,—
- (a) in the case of an entry for home consumption, when the JBMS (as defined in section 302(4) of the Act) debits the importer's deferred payment account, or raises a cash account in respect of the duty payable; and
 - (b) in the case of an entry of goods deemed to have been made in accordance with regulation 26, when entry is deemed to have been made according to that regulation; and
 - (c) in any other case, when a delivery order message is generated by the Customs.

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

Expired rulings

"Public Ruling BR Pub 06/03: Importers and GST input tax deductions", *Tax Information Bulletin* Vol 18, No 6 (July 2006): 5. <https://www.taxtechnical.ird.govt.nz/tib/volume-18---2006/tib-vol18-no6>

"Public Ruling BR Pub 97/10: Importers and GST input tax deductions", *Tax Information Bulletin* Vol 9, No 11 (November 1997): 11. <https://www.taxtechnical.ird.govt.nz/tib/volume-09---1997/tib-vol9-no11>

"Public Ruling BR Pub 95/09: GST: Importers and input tax deductions", *Tax Information Bulletin* Vol 7, No 7 (January 1996): 15. <https://www.taxtechnical.ird.govt.nz/tib/volume-07---1995-1996/tib-vol7-no7>

Case references

Shell New Zealand Holding Co. Ltd v CIR (1994) 16 NZTC 11,163

Legislative references

Goods and Services Tax Act 1985, ss 2 (definitions of "document" and "invoice"), 3A, 12, 20(3), 75

Tax Administration Act 1994, s 3 (definition of "document")

Customs and Excise Act 2018, ss 5 (definition of "duty"), 75, 100, 111, 122

Customs and Excise Regulations 1996, regs 23, 24

About this document

Public Rulings are issued by the Tax Counsel Office. Public Rulings set out the Commissioner's view on how tax laws apply to a specific set of facts – called an arrangement.

Taxpayers whose circumstances match the arrangement described in a Public Ruling may apply the ruling but are not obliged to do so. Public Rulings are binding on the Commissioner. This means that if you are entitled to apply a Public Ruling and you have calculated your tax liability in accordance with the ruling, the Commissioner must accept that assessment. A Public Ruling applies only to the taxation laws and arrangement set out in the ruling, and only for the period specified in the ruling. It is important to note that a general similarity between a taxpayer's circumstances and the arrangement covered by a Public Ruling will not necessarily lead to the same tax result.