



## **Submission**

by the

**Brewers' Guild of New Zealand (BGNZ)**

to the

**New Zealand Customs Service**

on the

**Review of the Customs & Excise Act 1996**

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## **Executive Summary**

The Brewers' Guild of New Zealand (the Guild) welcomes the opportunity to comment on the review of the Customs and Excise Act 1996.

The three key areas that would improve the way that excise tax is administered and collected for the brewing sector are:

- (1) Adapting the *Point of Liability*
- (2) Extending the definition for *off-site storage* to include all alcohol producers
- (3) Improving the process for *refunds, remissions and drawbacks*

Improvements in these three areas would see a significant reduction in administrative burden both for business and Customs. They would not lead to a reduction in revenue collected by Customs, but they would ensure a fair, equitable and fit for purpose system that could last another 20 years.

The Brewers' Guild does not seek confidentiality for this submission.

## **The Brewers' Guild of New Zealand (BGNZ)**

BGNZ represents around 70 breweries of all shapes and sizes throughout New Zealand. Overall, the brewing industry employs 1,800 people with thousands more working in the beer value chain. Brewing is a \$2.2 billion industry which contributes \$722 million directly to New Zealand's GDP every year.

BGNZ was created to support and give a collective voice to the burgeoning number of local breweries in New Zealand. It has been a very exciting time in the industry with the number of new breweries and new beers increasing dramatically. The Guild aims to support and represent a vibrant, diverse and socially responsible Kiwi brewing industry.

## **Relevant Questions from the Discussion Document – Excise Duty**

### **System design**

*Q 39 What do you see as the major issues with the collection and administration of excise generally (on alcohol)? What impact, if any, have these had on your industry or business?*

The three key areas that would improve the way that excise tax is administered and collected for the brewing sector are:

- 1) Adapting the *Point of Liability* to the point the manufactured product leaves the CCA
- 2) Extending the definition for *off-site storage* to include all alcohol producers
- 3) Improving the process for *refunds, remissions and drawbacks*

Improvements in these 3 areas would see a significant reduction in administrative burden both for business and Customs.

If the adjustments were made to the point of liability, the total revenue take would continue to be the same for Customs, but the timing of the collection would have a transition period. The financial impact for business would be that cash flow would improve, as the point the excise is due is nearer the time of sale to the consumer, making it easier for businesses to operate.

Furthermore, the process is very paper based and therefore subject to more user error than ideal. It would save both time and leave less room for human error if excise returns could be calculated and filed on-line like PAYE & GST.

A minimum of three (3) months advance notice of any changes to excise would create more stability for the sector so as to allow business forecasting.

*Q 40 Are there specific issues in excise collection processes that affect small and medium scale businesses more than others? If so, what are these?*

All three of the above issues are a real issue for small and medium scale businesses :

- The way the current system operates places a heavy burden on cash flow which is more onerous for smaller companies.

Given the ways that the rules are applied currently the excise has to be paid out of sync with when the product is going to market. This can be easily improved by aligning the point of liability to the point it leaves the CCA for home consumption.

- The rules around remission and refunds are administratively burdensome and out of step with modern brewing practices.

For example, many brewers might experiment with smaller batches to design new recipes. Under the way the current rules are applied excise is calculated on all alcohol product, even if it is never intended to go to market, then it must be claimed back.

- Off-site storage rules are creating a disadvantage for the brewing sector given the need to use other sites to store product, often particularly necessary for smaller businesses that don't have spare capacity.

*Q 41 Should other alcohol manufacturers be able to be granted permanent licences for offsite storage of product? Should location of the off-site storage matter? What impact if any, does the location of off-site storage have on your business?*

Yes other alcohol manufacturers should be able to be granted permanent licences for offsite storage of product. This would reflect current brewing and commercial operations. As above there are occasions when beer is stored for a time and there is not adequate space at the place of production.

This is extremely important for the brewing sector. For example:

- Many beer companies make their beer by contract brewing, either because they choose not to invest in equipment themselves (eg. Yeastie Boys) or when they need to expand their production to meet demand (eg. Moa). These contract breweries are scattered throughout the country (eg. Invercargill (Invercargill Brewing), Christchurch (Harringtons), Nelson (Stoke), Upper Hutt (Kereru), Auckland (Steam Brewing)). Often the product might be brewed at the contract brewery but bottled or finished at another site.
- Given the yeast strains in some beers it is necessary for them to be stored in areas separate to the manufacture of other beers (the yeasts in some beer styles can contaminate other yeast

strains). Currently there is a trend for sour beer and because of the yeast in those beers they need to be kept separate. These need to be manufactured in another CCA, and development in these styles is currently constrained because of the lack of licenced off-site storage.

- In the same vein, some breweries are developing barrel-aged beers. These are matured for a number of months and take up a good deal of storage, which not all breweries have the capacity for.
- There are often times when breweries need to brew extra beer to meet particular demands. For example, building product for the summer period, or for export, or for a particular special event. This product will often need to be stored elsewhere for a certain period.

*Q 42 Are applications (permits) to move goods between Customs Controlled Areas necessary? Do you have a view on what would be a less administratively burdensome process?*

Applications (permits) should not be required to move goods between CCAs. Adequate records should be kept as a matter of course but a permit should not be required. There is no rationale for the need to apply for a permit if the excise is due at the point the product leaves a CCA.

*Q 43 Should the approach to defining a Licensed Manufacturing Area or off-site storage be standardised? Could Land Information New Zealand boundary data be used? Could local council resource consent approval be used?*

The Guild's view is that the approach to defining a Licensed Manufacturing Area or off-site storage area should **not** be standardised to a prescriptive level. The Guild members are small, medium and large breweries and as such may have different requirements. We believe that the approach should be flexible and not too prescriptive.

We can see benefit to using Land Information New Zealand boundary data where appropriate. As to whether resource consent approval should be used, it is surely already built into allowed activity in certain zones.

*Q 44 How can the excise audit system be designed to reduce risk and cost? Should third party audits be compulsory under certain conditions? What parts of your business are currently subject to third-party audits?*

The Guild does not support compulsory third-party audits where this creates additional cost to the brewing sector. Other concerns include the efficiency and effectiveness of the process given the specialised nature of customs and excise i.e. the third party would need to have the appropriate knowledge and expertise.

The Guild would welcome more information and transparency on the risk-review process adopted by Customs, risk ratings of taxpayers, and Customs Audit programmes. This can then ensure that the brewing sector is knowledgeable as to the standards and interpretations it is expected to meet.

The Guild would also welcome greater sharing of information, in particular, internal Customs guidelines and policies. This could include the formulation of a comprehensive 'Guide to Excise' as a reference source to industry. We would welcome being part of that process.

## **Payment**

*Q 46 Should the excise return and payment deferral periods be reduced to one, two and six months? What impact would this have on your business?*

The Guild recommends that payment deferral periods be reduced to one or two months. A shorter timeframe is the better option so that it is a process that is budgeted for each month and small businesses ought not to get too far behind with paperwork or payment. It is much harder to ensure accuracy over a six month period than it is a one or two month period. Customs should, however, have flexibility to grant extensions and payment arrangements where financial difficulty is experienced without excessive penalties being levied.

*Q 47 Would it be useful to have the excise return timing aligned with the filer's GST filing periods? What impact would this have on your business?*

Not necessarily, as for many SMEs it is easier for cashflow to keep the return and payment dates separate from GST. It depends on the system that is adopted, for example, if it can be filed on-line rather than paper-based. The implications of this would need to be considered carefully.

*Q 48 Should Customs have the ability to shorten the return and payment period for excise payers who fall behind in their filing and/or payment?*

Possibly, with consultation. Refer answer Q46.

*Q 49 What changes to processes (applications and physical evidence), if any, are needed for remissions and refunds for excise duty? If changes were made to the current processes, what impact would this have on your business?*

Remission/refund circumstances need to be broadened to include circumstances where goods have "no commercial value" and are disposed of (eg. excess production, aged stock, trial product etc). This reflects the modern operation of brewing practice and strict quality control practices. Many craft brewers noted this was of key concern – the lack of ability to claim a refund for "expired beer". It has in effect been "spoilt by age" therefore the rules should extend to cover that product, especially given it has not entered the market for consumption.

Better clarity, consistency and alignment between the refund and remission rules and the point of liability would see a significant reduction in the complexity and administration associated with the process for the benefit of all, especially given limited resources.

Key changes:

- Remission/refund circumstances be broadened to include circumstances where the beer has no commercial value (expired beer, trial product, excess production etc)

- A definitive timeframe documented for Customs Department to resolve refunds, remissions and drawbacks.
- A less formal and more flexible approach in the way the remissions and refunds are processed by Customs such as an automatic approval in clearly specified circumstances without the need for a formal application, provided records and supporting documentation are maintained. For example, Customs may apply a minimum threshold for breakages within a CCA where a remission application is not required to be lodged.
- Approval in other specified circumstances without the need to inspect or supervise destruction, with the requirement to submit evidence of destruction/disposal at the direction of Customs. For example, an automatic ullage allowance.
- The liability for excise duty can be inconsistently applied when it comes to contract brewing and bottling. Adjusting the point of liability for excise to the point when the product leaves the (last) CCA for entry for home consumption would provide more clarity. We would like to see this changed so that the liability lies with the party selling the goods to the end consumer.

*Q 50 Should goods recalled from sale by the manufacturer and exported for destruction generate drawback? Please give your reasons.*

Yes recalled goods should generate drawback. These products have not entered the market for consumption; therefore there is no justification for the excise duty to be applied. We do not believe there should be a difference in treatment of goods that have entered the NZ market, recalled and subsequently exported, to any other goods manufactured in New Zealand.

### **General**

*Q 51 Is there anything else we need to consider in relation to how Customs administers excise on alcohol? In particular, are there amendments that could be made to reduce costs and simplify the system for excise payers without involving fundamental change?*

#### **Adjusting the point of liability**

Adjusting the point of liability, from the point of manufacture to the point it leaves the CCA , as well as extending the definition of off-site storage would:

- significantly reduce the administrative burden on Customs *and* business;
- better align with the intention of the excise tax to be on alcohol product entering the market;
- improve the remissions and refunds system;
- would not reduce the revenue collected by Customs;
- make the administration and collection of alcohol excise more fair, equitable and fir for purpose.

#### **Bonded warehouses**

Whilst we acknowledge the availability of the Customs' Deferred Payment Scheme for approved importers, we suggest that consideration should be given to the licencing of warehouses used to store imported goods, commonly referred to as "bonded" warehouses in many overseas jurisdictions. "Bonded" warehouse regimes exist in Australia, the UK and many other European countries.

The key benefits include:

- Cash flow savings to industry as duty is only payable when the goods leave the CCA and are entered for home consumption
- General alignment of the rules and regulations such that the same rules apply to both domestic and imported product (as imported goods remain under Customs control until they are entered for home consumption)
- For businesses that are both importers and manufacturers, alignment of systems and processes across all warehouses, resulting in reduced complexity and administration
- Alignment with other countries, resulting in increased international trade competitiveness

The Guild has beer importers and distributors in its membership and a provision such as the above would greatly assist in their ability to run efficient businesses.

### ***Refunds, Remissions and Drawbacks***

*Q 52 Have you experienced issues with refunds, remissions or drawbacks of duty and, if so, what were they?*

The current process is onerous and administratively burdensome. It should be a simple matter that **any** product that does not enter the New Zealand market (ie. is either disposed of or exported) should not be required to pay excise tax.

Remissions and refunds are a small part of the overall excise administration, but can take up a lot of business and Customs time and resource. Better clarity, consistency and alignment between the refund and remission rules and the point of liability would see a significant reduction in the complexity and administration associated with the process for the benefit of all.

### **Aged Stock**

Remission/refund circumstances need to be broadened to include circumstances where goods have “no commercial value” and are disposed of (eg. excess production, aged stock, trial product etc). Many craft brewers have noted that the lack of ability to claim a refund for “expired beer” is a key concern. It has in effect been “spoilt by age” therefore the rules should extend to cover that product, especially given it has not entered the market for consumption. This is extremely important in order to maintain high standards of quality for the reputation of the brewery and the industry.

Under the current rules Customs’ view is that the aged stock is not considered to have “deteriorated in condition” or “diminished value” until it reaches the best before date. There may be occasions, however, when the beer is known to be “bad” prior to that date, but the brewery is required to hold such stock in storage for months before a remission is approved. This incurs cost to the business in storage on product that will never enter the market, nor should it.

### **Trial Stock**

Many brewers experiment with smaller batches to design new recipes. Under the way the current rules are applied excise is calculated on all alcohol product, even if it is never intended to go to

market, then it must be claimed back. With advances in technology it is much easier to innovate in the beers that are being developed, but some never sees the light of day. Adjustments need to be made to the remissions and refunds system to clearly and easily allow for this set of circumstances.

### **Drawbacks**

Beer exporters have experienced issues regarding excise drawbacks, especially around the matter of needing to provide evidence of excise being paid for any drawback.

For example, the Guild sends via BEERNZ entries to the Australian International Beer Awards (AIBA). Breweries transfer their beer entries to BEERNZ who are currently not a CCA, therefore the breweries must pay excise at that point. It is always intended that the beer is to be exported and the beer is not available for sale in New Zealand. However, claiming the excise back on those entries is incredibly onerous and BEERNZ has to show the proof from 20 or more breweries. There should be no onus on BEERNZ to show evidence or proof. It is in effect double policing the law as the responsibility is with the breweries to show evidence of payment to Customs, not BEERNZ.

It would be a better system if each brewery was not required to pay excise in the first place on the basis they could provide copies of documentation showing the product was exported. Adjusting the point of liability would again resolve this unnecessary administration, as the point of liability should be when it leaves the CCA for entry into the New Zealand market for home consumption.