



Customs and Excise Amendment Act 2015

Public Act 2015 No 57
Date of assent 27 May 2015
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Customs and Excise Amendment Act 2015.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Customs and Excise Act 1996 (the **principal Act**).

4 Sections 288B to 288I and cross-headings inserted

After section 288A, insert:

Levies for recovering border processing costs

288B Levies for recovering border processing costs

- (1) In this section, **traveller** means any person who arrives in New Zealand from, or departs New Zealand for, any place outside New Zealand.
- (2) Every traveller who on or after 1 January 2016 arrives in or departs New Zealand is liable, while there is a levy order in force under subsection (3), to pay a levy to the chief executive in relation to the costs incurred by the Customs in, or for the purpose of, exercising its powers or performing its functions, under this Act or any other Act, in relation to travellers and their accompanying baggage (or other goods in their possession or under their control).
- (3) The Governor-General may, by Order in Council, on the recommendation of the Minister, make a levy order prescribing—
 - (a) the rate of levy or the basis on which the rate is to be calculated or ascertained; and
 - (b) insofar as the order does not set an actual rate, how the actual rate of the levy is to be set; and
 - (c) when and how the levy is to be paid; and
 - (d) how the rate of the levy, and any variation of the rate, is to be notified.
- (4) The Minister must, before recommending that a levy order be made under this section, consult with such persons, representative groups, government departments, and Crown agencies as he or she considers reasonable and appropriate in the circumstances.
- (5) A levy order must not be made in respect of the costs that are otherwise recovered or otherwise to be recovered under this Act or the Airports (Cost Recovery for Processing of International Travellers) Act 2014.
- (6) A levy order made under this section—
 - (a) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012; and
 - (b) must be presented to the House of Representatives under section 41 of that Act.

288C Contents of border processing levy order

- (1) A levy order under section 288B may—

- (a) prescribe different rates of levy, on any differential basis, for different persons or different classes of persons:
 - (b) prescribe a maximum rate or maximum rates of levy:
 - (c) exempt certain persons or classes of persons from the requirement to pay the levy:
 - (d) prescribe persons responsible for collecting the levy from those primarily responsible for paying it:
 - (e) allow persons collecting the levy to recover the costs of collecting the levy and, if so, prescribe the basis on which those costs are to be calculated or ascertained:
 - (f) require that returns be made to the chief executive or some other person or body to enable the amounts of levy payable to be calculated, determined, or verified:
 - (g) provide, subject to such conditions as may be prescribed, for extensions of time for the payment of the levy:
 - (h) provide for the payment of additional or increased levy in the event of late payment or non-payment:
 - (i) provide for circumstances in which levy paid may be refunded:
 - (j) require that levy funds payable be held on trust in separate accounts.
- (2) Every order must,—
- (a) for the purpose of determining whether an order is being complied with, require any of the following persons to keep statements, accounts, or records of specified classes or descriptions:
 - (i) the chief executive:
 - (ii) persons responsible for collecting the levy:
 - (iii) persons responsible for paying the levy; and
 - (b) provide for those statements, accounts, or records to be retained for a specified period; and
 - (c) provide for the remuneration of auditors under section 288G(2).

Compare: 1993 No 95 ss 140, 141A

288D Trust accounts for levy money payable to chief executive

- (1) If a levy order provides that the levy funds payable are to be held on trust in separate accounts, each person responsible for collecting the levy must—
- (a) keep a bank account at a registered bank; and
 - (b) ensure that the account is so named as to identify that it is a trust account kept by the person responsible for collecting the levy for the purposes of the order; and
 - (c) take all practicable steps to ensure that—

- (i) the account is used only for holding amounts required to be deposited under this section; and
 - (ii) the balance in the account on any day is not less than the amount outstanding on that day to the chief executive.
- (2) A person responsible for collecting a levy must deposit in a trust account an amount equal to the levy calculated in accordance with the levy order on the day or days specified in, or calculated in accordance with, that order.
- (3) If the amount held in the trust account—
 - (a) is more than the amount of levy money that is outstanding to the chief executive, the amount outstanding is deemed to be held on trust for the chief executive:
 - (b) is the same as or less than the amount that is outstanding, all the money in the account is deemed to be held on trust for the chief executive.
- (4) Money deemed by subsection (3) to be held on trust is not available for the payment of, and is not liable to be attached or taken in execution at the instance of, any creditor of the person responsible for collecting the levy (other than the chief executive).
- (5) A person who ceases to be a person responsible for collecting a levy must continue to maintain the trust account until all the levy money payable to the chief executive, in respect of the period during which that person was responsible for collecting the levy, has been paid.
- (6) Nothing in subsection (5) limits or affects any obligation or liability under this Act of any person who has become responsible for collecting the levy.
- (7) In this section,—

levy order means an order under section 288B

registered bank has the meaning given to it in section 2(1) of the Reserve Bank of New Zealand Act 1989

trust account means the account referred to in subsection (1).

Compare: 1993 No 95 s 140A

288E Effect of levy order

If a levy order is made under section 288B, the following provisions apply:

- (a) every person responsible for paying or collecting the levy must do so; and
- (b) the chief executive may recover the levy in any court of competent jurisdiction as a debt due from any person responsible for paying or collecting it.

Compare: 1993 No 95 s 141

288F Compliance audits

- (1) While an order under section 288B is in force, the Minister may, at the request of the chief executive, appoint 1 or more auditors to conduct an audit of the affairs of any person responsible for collecting the levy.
- (2) The purpose of an audit under this section is to ascertain—
 - (a) the extent to which persons responsible for paying or collecting the levy concerned are doing or have done so:
 - (b) the extent to which appropriate amounts of the levy concerned are being or have been paid over to the chief executive:
 - (c) the extent to which statements, accounts, and records are being or have been kept or properly kept.

Compare: 1993 No 95 ss 141B(1), (2), 141C

288G Auditors

- (1) A person is not qualified to be an auditor for the purpose of section 288F if—
 - (a) the person is not a qualified auditor within the meaning of section 35 of the Financial Reporting Act 2013:
 - (b) the person is an officer or employee of—
 - (i) the chief executive:
 - (ii) any person responsible for collecting the levy concerned:
 - (iii) any person responsible for paying the levy concerned.
- (2) Every person appointed as an auditor is entitled to remuneration paid by the chief executive as provided for in the relevant levy order.
- (3) For the purposes of conducting an audit, an auditor may—
 - (a) require any specified person to produce, and the person must produce, for inspection within a reasonable period specified by the auditor any statements, accounts, and records—
 - (i) that are required to be kept under section 288C(2); and
 - (ii) that are in that person's possession or under that person's control:
 - (b) take copies of, or extracts from, those statements, accounts, and records.
- (4) The persons referred to in subsection (3)(a) are—
 - (a) the chief executive:
 - (b) any person responsible for collecting the levy:
 - (c) any employee or officer of a person in paragraph (a) or (b).
- (5) Every direction under subsection (3) must contain—
 - (a) a reference to this section; and
 - (b) the full name of the auditor; and

- (c) a statement of the powers conferred on the auditor by that subsection.
- (6) An auditor must not disclose to any person other than the Minister (or a person authorised in that behalf by the Minister) any information obtained by the auditor under subsection (3), except in respect of—
- (a) a prosecution under this Act;
- (b) an action for the recovery of any amount due under this Act.
- (7) To avoid doubt, the Official Information Act 1982 applies in respect of any information held by a Minister that was obtained pursuant to subsection (6).
- Compare: 1993 No 95 ss 141B(3)–(5), 141D

288H Offences in relation to levy orders

- (1) A person commits an offence against this Act who fails to keep or maintain statements, accounts, or records that are required to be kept or maintained under an order made under section 288B.
- (2) A person commits an offence against this Act who fails to make a return that the person is required to make by an order made under section 288B.
- (3) A person commits an offence against this Act who makes a return that the person is required to make by an order made under section 288B knowing that the return is false or misleading in a material particular.
- (4) A person commits an offence against this Act who fails to comply with a requirement imposed under section 288G(3)(a).
- (5) Every person who commits an offence against subsection (1) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000;
- (b) in the case of a body corporate, to a fine not exceeding \$15,000.
- (6) Every person who commits an offence against subsection (2) or (4) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$1,000;
- (b) in the case of a body corporate, to a fine not exceeding \$3,000.
- (7) Every person who commits an offence against subsection (3) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000;
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

Compare: 1993 No 95 ss 154N(15), (16), 154O(7)

288I Section 288H strict liability offences

- (1) This section applies to the offences in section 288H(1), (2), and (4).
- (2) The offences are strict liability offences and the prosecution is not required to prove that a defendant intended to commit the offence.

- (3) The defendant will have a defence if the defendant proves that—
- (a) the action or event to which the prosecution relates was due to—
 - (i) the act or omission of another person; or
 - (ii) an accident; or
 - (iii) some other cause or circumstance outside the defendant’s control;
and
 - (b) the defendant took all reasonable precautions, and exercised due diligence, to avoid the commission of the offence.
- (4) The defence in subsection (3) is only available if the defendant gives a written notice to the prosecutor at least 15 working days before the hearing date, or within such other time as the court allows, that—
- (a) states the defendant’s intention to rely on the defence; and
 - (b) includes facts that support the defence.

Compare: 1993 No 95 s 154N

Consequential amendments, revocations, and repeals

Legislative history

- | | |
|-------------|---|
| 21 May 2015 | Divided from Border Processing (Arrivals and Departures) Levy Bill (Bill 19–1), third reading |
| 27 May 2015 | Royal assent |

This Act is administered by the New Zealand Customs Service.