

Customs and Excise (Tobacco Products) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Customs and Excise Act 2018 (the **Act**), and the Excise and Excise-equivalent Duties Table (the **EEDT**). The purpose of the Bill is to ensure that the correct excise and excise-equivalent duty is applied to certain tobacco goods and to reduce duty evasion.

To counter the difficulty of determining the actual tobacco content of water-pipe tobacco for the correct levying of excise and excise-equivalent duty (which creates opportunities for illicit trade), the Bill contains measures to combat suspected under-declaration of tobacco content by importers of water-pipe tobacco and to secure Crown revenue from taxes on water-pipe tobacco. It imposes import controls, changes the statistical unit for calculating duty, and creates a new excise and excise-equivalent duty rate for water-pipe tobacco, which is also known as flavoured tobacco, hookah, shisha, molasses tobacco, and fruit tobacco.

The Bill also amends the definition of tobacco product in Schedule 3 of the Act to include new tariff and excise headings as a result of changes made to the Harmonized Commodity Description and Coding System (the **HS Code**).

Permit required to import water-pipe tobacco

The Bill imposes import controls in the form of making water-pipe tobacco a prohibited import by removing it from the list of tobacco products in section 95A of the Act to which prohibition does not apply. This brings water-pipe tobacco within the scope of the permitting regime in Schedule 3A of the Act. Tobacco products require a permit to import issued by the chief executive of the New Zealand Customs Service (**Customs**) before importation. Any water-pipe tobacco imported without a permit, or in breach of the conditions of a permit, would be subject to forfeiture (which is currently the case with smuggled water-pipe tobacco).

New statistical unit and duty rate

The Bill amends the EEDT to replace the current method of charging per kilogram of tobacco content for water-pipe tobacco with charging based on total weight. It also amends the excise and excise-equivalent duty rate for water-pipe tobacco to \$234.77 per kilogram, based on the current tobacco excise rate and an assumed tobacco content of 15%.

These changes are necessary as Customs suspects some importers are drastically under-declaring the tobacco content of the product, evading much of the duty they should be paying. Not paying duty also undermines the health strategy of using tobacco taxation to reduce consumption. More honest importers are also competitively disadvantaged relative to dishonest importers.

Simplified seizure process and compensation for destruction of goods in error

Removing water-pipe tobacco from the list of goods in section 95A of the Act to which prohibition does not apply means that water-pipe tobacco will also be subject to the simplified seizure process under sections 185A and 185B of the Act, with importers able to seek compensation in accordance with Schedule 3B if water-pipe tobacco is disposed of incorrectly.

Transitional arrangement

The Bill amends Schedule 1 of the Act to provide for consignments to enter without import controls and at the pre-amendment rate of duty if the importer provides evidence that the goods were en route to New Zealand before the date on which the Bill takes effect.

Amendment to definition of tobacco product in Schedule 3 of Act

The Bill amends the definition of tobacco product in clause 21(6) of Schedule 3 of the Act to enable annual inflation adjustment to goods classified under new tariff heading 24.04 and the corresponding excise heading 99.67. This is a consequential amendment arising from changes to the New Zealand Tariff and the EEDT on 1 January 2022. The New Zealand Tariff is based on the HS Code, an international system that codifies all goods as a basis for tariff charging and for collecting international trade statistics. The HS Code is updated periodically to reflect changes in technology and trade patterns.

The 1 January 2022 HS Code revision required some tobacco products that had previously been classified under tariff headings 24.02 and 24.03 to be reclassified under new tariff heading 24.04. The reclassified products retained the same excise rate that applied previously. Both the New Zealand Tariff and the EEDT were amended to add new tariff heading 24.04 and the corresponding excise heading 99.67.

Clause 21(6) of Schedule 3 of the Act defines tobacco products for the purposes of the annual inflation adjustment by reference to tariff headings 24.02 and 24.03, and to the corresponding excise items 99.60 and 99.65. This means tobacco products classified under the new tariff heading 24.04 and the corresponding excise heading 99.67

cannot be adjusted annually for inflation without this amendment, and will become out of step with the excise rates for tobacco products under the other 2 headings.

Departmental disclosure statement

The New Zealand Customs Service is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=125>

Regulatory impact statement

The New Zealand Customs Service produced a regulatory impact statement on 23 March 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.customs.govt.nz/ris>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 states that the Bill will come into force on the day after the date that it receives the Royal assent.

Part 1

Amendments to Customs and Excise Act 2018

Clause 3 states that *Part 1* of the Bill amends the Customs and Excise Act 2018.

Clause 4 amends section 95A, which relates to the prohibition of certain tobacco products. The effect of the amendment is to make water-pipe tobacco a prohibited import. In summary, the prohibition does not apply to water-pipe tobacco imported by a person holding a permit issued under Schedule 3A of the Act. The importation of water-pipe tobacco without a permit or in breach of the conditions of a permit may attract criminal liability, and the goods may be subject to forfeiture. The prohibition also does not apply to a person who brings water-pipe tobacco into New Zealand with them (for example, as part of their duty-free allowance), and does not apply to tobacco that enters New Zealand temporarily (for example, as part of an international transshipment).

Clause 5 inserts *new Part 4* (dealing with transitional provisions) into Schedule 1 of the Act.

Clause 6 amends Schedule 3 of the Act to reflect changes to the descriptions of certain tobacco products in the Harmonized Commodity Description and Coding System (the **HS Code**), which is maintained by the World Customs Organization. The effect of the amendment is to enable the Governor-General to continue to adjust duty on the affected tobacco products by Order in Council.

Part 2

Amendments to Excise and Excise-equivalent Duties Table

Clause 7 states that *Part 2* of the Bill amends the Excise and Excise-equivalent Duties Table (the **EEDT**).

Clause 8 alters the unit of measurement and rate of excise duty that apply to water-pipe tobacco. It also amends the structure of excise items in Part A of the EEDT to ensure that the alteration only applies to water-pipe tobacco.

Clause 9 alters the unit of measurement and rate of excise-equivalent duty that apply to water-pipe tobacco. It also amends the excise items in the relevant tariff heading in Part B of the EEDT.

Schedule

New Part 4 inserted into Schedule 1

New clause 41 defines certain terms used in *Part 4* of Schedule 1 of the Act.

New clause 42 relates to water-pipe tobacco that has already been imported at the time the Bill takes effect (**commencement**). The effect of this clause is that the tobacco is not a prohibited import under the Act.

New clause 43 relates to water-pipe tobacco that is en route to New Zealand at commencement. The effect of this clause is that the tobacco is not a prohibited import under the Act, and the pre-amendment rate of duty will apply to it.

Hon Meka Whaitiri

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Customs and Excise (Tobacco Products) Amendment Act **2022**.

2 Commencement

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

Part 1

Amendments to Customs and Excise Act 2018

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3 Principal Act

This Part amends the Customs and Excise Act 2018.

4 Section 95A amended (Prohibition on importation of tobacco and certain tobacco products)

Repeal section 95A(2)(c).

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5 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

6 Schedule 3 amended

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- (1) In Schedule 3, clause 21(6), definition of **tobacco product**, paragraph (a), replace “99.60 or 99.65” with “99.60, 99.65, or 99.67”.
- (2) In Schedule 3, clause 21(6), definition of **tobacco product**, paragraph (b), replace “24.02 or 24.03” with “24.02, 24.03, or 24.04”.

Part 2

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Amendments to Excise and Excise-equivalent Duties Table

7 Principal legislation

This Part amends the Excise and Excise-equivalent Duties Table made under clause 16(1) of Schedule 3 of the Customs and Excise Act 2018.

8 Excise items in Part A replaced

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In Part A, replace excise items 99.65.09C and 99.65.19L with:

99.65.11E	-- Water pipe tobacco	per kg	\$234.77
99.65.21B	-- Other	per KTC	\$1,565.18

9 Excise-equivalent heading and tariff items in Part B amended

- (1) In Part B, tariff heading 24.03, replace “99.65.09C, 99.65.19L” with “99.65.11E, 99.65.21B”.
- (2) In Part B, tariff item 2403.11.90,—

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- (a) replace “per KTC” with “per kg”; and
- (b) replace “\$1,565.18” with “\$234.77”.

Schedule
New Part 4 inserted into Schedule 1

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Part 4
Provisions relating to Customs and Excise (Tobacco Products)
Amendment Act 2022

41 Interpretation

In this Part,—

amendment Act means the Customs and Excise (Tobacco Products) Amendment Act **2022**

commencement means the start of the day on which the amendment Act comes into force.

42 Water-pipe tobacco imported as at commencement

(1) This clause applies to water-pipe tobacco that is prohibited from import by section 95A and that, as at commencement, has been imported into New Zealand.

(2) This Act applies to the water-pipe tobacco as if the amendment Act had not come into force.

43 Water-pipe tobacco en route to New Zealand as at commencement

(1) This clause applies to water-pipe tobacco that, as at commencement, is en route to New Zealand.

(2) This Act applies to the water-pipe tobacco as if the amendment Act had not come into force.

(3) The excise-equivalent duty levied in respect of the water-pipe tobacco is at the rate and unit of measurement that applied immediately before commencement.

(4) **Subclause (3)** applies despite—

(a) section 141; and

(b) the amendments made to the Excise and Excise-equivalent Duties Table by the amendment Act.