



Customs and Excise (Border Processing Levy) Order 2015

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 9th day of November 2015

Present:

The Right Hon John Key presiding in Council

Pursuant to section 288B of the Customs and Excise Act 1996, His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Customs made after consultation in accordance with section 288B(4) of the Customs and Excise Act 1996.

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Order

1 Title

This order is the Customs and Excise (Border Processing Levy) Order 2015.

2 Commencement

- (1) Clause 4(3) comes into force on the day after the date on which this order is notified in the *Gazette*.
- (2) The rest of this order comes into force on 1 January 2016.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Customs and Excise Act 1996

arriving cruise ship traveller means an arriving traveller who arrives in New Zealand on a cruise ship

arriving traveller means a traveller who arrives in New Zealand

collection agent has the meaning given by clause 12(1)

cruise line means a person who is carrying on an international cruise business

cruise ship means a ship, boat, or other vessel operated by a cruise line for an international cruise as part of its international cruise business

departing cruise ship traveller means a departing traveller who departs New Zealand on a cruise ship

departing traveller means a traveller who departs New Zealand

exempt traveller means a traveller who is exempt from the levy under clause 11(1)

initial levy period means the period of 30 months beginning with 1 January 2016 and ending with 30 June 2018

international air service licensee means a person who is licensed to carry on a scheduled international air service in New Zealand under Part 8A of the Civil Aviation Act 1990

international aircraft means an aircraft that—

- (a) is operated by an international air service licensee as part of a scheduled international air service; and
- (b) is not a non-passenger commercial craft

international cruise business means a business that involves operating ships, boats, or other vessels for international cruises, if places on the cruises are purchased by or for members of the public on the basis of schedules or itineraries that are publicly available or are made available to members of the public upon request

levy, except in clauses 4 to 10, includes any goods and services tax payable on the levy

levy period means—

- (a) the initial levy period; or
- (b) the period of 36 months beginning with 1 July 2018 and ending with 30 June 2021; or
- (c) a period of 36 months beginning with the 1 July that immediately follows the close of a period that is a levy period under paragraph (b) of this definition or under this paragraph

non-levy funded exempt traveller means a traveller who is exempt from the levy under any of paragraphs (f) to (m) of clause 11(1) (whether or not the traveller is also exempt under any of paragraphs (a) to (e) of clause 11(1))

non-passenger commercial craft means a craft—

- (a) the purposes of which do not relate wholly or primarily to passengers; and
- (b) the business of which is wholly commercial; and
- (c) on which no passengers are being carried or on which passengers are being carried only as an incidental part of the business of the craft

passenger means a person carried on a craft during a flight or voyage, other than a person—

- (a) who is employed or engaged under a contract of service or a contract for services; and
- (b) who, under that contract, provides services on the craft during the flight or voyage wholly for the purposes of the business of the craft

scheduled international air service has the meaning given by section 87A of the Civil Aviation Act 1990

traveller has the meaning given by section 288B(1) of the Act.

Initial levy period

4 Levy rates for initial levy period

- (1) The rates of levy for the initial levy period are as follows:
 - (a) \$7.45 for an arriving traveller other than an arriving cruise ship traveller:
 - (b) \$7.50 for an arriving cruise ship traveller:
 - (c) \$2.93 for a departing traveller other than a departing cruise ship traveller:
 - (d) \$3.10 for a departing cruise ship traveller.
- (2) The rates of levy set by subclause (1) are exclusive of goods and services tax.
- (3) The chief executive must, before 1 January 2016, notify the rates of levy set by subclause (1) by notice in the *Gazette*.

Later levy periods

5 Levy rates for later levy periods

- (1) The rates of levy for each levy period after the initial levy period must be set and notified as follows.
- (2) The chief executive must, before the levy period begins, set the rates of levy referred to in subclause (3) for the levy period in accordance with clauses 6 to 9.
- (3) The rates of levy to be set are as follows:
 - (a) the rate for an arriving traveller other than an arriving cruise ship traveller:
 - (b) the rate for an arriving cruise ship traveller:
 - (c) the rate for a departing traveller other than a departing cruise ship traveller:
 - (d) the rate for a departing cruise ship traveller.
- (4) The rates of levy set under subclause (2) are exclusive of goods and services tax.

- (5) The chief executive must, before the levy period begins, notify by notice in the *Gazette* each rate of levy set under subclause (2) that is higher or lower than the corresponding rate for the previous levy period.
- (6) *See also* clause 10, which provides that a rate of levy may be reset because of unanticipated circumstances.

6 Levy rate for arriving travellers other than arriving cruise ship travellers

- (1) The rate of levy referred to in clause 5(3)(a) must be set on the basis of the following formula (subject to subclause (3)):

$$a \div b$$

where—

- a is an estimate of the border processing costs for the levy period, as adjusted under subclause (2)
 - b is an estimate of the number of arriving travellers who will arrive in New Zealand in the levy period, excluding arriving cruise ship travellers and arriving travellers who are exempt travellers.
- (2) The estimated border processing costs referred to in subclause (1) must be adjusted to take into account—
 - (a) any estimated shortfall in recovery, or any estimated over-recovery, of the border processing costs for the previous levy period; and
 - (b) any actual shortfall in recovery, or any actual over-recovery, of the border processing costs for the levy period before the previous levy period so far as the shortfall remains to be recovered, or the over-recovery remains to be allowed for.
 - (3) The rate of levy must not exceed \$7.80.
 - (4) In this clause, **border processing costs** means costs incurred by the Customs in, or for the purpose of, exercising its powers or performing its functions, under the Act or any other Act, in relation to relevant travellers and their accompanying baggage (or other goods in their possession or under their control), but excluding costs referred to in section 288B(5) of the Act.
 - (5) In subclause (4), **relevant travellers** means arriving travellers excluding arriving cruise ship travellers and arriving travellers who are non-levy funded exempt travellers.

7 Levy rate for arriving cruise ship travellers

- (1) The rate of levy referred to in clause 5(3)(b) must be set on the basis of the following formula (subject to subclause (3)):

$$c \div d$$

where—

- c is an estimate of the border processing costs for the levy period, as adjusted under subclause (2)
 - d is an estimate of the number of arriving cruise ship travellers who will arrive in New Zealand in the levy period, excluding arriving cruise ship travellers who are exempt travellers.
- (2) The estimated border processing costs referred to in subclause (1) must be adjusted to take into account—
- (a) any estimated shortfall in recovery, or any estimated over-recovery, of the border processing costs for the previous levy period; and
 - (b) any actual shortfall in recovery, or any actual over-recovery, of the border processing costs for the levy period before the previous levy period so far as the shortfall remains to be recovered, or the over-recovery remains to be allowed for.
- (3) The rate of levy must not exceed \$10.40.
- (4) In this clause, **border processing costs** means costs incurred by the Customs in, or for the purpose of, exercising its powers or performing its functions, under the Act or any other Act, in relation to relevant travellers and their accompanying baggage (or other goods in their possession or under their control), but excluding costs referred to in section 288B(5) of the Act.
- (5) In subclause (4), **relevant travellers** means arriving cruise ship travellers excluding arriving cruise ship travellers who are non-levy funded exempt travellers.

8 Levy rate for departing travellers other than departing cruise ship travellers

- (1) The rate of levy referred to in clause 5(3)(c) must be set on the basis of the following formula (subject to subclause (3)):

$$e \div f$$

where—

- e is an estimate of the border processing costs for the levy period, as adjusted under subclause (2)
 - f is an estimate of the number of departing travellers who will depart New Zealand in the levy period, excluding departing cruise ship travellers and departing travellers who are exempt travellers.
- (2) The estimated border processing costs referred to in subclause (1) must be adjusted to take into account—
- (a) any estimated shortfall in recovery, or any estimated over-recovery, of the border processing costs for the previous levy period; and
 - (b) any actual shortfall in recovery, or any actual over-recovery, of the border processing costs for the levy period before the previous levy period

so far as the shortfall remains to be recovered, or the over-recovery remains to be allowed for.

- (3) The rate of levy must not exceed \$3.10.
- (4) In this clause, **border processing costs** means costs incurred by the Customs in, or for the purpose of, exercising its powers or performing its functions, under the Act or any other Act, in relation to relevant travellers and their accompanying baggage (or other goods in their possession or under their control), but excluding costs referred to in section 288B(5) of the Act.
- (5) In subclause (4), **relevant travellers** means departing travellers excluding departing cruise ship travellers and departing travellers who are non-levy funded exempt travellers.

9 Levy rate for departing cruise ship travellers

- (1) The rate of levy referred to in clause 5(3)(d) must be set on the basis of the following formula (subject to subclause (3)):

$$g \div h$$

where—

- g is an estimate of the border processing costs for the levy period, as adjusted under subclause (2)
 - h is an estimate of the number of departing cruise ship travellers who will depart New Zealand in the levy period, excluding departing cruise ship travellers who are exempt travellers.
- (2) The estimated border processing costs referred to in subclause (1) must be adjusted to take into account—
 - (a) any estimated shortfall in recovery, or any estimated over-recovery, of the border processing costs for the previous levy period; and
 - (b) any actual shortfall in recovery, or any actual over-recovery, of the border processing costs for the levy period before the previous levy period so far as the shortfall remains to be recovered, or the over-recovery remains to be allowed for.
 - (3) The rate of levy must not exceed \$4.10.
 - (4) In this clause, **border processing costs** means costs incurred by the Customs in, or for the purpose of, exercising its powers or performing its functions, under the Act or any other Act, in relation to relevant travellers and their accompanying baggage (or other goods in their possession or under their control), but excluding costs referred to in section 288B(5) of the Act.
 - (5) In subclause (4), **relevant travellers** means departing cruise ship travellers excluding departing cruise ship travellers who are non-levy funded exempt travellers.

10 Resetting of levy rates

- (1) This clause applies if the chief executive is satisfied that it is appropriate to re-set a rate of levy for a levy period after the initial levy period because of circumstances that—
 - (a) occur before or during the levy period but after the rate of levy was set under clause 5(2) or was last reset under subclause (2) of this clause; and
 - (b) were not anticipated by the chief executive when setting the rate of levy under clause 5(2) or last resetting the rate of levy under subclause (2) of this clause.
- (2) The chief executive must, as soon as is reasonably practicable,—
 - (a) reset the rate of levy for the levy period in accordance with clause 6, 7, 8, or 9 (as the case may be); and
 - (b) notify the new rate of levy by notice in the *Gazette*.
- (3) The new rate of levy set under subclause (2) is exclusive of goods and services tax.
- (4) The new rate of levy set under subclause (2) applies on and after the later of the following:
 - (a) the first day of the levy period;
 - (b) the 28th day after the date on which the new rate is notified in the *Gazette*.
- (5) In deciding whether it is appropriate to reset a rate of levy for a levy period, the chief executive must have regard to—
 - (a) the size (or the increased size) of any shortfall in recovery, or any over-recovery, of costs that is likely to result from the occurrence of the circumstances if the rate of levy is not reset; and
 - (b) the amount of time remaining in the levy period; and
 - (c) any other matters that the chief executive considers relevant.

*Exemptions***11 Travellers exempt from levy**

- (1) The following travellers are exempt from the levy:
 - (a) a traveller under the age of 2 years;
 - (b) a traveller who arrives in, or departs, New Zealand on an international aircraft otherwise than as a passenger;
 - (c) a traveller who arrives in, or departs, New Zealand on a cruise ship otherwise than as a passenger;
 - (d) a traveller who—
 - (i) arrives in New Zealand on an aircraft; and

- (ii) is not required to report to a Customs officer at an arrival hall because the traveller is in transit to a place outside New Zealand:
- (e) a traveller who, having arrived in New Zealand as referred to in paragraph (d), departs New Zealand on an aircraft for the place outside New Zealand without having been required to enter a departure hall:
- (f) a traveller who arrives in, or departs, New Zealand on any of the following:
 - (i) a craft being operated by the New Zealand Defence Force or the defence forces of any Government other than that of New Zealand:
 - (ii) a craft being used wholly for diplomatic or ceremonial purposes of any Government:
 - (iii) a craft being used wholly for the purposes of a mission being carried out or organised by any Government that is a humanitarian mission or a mission in response to an emergency or a crisis:
 - (iv) a craft being used for the purposes of an official expedition of a Contracting Party:
 - (v) a non-passenger commercial craft:
- (g) a traveller who arrives in New Zealand after having been rescued at sea:
- (h) a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather:
- (i) a traveller who, having arrived in New Zealand as referred to in paragraph (h), departs New Zealand as soon as is reasonably practicable:
- (j) a traveller who departs New Zealand on a craft on a journey—
 - (i) that is not intended to go beyond the exclusive economic zone; and
 - (ii) that is not intended to include a meeting with any craft or persons entering the exclusive economic zone from a point outside New Zealand:
- (k) a traveller who arrives in New Zealand on a craft—
 - (i) that has returned to New Zealand after a journey that did not extend beyond the exclusive economic zone; and
 - (ii) that did not meet during that journey with any other craft or persons entering the exclusive economic zone from a point outside New Zealand:
- (l) a traveller who arrives in, or departs, New Zealand before 1 January 2017 on an international aircraft as a passenger being carried on a ticket that was purchased, and fully paid for, before 1 January 2016:

- (m) a traveller who arrives in, or departs, New Zealand before 1 January 2017 on a cruise ship as a passenger on an international cruise and whose place on the cruise was purchased, and fully paid for, before 1 January 2016.
- (2) In this clause,—
- Contracting Party** has the meaning given by section 7(1) of the Antarctica (Environmental Protection) Act 1994
- exclusive economic zone** has the meaning given by section 2(1) of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977
- official expedition**, in relation to a Contracting Party, has the meaning given by section 7(1) of the Antarctica (Environmental Protection) Act 1994.

When and how levy is to be paid

12 Collection agents

- (1) In this order, **collection agent** means a person who is responsible for collecting the levy under any of subclauses (2), (3), (4), and (6).
- (2) An international air service licensee is responsible for collecting the levy from the travellers who arrive in, or depart, New Zealand on international aircraft operated by the international air service licensee.
- (3) A cruise line is responsible for collecting the levy from the travellers who arrive in, or depart, New Zealand on cruise ships operated by the cruise line.
- (4) The following person is responsible for collecting the levy from the travellers who arrive in New Zealand on a craft if neither subclause (2) nor subclause (3) applies:
- (a) any agent in New Zealand of the owner or operator of the craft who, acting under section 21(2)(a)(ii) of the Act, provides to the Customs any advance notice required under section 21(1)(a) of the Act relating to the craft's arrival in New Zealand:
- (b) the person in charge of the craft, if paragraph (a) does not apply.
- (5) Subclause (4) does not apply if all of the travellers who arrive in New Zealand on the craft are exempt travellers.
- (6) The following person is responsible for collecting the levy from the travellers who depart New Zealand on a craft if neither subclause (2) nor subclause (3) applies:
- (a) any agent in New Zealand of the owner or operator of the craft who, acting under section 34AA(b) of the Act, provides to the Customs the advance notice of departure referred to in section 34(a) of the Act relating to the craft's departure from New Zealand:
- (b) the person in charge of the craft, if paragraph (a) does not apply.

- (7) Subclause (6) does not apply if all of the travellers who depart New Zealand on the craft are exempt travellers.

13 Payment of levy

- (1) This clause applies in relation to a traveller who is not an exempt traveller.
- (2) If the traveller is an arriving traveller, the traveller must pay the levy to the collection agent no later than the day of the traveller's arrival.
- (3) If the traveller is a departing traveller, the traveller must pay the levy to the collection agent no later than the day of the traveller's departure.
- (4) The collection agent must pay the levy to the chief executive no later than the 20th day of the month following the month in which the collection agent receives a notice under clause 16 that requires the collection agent to pay the levy.

14 Extension of time for payment of levy by collection agent

The chief executive may extend the time for payment of the levy given by clause 13(4) if the chief executive considers that the collection agent was or will be unable to pay the levy before the close of the day referred to in clause 13(4) because of extraordinary circumstances that are beyond the collection agent's control.

15 Additional levy if levy paid late

- (1) This clause applies if the whole or a part of an amount of levy payable by a traveller is not paid to the chief executive by the collection agent before the close of the payment day (whether or not the collection agent has collected the whole or the part of that amount from the traveller).
- (2) The collection agent must pay to the chief executive an amount of additional levy (including any goods and services tax payable on that amount).
- (3) The amount of additional levy (exclusive of goods and services tax) is—
- (a) 8% of the unpaid amount; plus
 - (b) for each relevant period that the unpaid amount remains wholly or partly unpaid, 2% of so much of the unpaid amount as remains unpaid at the close of the relevant period.
- (4) In subclause (3), **unpaid amount**—
- (a) means the whole or the part of the amount of levy not paid as referred to in subclause (1); and
 - (b) in paragraph (b), includes the amount of additional levy (exclusive of goods and services tax).
- (5) For the purposes of subclause (3)(b), the first **relevant period** is the period of 1 month beginning with the day after the payment day, the second relevant period

is the period of 1 month beginning with the day that immediately follows the close of the first relevant period, and so on.

- (6) In this clause, **payment day** means—
- (a) the day referred to in clause 13(4); or
 - (b) if clause 14 applies, the day allowed by the chief executive.

16 Chief executive to issue notices to collection agents requiring payment of levy

- (1) This clause applies if a craft arrives in, or departs, New Zealand.
- (2) The chief executive must issue a notice under this clause to the person who is the collection agent for the travellers who arrive in, or depart, New Zealand on the craft.
- (3) The notice must be issued no later than the close of the third month following the month in which the craft arrives or departs.
- (4) The notice must—
 - (a) require the collection agent to pay to the chief executive the amounts of levy payable by any travellers who arrive in, or depart, New Zealand on the craft; and
 - (b) include an estimate of the total amount payable.
- (5) A notice issued under this clause to a person may cover more than 1 craft in relation to which the person is the collection agent.

Returns, records, and auditors

17 International air service licensees to make returns relating to travellers exempt under clause 11(1)(l)

- (1) If international aircraft operated by an international air service licensee arrive in, or depart, New Zealand in 2016, the international air service licensee must provide the Customs with sufficient information to enable the reasonable verification of the number of service travellers who are exempt from the levy under clause 11(1)(l).
- (2) For the purposes of subclause (1), the international air service licensee must,—
 - (a) no later than the date given by subclause (3), provide the Customs with a return containing the required information in relation to—
 - (i) service travellers who arrive in, or depart, New Zealand before the date of the return; and
 - (ii) persons who are scheduled to arrive in, or depart, New Zealand as service travellers on or after the date of the return; and
 - (b) promptly provide the Customs with returns updating the information provided under paragraph (a)(ii) or this paragraph as necessary to take account of actual arrivals and departures of service travellers or changes

to the persons who are scheduled to arrive in, or depart, New Zealand as service travellers.

- (3) The date referred to in subclause (2)(a) is the later of the following:
 - (a) 1 February 2016:
 - (b) the first day in 2016 on which service travellers arrive in, or depart, New Zealand.
- (4) In this clause, **service traveller** means a traveller who arrives in, or departs, New Zealand in 2016 on an international aircraft operated by the international air service licensee.

18 Cruise lines to make returns relating to travellers exempt under clause 11(1)(m)

- (1) If cruise ships operated by a cruise line arrive in, or depart, New Zealand in 2016, the cruise line must provide the Customs with sufficient information to enable the reasonable verification of the number of relevant cruise ship travellers who are exempt from the levy under clause 11(1)(m).
- (2) For the purposes of subclause (1), the cruise line must,—
 - (a) no later than the date given by subclause (3), provide the Customs with a return containing the required information in relation to—
 - (i) relevant cruise ship travellers who arrive in, or depart, New Zealand before the date of the return; and
 - (ii) persons who are scheduled to arrive in, or depart, New Zealand as relevant cruise ship travellers on or after the date of the return; and
 - (b) promptly provide the Customs with returns updating the information provided under paragraph (a)(ii) or this paragraph as necessary to take account of actual arrivals and departures of relevant cruise ship travellers or changes to the persons who are scheduled to arrive in, or depart, New Zealand as relevant cruise ship travellers.
- (3) The date referred to in subclause (2)(a) is the later of the following:
 - (a) 1 February 2016:
 - (b) the first day in 2016 on which relevant cruise ship travellers arrive in, or depart, New Zealand.
- (4) In this clause, **relevant cruise ship traveller** means a traveller who arrives in, or departs, New Zealand in 2016 on a cruise ship operated by the cruise line.

19 Records to be kept by collection agents

- (1) A person who is a collection agent in a levy period must keep the following records in respect of the levy period:
 - (a) records that reasonably verify the following:

- (i) the number of travellers for whom the person is the collection agent:
 - (ii) the number of those travellers who are exempt travellers:
 - (iii) the amounts of levy (including amounts of additional levy) that the collection agent is required to pay to the chief executive:
 - (iv) the payments of levy (including additional levy) made by the collection agent to the chief executive, including the days on which the payments are made:
- (b) records that reasonably explain any differences between—
 - (i) the amounts of levy that the collection agent is required to pay to the chief executive:
 - (ii) any estimates of amounts of levy payable included in notices issued to the collection agent under clause 16:
 - (c) if the levy period is the initial levy period, copies of any returns made by the collection agent under clause 17 or 18.
- (2) The records must be retained for 2 years after the close of the levy period.

20 Records to be kept by chief executive

- (1) The chief executive must keep the following records in respect of each levy period:
- (a) records of the rates of levy set:
 - (b) records that reasonably verify the following:
 - (i) the amounts of levy (including amounts of additional levy) paid to the chief executive, the days on which the payments are made, and the persons by whom the payments are made:
 - (ii) the ways in which the levy (including additional levy) is spent:
 - (c) copies of any notices issued under clause 16:
 - (d) if the levy period is the initial levy period, any returns received under clause 17 or 18.
- (2) The chief executive must, in respect of each levy period after the initial levy period, also keep records of the following:
- (a) any estimates used by the chief executive as referred to in clauses 6 to 9:
 - (b) any shortfalls in recovery, or any over-recoveries, of costs taken into account by the chief executive under clause 6(2)(b), 7(2)(b), 8(2)(b), or 9(2)(b):
 - (c) the ways in which the things referred to in paragraphs (a) and (b) were calculated.
- (3) The records referred to in subclauses (1) and (2) must be retained for 2 years after the close of the levy period.

21 Remuneration of auditors

A person appointed as an auditor under section 288F of the Act must be remunerated by the chief executive at a rate determined by the Minister.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order is a levy order made under section 288B(3) of the Customs and Excise Act 1996 relating to the levy imposed by section 288B(2) of that Act on travellers who arrive in, or depart, New Zealand on or after 1 January 2016. *Clause 4(3)* comes into force on the day after the date on which the order is notified in the *Gazette*. The rest of the order comes into force on 1 January 2016.

The order does the following:

- sets the rates of levy for the period of 1 January 2016 to 30 June 2018, prescribes how the rates of levy are to be set for subsequent periods, and provides for the notification of the rates of levy (*see clauses 4 to 10*);
- exempts certain travellers from the levy (*see clause 11*);
- prescribes when and how the levy is to be paid, including by prescribing the persons who are responsible for collecting the levy from travellers and paying it to the New Zealand Customs Service, and providing for the payment of additional levy in the event of late payment (*see clauses 12 to 16*);
- makes provision about returns, records, and auditors (*see clauses 17 to 21*).

Regulatory impact statement

The New Zealand Customs Service and the Ministry for Primary Industries produced a regulatory impact statement on 11 September 2015 to help inform the decisions taken by the Government relating to the contents of this instrument.

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

- <https://mpi.govt.nz/news-and-resources/consultations/border-clearance-levy/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 12 November 2015.

This order is administered by the New Zealand Customs Service.