Australian Customs Notice 1998 12

**PENALTIES APPLYING TO SHORT PAYMENTS OF SALES TAX**

Australian Customs Notice (ACN) [97/79](https://borderauthor.border.gov.au/Busi/Cust/Aust/Australian-Customs-Notice-1998-12) advised that Customs had undertaken a review of import data relating to items covered by Schedule 5 of the Sales Tax (Exemptions and Classifications) Act 1992. The review found that there was significant misapplication of sales tax rates applying to imported goods falling within this Schedule.

Importers and Customs brokers were advised to check all import entries of goods covered by Schedule 5 and where an error had occurred to lodge an amending entry and tender any sales tax shortpaid. Advice was given that voluntary tenders made before 1 January 1998 may result in a reduction of any imposed sales tax penalty. While there is evidence that there have been shortpayments of sales tax in respect of a number of importations, the response to ACN 97/79 in terms of voluntary payments has been virtually non-existent. This Notice is being issued to extend that deadline until 3 April 1998 and to provide information on penalties applying to shortpayments of sales tax.

Section 68 of the Sales Tax Assessment Act 1992 (STAA) creates a liability to a penalty where sales tax remains unpaid after the date on which it would otherwise have been payable. This is generally termed a "late payment" penalty. Section 97 STAA creates a liability to a penalty where a person makes a false statement which results in a shortpayment of sales tax. This may be termed a "false statement" penalty. The "false statement" penalty can apply where false statements resulting in shortpayments of sales tax are made at the time of importation. Where false statements resulting in shortpayments of sales tax are detected/disclosed after importation (for example during an audit process or as a result of activity such as that outlined in ACN 97/79) both "false statement" penalty AND "late payment" penalty may be applied. In serious cases, prosecution action may be taken. The Commissioner of Taxation can issue a demand for payment of shortpayments of sales tax and any imposed administrative penalty up to three years after the sales tax became payable.

The application of penalties issued under the STAA is a complex matter and many factors are taken into consideration. The following two paragraphs outline the main provisions but do not attempt to provide all the detail. Further information can be obtained from Mr Tom Marshall on (08) 8447 9280 or reference can be made to SST Ruling No 3 Sales Tax: Guidelines for Penalty Remission.

The "false statement" penalty is imposed at 200% of the shortpaid amount. If an importer makes a false statement and subsequently brings it to Customs attention, the nature of the error, and the fact that it was disclosed voluntarily may influence the level of the penalty significantly and it may be remitted in full. The same factors may also impact on the "late payment" penalty (imposed at the rate of 16% per annum) and could result in up to half of this penalty being remitted.

If an error is detected by Customs during an audit, the "false statement" penalty can also be subject to remission. One factor which may influence the level of penalty is positive action by the taxpayer which results in a significant saving in time and resources in completing the audit.

Penalties issued under the Sales Tax Assessment Act 1992 are additional to those imposed on shortpayments of Customs Duty by Customs Act s243T.

From 6 April 1998 Customs will be examining past importations looking specifically for shortpayments of sales [tax. Initial focus will be on those goods outlined in ACN 97/79(Schedule 5), and also those described in ACN 98/08 (Schedules 4 &amp; 7). In addition to the collection of any shortpayments identified, Customs will be](https://borderauthor.border.gov.au/Busi/Cust/Aust/Australian-Customs-Notice-1998-12) considering the imposition of "late payment" and "false statement" penalties for shortpayments of sales tax made in the previous three years. Concurrently with this exercise Customs is verifying the veracity of statements made on current shipments. Shortpayments will be adjusted and "false statement" penalties considered.

Importers and Customs Brokers are reminded to check all import entries of goods subject to sales tax and to ensure that the correct rate has been applied.

For information relating to the Schedule 5 review, contact Mr Jim Collins, National Business Centre (General Business) on (07) 3835 3282. Enquiries regarding the Schedule 4 and Schedule 7 review should be directed to Mr Robert Harkins, National Business Centre (Alcohol) on (02) 9893 4304 or Mr Phil Lane, National Business Centre (Spirits) on (08) 8447 9385.

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February 1998

(Commercial Compliance C97/01837)