Australian Customs Notice 2000 20

**Amendments to Customs Refund Regulations 126, 127, and 128**

A number of changes to the refund regulations have been made, which become effective on 1 June 2000 and 17 June 2000. The changes in the main are amendments to existing regulations that address simple procedural matters as well as the removal of redundant and inconsistent wordings to make the regulations easier to understand.

Important changes have also been made to the regulations relating to the refund application fee and a new refund circumstance has been introduced to allow for a refund of duty to apply when automotive components and certain passenger motor vehicles are donated to educational institutions. The amendments also prescribe certain consequential regulation amendments that became necessary upon the commencement of Schedule 1 to

the *Customs Legislation Amendment Act (No.2) 1999* on 4 May 2000 ('the ELOR legislation'). **Refund Review Amendments**

In May/June 1999, a number of Public Information Seminars announced by

ACN 99/37, were conducted in conjunction with the Customs Broker's Council of Australia. These seminars outlined prospective amendments to the refund regulations that followed an internal review of the refund circumstances. The internal review was conducted as a forerunner to the introduction of the Electronic Lodgement of Refunds ('ELOR'). The amendments to the regulations, foreshadowed at these seminars, have now been made.

The amendments are designed to make the refund regulations clearer to understand and easier to administer. They are not intended to extend or limit the coverage of the existing operable refund circumstances except to remedy deficiencies or where it is necessary for clarity. A synopsis of these amendments is set out in **Attachment A** to this notice.

# Refund Application Fees

Two important changes have been made to the regulations relating to the refund application fee.

First, a new subregulation, [128AA(3)] has been introduced to allow successful parties in Administrative Appeals Tribunal ('AAT') proceedings, relating to Commercial Tariff Concession Orders ('CTCO') and Tariff Concession Orders ('TCO'), to make an application for refund in certain circumstances without having to pay the refund application fee.

When the Chief Executive Officer makes a decision in relation to a TCO or a CTCO those affected by that decision may apply to the AAT to have that decision reviewed. As a result of a decision of the AAT it may be that a TCO or CTCO will come into effect retrospectively.

In these circumstances, importers may be entitled to a refund. New subregulation 128AA(3) provides that where this circumstance occurs, the parties to the AAT proceedings do not have to pay the refund application fee when they apply for the relevant refund of duty.

A person will be a party to proceedings if they fall within the meaning of paragraph 30(1)(a) or (d) of the *Administrative Appeals Tribunal Act 1975.*

Secondly, a new regulation [128AC] has been made under s 163(1D)(b) of the *Customs Act 1901* ('the Customs Act'). The regulation prescribes that from 17 June 2000 the fee payable on refund applications made in an approved form will be $45.00.

The current fee for those refund applications created electronically is $45.00 and for those made in an approved form the fee is $65.00. For a period of time from

17 June 2000 applicants will not be able to electronically create refund applications on the COMPILE computer system. During this period it will be necessary for applicants to apply for a refund in the approved form. The new regulation will ensure that those applicants who currently have the benefit of paying the lower fee will not be disadvantaged.

When COMPILE becomes available again, for applicants to create applications electronically, this regulation will be repealed. It is anticipated that this will occur in September 2000.

# Donated vehicles and automotive components

Two new subregulations have been inserted [126(1)(x) and (y)] to cover circumstances where automotive components and certain passenger motor vehicles are donated to educational institutions.

New subregulation 126(1)(x) provides that a person can get a refund of duty that has been paid on a passenger motor vehicle ('PMV') if the PMV:

was imported solely for testing, evaluation or engineering development; was new or unused when it was imported; and

has been donated to an education institution.

The education institution must undertake to dispose of the PMV only for scrap. PMVs include passenger cars, passenger car variants or derivatives, light commercial/forward control and 4WD vehicles which have a Gross Vehicle Mass of 3.5 tonnes or less.

New subregulation 126(1)(y) provides that a person may be eligible for a refund of duty on an automotive component if the automotive component is donated to an educational institution.

Again the education institution must undertake in writing to dispose of the automotive component only for scrap.

New subregulations 128B (5) &amp; (6) prescribe the method for calculating the amount of duty that should be refunded under these two new circumstances.

# ELOR Consequential Amendments

Due to the enactment of the ELOR legislation certain consequential and preparatory amendments have been made. It is anticipated that ELOR will begin in early

October 2000. ELOR will be based on self-assessment principles and will require applicants to explicitly indicate under which refund circumstance their application is made.

The explanatory memorandum to the ELOR legislation specified that it would be necessary to amend the regulations to re-enforce that an application for refund can only refer to goods that were entered on one import entry.

New subregulations 128(2), (3) and (4) have accordingly been inserted to provide new requirements in respect of applications for refunds. New subregulation 128(2) provides that an application may only refer to goods if the goods were imported on the same import entry.

New subregulation 128(3) provides that only one circumstance may be stated to apply to particular goods mentioned in a line of a refund application. This will ensure that an applicant must identify the line on the entry of the goods, in respect of which the refund application is being made, and must also identify the particular circumstances that applies to that line of goods.

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(L. BITMEAD) National Manager Import / Export Management Branch for Chief Executive Officer 25 May 2000