

# Collection of Customs Debts Manual

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## 1 Introduction

This Manual explains the procedures to be followed in relation to the collection of customs debts where outstanding import duties (i.e. customs debts) are identified **post clearance**.

Revenue has robust checking procedures in place in order to satisfy EU obligations and ensure compliance with the requirements of the Customs Code and its associated Implementing Provisions.

Article 48 of Regulation EU 952/2013 laying down the Union Customs Code, provides for post-clearance controls. This article provides for customs authorities to verify the accuracy and completeness of the information given in a customs declaration and to satisfy themselves of the existence, authenticity, accuracy and validity of any supporting documents.

Post clearance checking procedures are delivered by Revenue at two levels e.g. customs audit and transaction driven verification checks (non-audit compliance interventions)<sup>1</sup>.

## 2 Definitions

For the purposes of this manual:

### 2.1 Import duties

Customs duties and charges having an effect equivalent to customs duties payable on imported goods. Such duties include, anti-dumping duty and countervailing duty.

### 2.2 Debtor

The definition of “debtor” is provided in Article 5(19) of the Union Customs Code, (UCC).

The debtor is the person liable for the customs debt.

The debtor is normally the declarant or, in the event of indirect representation, also the person on whose behalf the customs declaration is made.

If several persons are liable for payment of the amount of import or export duty corresponding to one customs debt, they are jointly and severally liable for payment of that amount in accordance with Article 84 UCC.

For customs debt incurred through non-compliance, the debtor is, according to Article 82(3) UCC:

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<sup>1</sup> <https://www.revenue.ie/en/self-assessment-and-self-employment/documents/code-of-practice-revenue-audit.pdf>

- any person who was required to fulfil the obligation concerned;
- any person who was aware or should reasonably have been aware that the obligation concerned was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation;
- any person who participated in the act which led to the non-fulfilment of the obligation and who was aware or should reasonably have been aware that a customs declaration had not been lodged but should have been.

## 2.3 Types of representation

### 2.3.1 Customs Clearance Agents

Article 18 of the UCC, provides that any person may appoint a representative in their dealings with the customs authorities to perform the acts and formalities laid down by customs rules. That Article also provides that such representation may be direct or indirect.

Clearance Agents are required, when completing an import declaration, to specify the capacity in which they are acting.

If the representative doesn't state the type of representation on the customs declaration, or is not empowered to act as a representative, he/she will be considered to be acting in their own name and on their own behalf.

The representative must be able to demonstrate, on request, that he/she is authorised by the importer to so act. The customs authorities may require persons stating that they are acting as a customs representative to provide written evidence of their empowerment by the person represented (Article 19 UCC).

If a person acts as a **direct representative**, the importer/exporter is solely liable for the customs debt.

If a person acts as an **indirect representative**, that person and the importer/exporter will be jointly liable for any customs debt.

Customs Division, Transitional Own Resources Unit can be consulted where any doubt exists.

[eCustoms Notification 27 of 2020](#) contains the requirement for customs representatives to be correctly authorised to act on behalf of traders, and to declare the appropriate code in Box 14 of the SAD if you are using AEP for import declarations or in the case of using AIS for import declarations you must specify at Data Element (D.E) 3/21 the capacity in which you are acting. A suggested template for an authorisation as a direct/indirect representative is also contained therein.

## 2.4 Customs Debt

The term “customs debt” is defined in Article 5 (18) of the Union Customs Code (UCC). It means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force.

Article 56 (1) UCC clarifies that such duties shall be based on the Common Customs Tariff (CCT).

A customs debt can therefore only be incurred in cases where the CCT lays down a duty for the goods concerned.

Customs debt on import incurred through non-compliance is defined in Article 79 UCC. Pursuant to Article 79 UCC, goods liable to import duty incur a customs debt through non-compliance with any of the following obligations or conditions:

- (a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement, processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;
- (b) one of the obligations laid down in the customs legislation concerning the end-use of goods within the customs territory of the Union;
- (c) a condition governing the placing of non-Union goods under a customs procedure or the granting, by the end-use of the goods, of duty exemption or a reduced rate of import duty.

Examples of when a post clearance customs debt will arise (**this list is not exhaustive**):

1. Undervaluation, i.e. when the importer declares a value of imported goods which is lower than the actual value;
2. Misdescription of origin, where the importer declares a false country of origin of the imported goods;
3. Misclassification, by shifting to a product classification with a lower duty rate; or a combination of all the above;
4. Using incorrect currency.

### 2.4.1 EU Dimension

Under Article 325 of **The Treaty on the Functioning of the European Union, (TFEU)**, the Union and the Member States are obliged “**to counter fraud and any other illegal activities affecting the financial interests**” of the Union through measures which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.

In this regard, Ireland is obliged to take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

The Commission, in cooperation with Member States, each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of Article 325 TFEU.

#### 2.4.2 Own Resources

Customs duties collected by EU Member States are used to finance the EU budget. Customs duties are known in this context as “Own Resources.” The revenue that funds the EU budget consists primarily of its so-called Own Resources, including the TOR<sup>2</sup> which are a substantial contribution to the EU budget. The Member States are responsible for the collection of these resources and must establish, account for, recover and make available Own Resources to the Commission. Member States must have adequate controls to ensure that their customs administrations carry out their tasks in an appropriate manner.

The EU has drawn up certain rules and requirements to ensure that the customs authorities of the Member States are diligent in ensuring collection of outstanding customs debts. The European Commission carries out annual inspections/audits to ensure that the national authorities are correctly applying EU customs legislation and collecting the right amount of customs duties.

The practical consequence of the EU rules is that a number of legal procedures must be followed where a customs debt has been identified. The sequence follows the order of the relevant articles in the UCC.

Failure to follow the correct customs debt procedures will result in Ireland having a negative audit finding from EU auditors. In this regard, the Member State may be required to make additional contributions to the budget, including a penalty in the form of interest. The rate of interest is significant, and the rate escalates the longer the delay.

The Commission closely monitors the action taken by Member States to collect outstanding duties.

Customs debts which have been established are recorded in an account known as the A account unless the amounts have not been recovered. In such cases, the amounts are entered in the B account. The entries, either in the A or B account, must be made within prescribed time-limits.

These accounts are maintained by the Accountant General’s Office, (AG’s), and are available for inspection by the EU auditors.

**It is critical therefore, that once a customs debt is established that the rules for recording customs debts are followed correctly and that payment of customs debts are pursued promptly and without unwarranted delays.**

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<sup>2</sup> The other two elements of the Own Resources are a share of each EU country’s VAT base, and a GNI-based contribution which is directly proportional to each Member State’s economic size. The latter acts as a balancing mechanism, increasing if the TOR and VAT contributions shrink and vice versa.

## 3 Establishing the customs debt

### 3.1 Customs debt on import incurred through non-compliance

Customs debt on import incurred through non-compliance is defined in Articles 79 and 82 of UCC. Establishing a customs debt means calculating the amount of customs duty due and entering that amount in the local accounting records.

To calculate the customs debt the customs officer must apply the right tariff to the customs value of the goods. In order to know the right tariff, the customs officer consults TARIC and needs to know:

- the Combined Nomenclature (CN) code which identifies the goods,
- the origin of the goods

Under Article 85 UCC, the amount of import duty is determined based on the rules for the calculation of duty that were applicable to the goods concerned at the time when the customs debt in respect of them was incurred.

### 3.2 Time at which the customs debt is incurred

The time at which the customs debt is incurred is normally the date the customs declaration was accepted.

Article 79 UCC provides that where a customs debt is incurred through non-compliance, the time at which a customs debt is incurred, shall be either of the following:

- a) the moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met;

**Example: -**

**Goods are placed under temporary admission with partial relief from duty. After 6 months the procedure is discharged with a re-export declaration and the partial duty is paid.**

**Subsequently, it is established that the goods did not exit from the customs territory of the Union; a customs debt is incurred pursuant to Article 79(1) UCC.**

**The time of incurrence of the customs debt is the time when non-fulfilment of the conditions is determined.**

- b) the moment when a customs declaration is accepted for the placing of goods under a customs procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.

### 3.3 When does a customs debt not need to be established?

Articles 102 and 103 of the UCC provides when a notification of a customs debt shall not be made and includes any of the following circumstances:

- (i) where the amount of import or export duty concerned is less than EUR 10. The EUR10 limit applies to each recovery action,
- (i) where the duty is legally due, but the amount exceeds that determined on the basis of binding tariff information (BTI), or binding origin information (BOI), where, the holder of the binding information is entitled to continue to use it in respect of binding contracts, which were based upon a decision that was concluded before it ceased to be valid or was revoked. The period of extended use shall not exceed 6 months from the date on which the BTI decision ceases to be valid or its revocation took effect (Article 34 UCC).
- (ii) after the expiry of a period of three years from the date on which the customs debt was incurred.

However, where the customs debt is incurred as a result of an act which, at the time it was committed, was liable to give rise to criminal court proceedings, the three-year period shall be extended to a period of a minimum of five years and a maximum of 10 years in accordance with national law.

The three-year period can be suspended where an appeal is lodged in accordance with Article 44 or where the notification of the customs debt would prejudice a criminal investigation.

Customs Division, Transitional Own Resources Unit, can be consulted where there is any doubt as to whether or not a customs debt needs to be established.

## 4 Payment of Customs Debt

Following establishment of the debt, the person liable for payment is to be advised in writing and payment within 10 days (Article 108) is to be requested.

If payment is not received within the 10-day period, a "Final Demand" should be issued, indicating that interest is now accruing, and that enforcement action may be initiated if payment is not immediately received (Articles 113 and 114 UCC).

The Customs Authority should secure the payment of customs duties not paid within the prescribed period by all means available to them, in accordance with national legislation, including the enforcement of a guarantee (Article 113 UCC).

Upon application by the debtor, the customs authorities may extend the period if the amount of import or export duty payable was determined in the course of post-clearance control as referred to in Article 48 UCC, but, without prejudice to Article 112(1) UCC, the extensions must not exceed the time necessary for the debtor to take the appropriate steps to discharge his or her obligation.



## 4.1 How Payment is to be made

### 4.1.1 RevPay

With effect from 07 September 2019, C&E payments remitted by Electronic Fund Transfer (EFT) are no longer accepted.

From this date the account(s) in which these monies were transferred to, being Bank of Ireland or Allied Irish Bank, have ceased.

Traders/Agents must use Revenue's online payment facility, RevPay which is available through ROS or myAccount.

Please refer to Tax and Duty Manual (TDM) [RevPay in ROS or myAccount User Guide](#).

## 4.2 Payment of customs debt in phased payments

In accordance with Article 112 of the Union Customs Code, Revenue may offer an instalment arrangement to pay a Customs debt. To facilitate this arrangement, a guarantee equal to the Customs debt involved should be provided by a financial institution established in the EU and approved by the financial regulator. A guarantor's undertaking must be completed by the financial institution.

If such facilities are granted, interest must be charged on the import duty debt, in accordance with Article 112 (2) UCC.

A guarantee can be waived under UCC Article 112(3) where it is established, on the basis of a documented assessment of the situation of the debtor, that this would create serious economic or social difficulties for the debtor.

## 4.3 Interest

Under Article 114(2) UCC, if a customs debt is incurred on the basis of Article 79 (non-compliance), or if the notification of the customs debt results from post-clearance controls, interest on arrears is charged in addition to the import or export duty payable, from the date on which the customs debt was incurred until the date of its notification. Interest is therefore payable from the date the customs declaration was originally accepted. The rate of interest must be computed in accordance with Article 114(1) UCC.

Under Article 112(3) UCC, the customs authorities may refrain from requiring a guarantee or from charging credit interest where it is established, based on a documented assessment of the situation of the debtor, that this would create serious economic or social difficulties. In this instance the debtor must provide written substantiated evidence to that effect.

#### 4.4 Suspension of the time-limit for payment

Article 108(3) UCC lists the following cases in which the time-limit for payment of the amount of import or export duty corresponding to a customs debt is suspended:

- (a) where an application for remission of duty is made in accordance with Article 121 UCC;
- (b) where goods are to be confiscated, destroyed or abandoned to the State;
- (c) where the customs debt was incurred pursuant to Article 79 UCC and there is more than one debtor.

### 5 Enforcement of Customs Debt

Article 113 UCC provides that: **‘Where the amount of import or export duty payable has not been paid within the prescribed period, the customs authorities shall secure payment of that amount by all means available to them under the law of the Member State concerned.’** Therefore, where there is no satisfactory response to the final demand, consideration should be given to the most appropriate form of enforcement action.

Currently, the forms of enforcement available to pursue payment of import duties are; (a) through the courts by way of civil action or (b) by an attachment order (section 1002 Taxes Consolidation Act, (TCA) 1997). Section 1095 of the Finance Act 2010 brought import duties within the tax clearance regime.

## 6 Irrecoverable Amounts

As stated earlier in this manual, Member States shall take all requisite measures to ensure the collection of customs duties.

Member States shall be released from the obligation to place at the disposal of the Commission duties which prove irrecoverable for either of the following reasons:

- (a) for reasons of force majeure;
- (b) for other reasons which cannot be attributed to them.

Amounts of established entitlements shall be declared irrecoverable by a decision of the competent administrative authority finding that they cannot be recovered.

Amounts of established entitlements shall be deemed irrecoverable, at the latest, after a period of five years from the date on which the amount has been established or, in the event of an administrative or judicial appeal, the final decision has been given, notified or published.

If part payment or payments have been received, the period of five years at maximum shall start from the date of the last payment made, where this does not clear the debt.

Amounts declared or deemed irrecoverable shall be definitively removed from the separate accounts.

Where a customs debt having been determined is subsequently not recovered, the Customs Authority must prove that all requisite measures were taken to collect the debt, otherwise the EU Commission may hold Ireland liable for the full amount of the debt.

## 7 Right to be Heard

Establishing a customs debt is an important legal procedure and the debt should not be established until all legal procedures are followed.

In this regard attention is drawn to Article 22(6) UCC which states that **“Before taking a decision which would adversely affect the applicant, the customs authorities shall communicate the grounds on which they intend to base their decision to the applicant, who shall be given the opportunity to express his or her point of view within a period prescribed from the date on which he or she receives that communication or is deemed to have received it”** (see TDM [Right to be heard manual](#) ).

## 8 Appeals

Article 44 UCC provides that the debtor can appeal the customs decision to establish the debt. See [Customs Appeals](#) for further information.

It is important to note the submission of an appeal does not suspend the collection of duties. The payment of the debt must continue to be pursued with interest accruing on late payment. Where customs duties are not paid a guarantee must be in place.

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