



GOVERNMENT OF BERMUDA

Ministry of Finance

Customs Department

Public Notice 20

Civil Penalties, Forfeiture & Restoration

15 December 2014

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1 Introduction

1.1 What is this notice about?

If you engage in international trade in goods, or import or export goods privately, you must comply with Bermuda's customs laws. This notice explains how we calculate and notify customs civil penalties for contraventions of legal requirements. This notice also explains how you can lessen any penalty and how you may reclaim goods that have been seized for an offence punishable by forfeiture.

Our policies and procedures concerning civil penalties, forfeiture and restoration have been specifically designed to encourage you to make true and accurate declarations and to promote voluntary compliance with the law generally.

This notice is available on our website www.customs.gov.bm. Hard copies of this notice may be obtained from the Custom House on Front Street in Hamilton.

Throughout this notice, "we", "us" and "our" means the Collector of Customs or any officer of Customs acting on behalf of the Collector.

1.2 Who should read this notice?

Anyone who has been issued with a "Civil Penalty Notice" or a "Forfeiture Notice" by Customs should read this public notice.

The notice does not cover complaints about the conduct of an officer. If you have a complaint please try to resolve it on the spot with our officer and/or his or her manager. If you are unable to do so, you should ask for a copy of our information leaflet entitled "Complaints against Customs" or visit the customs website www.customs.gov.bm for an electronic version of the leaflet.

1.3 What is the relevant Law?

This notice does not have force of law but it explains how we interpret the relevant provisions of the Revenue Act 1898 ("RA"), namely—

- Section 84A and the Third Schedule - Standard Scale of Penalties
- Section 111A - Civil Penalty Assessment and Restoration

1.4 Further help and advice

If you need general advice or more copies of Customs public notices, please telephone 295-4816. You can call between 8:45 A.M. and 4:30 P.M., Monday to Friday. Alternatively, e-mail us at customs@gov.bm or visit our website www.customs.gov.bm.

2 Background

2.1 What is your policy on dealing with offences?

Our policy is to deal with offences against customs laws by the use of cost effective civil procedures wherever possible, encouraging the business (or their agent/representative) or the individual traveller or importer to co-operate and produce evidence, and reducing the penalty to take account of the extent of their co-operation in our investigations.

Criminal investigation will only be considered for those cases where we need to send a strong deterrent message and have concluded that the civil option will not achieve this.

2.2 Which offences are covered by the regime?

The Civil Penalties regime will cover breaches of Bermuda customs law relating to the import, export, entry and storage and holding or processing of imported goods under customs supervision. We will impose a penalty when we are satisfied that you have evaded customs duty and if you claim (including deferred or postponed payments) any repayment, drawback, relief, exemption or allowance to which you are not entitled.

These procedures do not affect our ability to seize goods liable to forfeiture. The current legal provisions may call for both a civil penalty and forfeiture of goods. In some circumstances seized goods may be offered for restoration. The restoration sum will include a penalty and the duty payable must be paid in full before the goods are released.

3 Civil Penalties

3.1 What is a civil penalty?

A “civil penalty” is a monetary penalty or forfeiture imposed by Customs for breach of certain Customs laws (for a legal definition of “civil penalty”, refer to RA section 84A(5)). While such offences are punishable in the courts we may assess a civil penalty up to the maximum level allowed as an alternative to a court action (refer to RA sections 111 and 111A). We can also effectively reduce the penalty assessed in view of mitigating circumstances.

3.2 How does Customs use civil penalties?

Our strategy is to encourage you to comply with Bermuda’s customs laws voluntarily. There are a number of different ways we promote compliance, including—

- Education
- Warnings
- Withdrawal or cancellation of approvals

For example, we inform you of your obligations through public notices, information leaflets and press releases. We also conduct public information meetings and hold training sessions when new laws or procedural changes are introduced. As a further measure we may, when and as appropriate, withhold, amend, cancel or temporarily withdraw permissions or authorizations. Civil penalties are an additional tool that we may use, in the appropriate circumstances, to encourage compliance. When faced with non-compliance we will consider all the facts of the matter and select the most appropriate response.

3.3 Do all customs offences attract civil penalties?

No, it depends on the nature and circumstances of the offence. Some offences are punishable only in the courts. For example, the offence of breaking a customs seal without proper authority is punishable only on summary conviction (refer to RA section 82(7)).

You should be aware that Customs has the option either to assess for that civil penalty or to prosecute for the civil penalty before the Courts.

3.4 When will Customs prosecute me?

We will consider prosecuting you instead of assessing for a civil penalty if, for example—

- you have assaulted an officer;
- you have obstructed a search;
- you are subject to a suspended prison sentence or are on parole;
- you are being investigated for other related offences, whether by Customs, the police or other Government Departments;
- you are an undischarged bankrupt or, if a limited company, are in liquidation;
- you have failed to keep adequate records;
- if you are a persistent offender; or
- you have abused a position of trust

3.5 When might I face a civil penalty?

We will normally assess for a civil penalty for—

- making a false declaration, document or oath;
- failure to comply with a lawful requirement or direction of Customs;
- illegal diversion, disposal or handling of restricted goods;
- failure to comply with legal duty or prohibition;
- breach of conditions of authorization; or
- breach of statutory conditions.

3.6 What if I discover a contravention myself?

Significant reductions will be available for unprompted disclosure and smaller reductions for prompted disclosure. If you have a satisfactory explanation for a discrepancy, or if you disclose an offence prior to the release of the relevant goods and there is no fraud detected, no penalty or restoration payment will be assessed.

If disclosure occurs after the goods concerned are released and no fraud is involved, the penalty will normally be the interest on the outstanding duty. No further reduction of the penalty will be allowed.

If the disclosure relates to an offence involving dishonesty the penalty and/or restoration payment will normally be reduced one level from the normal assessment for the relevant behaviour. Normal mitigation will apply.

The most likely situation to occur is the discovery, after declaration, that an error has been made which has resulted in an under-declaration of import duty. In such situations you should inform the Hamilton Long Room and ensure you retain a copy of all correspondence relating to action taken. In all cases you should send a letter of explanation to the Collector of Customs, PO Box 2084, Hamilton HM HX.

in the case of...	send a...
an overpayment of duty	letter of explanation requesting a refund, together with a copy of the relevant customs declaration and supporting documents addressed to the Collector of Customs, PO Box 2084, Hamilton HM HX
an underpayment of duty	letter of explanation to Collector of Customs, supporting documents and payment to PO Box 2084, Hamilton HM HX
a non-monetary error	letter of explanation to the Collector of Customs, PO Box 2084, Hamilton HM HX

There may also be occasions when it is found that statutory conditions of authorization are not being adhered to. If this is discovered you should inform the Collector of Customs and advise him of the action taken.

It is essential that in all circumstances of voluntary disclosure, you should maintain a record of the actions you take.

3.7 Is there any time limit for imposing civil penalties?

There is no expressed time limit for imposing civil penalties. However, if we decide to issue a civil penalty we will normally do so within:

- 1 year from the day on which we became aware of the facts, sufficient in our opinion to justify a penalty; and
- 3 years from the date you became liable a penalty.

4 Monetary amounts of penalties

4.1 What are the monetary amounts of penalties?

The maximum monetary amounts of penalties are set out in the Standard Scale below (refer to RA Third Schedule – “Standard Scale of Penalties”):

STANDARD SCALE OF PENALTIES

Level on the scale	Monetary amount of penalty
1	\$1,000
2	\$2,000
3	\$6,000
4	\$12,000
5	\$30,000
6	\$50,000
7	\$100,000

4.2 Will Customs impose the maximum amount for a civil penalty?

Normally the penalty will be less than the maximum amount. It will not be appropriate for Customs to impose the maximum penalty amount in all cases. Each of the maximum monetary amounts of penalties set out in the Standard Scale above is intended to cover a wide range of offending behaviour (refer to part 5 below for a more detailed treatment of the civil penalty assessment method).

The actions you take during the investigation can considerably reduce the level of the penalty.

5 Civil Penalty Assessments

5.1 How are monetary penalties worked out?

Customs uses graduated financial penalties based on the behaviour of the offender and the amount of duty evaded. We employ the two-step method described below to determine the appropriate penalty amount in each case. There is a simplified on-the-spot penalty assessment system for travellers arriving at the L.F. Wade International Airport (refer to section 4.8 below for further details).

1st STEP

The issuing officer will take account of the behavior that gave rise to the offence in assessing the 1st step amount as follows:

A. Where there is duty involved (e.g. false declaration)

1. Mistake (innocent/honest)	no penalty
2. Carelessness (negligence)	warning or up to 1 × duty due
3. Recklessness (foreknowledge)	up to 2 × duty due
4. Dishonesty (deliberate)	up to 4 × duty due
5. Aggravated dishonesty (problem offenders)	up to 5 × duty due

Note: No penalty assessment will exceed the statutory maximum.

B. Where no duty is involved (e.g. failure to report arrival of a vessel or aircraft)

1. Mistake (innocent/honest)	no penalty
2. Carelessness (negligence)	warning or up to 20% of max
3. Recklessness (foreknowledge)	up to 40% of max
4. Dishonesty (deliberate)	up to 80% of max
5. Aggravated dishonesty (problem offenders)	up to 100% of max

Note: Penalty assessments are made with due regard to an offenders knowledge and experience of customs regulations and procedure. This means that a commercial importer may expect to receive a higher penalty assessment than a casual importer for an offence involving similar behavior.

2nd STEP

The issuing officer will then take account of unforeseen and relevant events and any cooperative behaviour after the offence has been discovered or disclosed and may reduce (mitigate) the 1st step assessment amount by up to half. (e.g. early and truthful admission, co-operation, attending interviews, producing records etc.). Refer to part 6 below for more information on mitigation.

5.2 What does Customs consider an honest or innocent mistake?

This is where we think that no offence was intended. In our experience, an innocent mistake usually arises from lack of experience or knowledge. An innocent mistake may also arise where a person offends in spite of taking reasonable care – for example, where a person commits an offence after receiving inadequate or incorrect information from Customs.

5.3 What is the difference between carelessness and recklessness?

We regard carelessness as a failure to exercise the degree of care that reasonable and honest persons would ordinarily take to avoid committing an offence. Recklessness goes beyond simple carelessness. This is where a person has foreknowledge of the risk he runs of offending by his actions, but decides nonetheless to continue with his actions and take the risk.

5.4 What is the difference between dishonesty and aggravated dishonesty?

Dishonesty involves lying, acting with intent to deceive or being deliberately misleading. Aggravated dishonesty goes beyond simple dishonesty. This is where the behaviour giving rise to the offence is serious enough for us to consider prosecution of the offender before the courts. For example, offences by persistent offenders or offences involving premeditation, organization and conspiracy; abuse of trust; or abuse of power may be regarded as involving aggravated dishonesty.

5.5 What circumstances warrant reduction (mitigation) of a penalty?

The law does not define the grounds for reducing a penalty so we will look at all the facts of your case. The circumstances which contributed to the contravention will be given due consideration. Your previous compliance history may be taken into account. We may also recognize unforeseen and relevant events that may have been a factor in the offence. We will certainly acknowledge the degree of co-operation given to our officers once your liability to a penalty has been established.

The amount of mitigation allowed will depend on the specific circumstances of your case. Whilst co-operating clearly has benefits for you, you should be under no misapprehension that this means you are obliged to co-operate in our investigation. It is up to you to decide whether or not you speak to us or assist us generally in our investigation.

If you do speak to us we may use what you say, or any information you provide, in assessing your liability to the duty or to a penalty. We may also seek to give evidence of this in any subsequent Tribunal proceedings.

5.6 What do you mean by unforeseen and relevant events?

In deciding on the appropriate degree of mitigation we will take into account—

- compassionate circumstances: where you are totally responsible for running a small business and you or a member of your immediate family was seriously ill, or recovering from such an illness;
- computer breakdown: where records essential to the declaration or procedure at issue are held on computer and it breaks down at a critical point. However you must have taken reasonable steps to correct the fault;
- loss of key personnel: where the person responsible for completing declarations or applying a particular procedure leaves your employment at short notice and there is no one else to assume that person's responsibilities at that time;
- loss of records: where your records are stolen or destroyed preventing you from making declarations or following a procedure on time. You must notify the loss of records to Customs immediately.

These extenuating circumstances will not necessarily result in mitigation just because it seems to fit one of the categories. Any decision on allowing a reduction of a penalty will be based on all the circumstances of your individual case.

5.7 What is not considered a mitigating factor?

The following will not be considered in mitigation:

- your ability to pay any duty, fees or penalty due;
- the fact little or no duty revenue has been lost; and
- the fact you acted in good faith.

5.8 On-the-spot civil penalties at the Airport

The following simplified penalty assessment system is in use for customs offences by travellers arriving at the L.F. Wade International Airport (the Airport):

1. Mistake (innocent or careless)	no penalty
2. Dishonesty (deliberate)	3 × duty due
3. Where no duty is involved	\$500

Civil penalty assessments at the airport will normally be made at the time of commission of the offence. Mitigating factors are not taken into account.

6 Forfeiture and restoration

6.1 What is 'forfeiture' of goods'?

Forfeiture is where we seize goods that have not been properly declared to Customs, or that have been incorrectly stored under a Customs Bond i.e. a suspected Customs offense has occurred. We will move to seize any goods that we consider to be liable to forfeiture.

We will either seize goods liable to forfeiture in your presence (or in the presence of your representative) or arrange for a written “Forfeiture Notice” to be issued to you.

Please note that some customs offences are punishable by forfeiture only; while some others call for both a monetary penalty and forfeiture of goods.

6.2 How can I get my goods back?

We will normally give seized goods back to you, provided that you meet certain conditions, which will include a “restoration payment” plus payment of the outstanding duty and any civil penalty amount due. This process of reclaiming goods seized by Customs is called “restoration”.

In order to claim goods seized as liable to forfeiture you must give written notice to the Collector of Customs that you are claiming your goods or intend to claim them. You must give written notice of claim within thirty calendar days from the date your goods were seized as liable to forfeiture (refer to RA s. 101). In default of such a notice of claim we will sell the goods at auction and the proceeds are paid into the general revenue (refer to RA s.102).

You may apply to the Collector of Customs to have goods restored to you prior to the conclusion of a penalty investigation. If goods are to be restored to you before the conclusion of an investigation, we will normally require security by monetary deposit together with an undertaking from you that the goods will not be disposed of during the investigation. Even though your goods have been restored you may still face a penalty assessment at the conclusion of the investigation.

Accompanied personal goods that have been seized at the Airport may be restored on the spot if you pay the duty and penalty assessed by Customs right away.

Please note that goods seized for breach of an import or export prohibition will not be restored to you.

6.3 How are restoration payments worked out?

In cases where an offence is punishable by both a civil penalty and forfeiture the restoration payment will include the penalty assessment, any outstanding duty and any costs and charges occasioned by the seizure of the goods.

In cases where an offence is punishable by forfeiture alone we assess the restoration payment by reference to the value of the goods as follows:

- | | |
|----------------------------------------------|-------------------------------|
| 1. Mistake (innocent/honest) | no payment |
| 2. Carelessness (negligence) | warning or up to 20% of value |
| 3. Recklessness (foreknowledge) | up to 40% of value |
| 4. Dishonesty (deliberate) | up to 80% of value |
| 5. Aggravated dishonesty (problem offenders) | up to 100% of value |

7 Warnings and notification of penalties and forfeiture

7.1 How will I be given a warning?

Where we decided not to impose a penalty, we may issue you with a Warning Letter telling you the nature of the offence that we believe you have committed, and warning you that should you commit a similar offence within the next two years you may be issued with a civil penalty assessment.

7.2 How will I be notified of a civil penalty?

Where we decide to impose a civil penalty, you will be issued with a Civil Penalty Notice telling you the nature of the offence we believe you have committed, how much duty is due and the amount of the penalty.

7.3 How will I be notified of the seizure of my goods?

Where an offence results in forfeiture of goods, you will be issued with a Forfeiture Notice. We will indicate the sum required to secure restoration of your goods.

7.4 Who will notify me of a warning, penalty or forfeiture?

Officers will report contraventions to a specialist investigating officer who will consider the facts and any representations you make, decide whether to issue a warning, a penalty or impose forfeiture and, if so, the amount of the penalty or restoration payment as appropriate.

We have appointed specialist officers in order to ensure consistent treatment across the wide range of customs regimes and procedures. The investigating officer will issue the appropriate notice which will show how much mitigation has been allowed and include a remittance advice. This will indicate the alternative methods of payment and where to send your remittance.

In more complex circumstances we may also send—

- an explanatory letter, in support of the penalty; and/or
- a schedule outlining the detail of the penalty,

and they should be read together.

7.5 What if I cannot pay?

Where you are unable to pay the civil penalty or restoration payment immediately, and there are compelling reasons, it may be possible to pay by installments. You will be expected to make a significant down payment, with the balance payable by agreed installments over a short period and generally within the financial reporting cycle during which Civil Penalty Notice is given.

Failure to pay may result in recovery proceedings before the courts.

7.6 Will a penalty assessment or forfeiture remain confidential?

We will not publish any information that you give to us under any circumstances. Nor will we publish any details of any civil penalty assessment imposed on you. However, if you do speak to us we may use what you say, or any information you provide, in assessing your liability to duty or to a penalty. We may also seek to give evidence of this in any Tax Appeal Tribunal or court proceedings.

Details may also be disclosed in the following circumstances:

- to your employer, when it is apparent that—
 - the nature of your employment has facilitated the offence; or
 - where substance abuse, including alcohol are involved;
- where the nature of your employment or duties requires a high degree of unimpaired judgment or faculties;
- to other Government Departments, whose statutory responsibilities are directly affected by your actions; or
- to the House of Assembly or the media, if it is in the public interest.

8 Reviews & Appeals

8.1 What if I do not agree with a penalty or forfeiture notice?

If you do not agree with your liability to penalty or the amount of the penalty, or with the forfeiture of your goods you may demand a formal Customs review of your case.

You can ask for a review of your case if, for example you think that—

- you did not commit an offence;
- you have further information that may not have been taken into account; or
- if there are mitigating circumstances that warrant reduction of the penalty that our officer may not have known about.

In any event, you must ask for a review in writing to the Collector of Customs within 30 days of the date of the Civil Penalty Notice or Forfeiture Notice.

The Collector will appoint an independent officer who has not had any direct involvement in the decision to review the penalty. The Reviewing Officer may confirm, vary or withdraw the Customs decisions contained in the Civil Penalty or Forfeiture Notices.

8.2 What if I am still not satisfied?

If you are still not satisfied with the outcome of the formal Customs review, or we do not respond within 30 days from the day you requested the review, you can appeal your case to the independent Tax Appeal Tribunal.

8.3 What happens if I do not seek a review of the seizure of my goods?

If you do not demand a review within the 30 calendar days allowed, the seized goods will be deemed to be condemned. Condemned goods may be sold or destroyed. Prohibited goods will eventually be destroyed following the conclusion of court proceedings.

8.4 What happens if I do not seek a review of a penalty assessment?

If you fail to pay a penalty assessment and do not ask for a Departmental review, we may commence recovery proceedings under section 111 of the Revenue Act 1898 and sue for the penalty before the courts.

8.5 Further help and advice

For full details on the Customs appeals process ask us for a copy of Public Notice 15 – “Customs Reviews & Appeals”. For copies of Customs public notices, please telephone 295-4816. You can call between 8:45 A.M. and 4:30 P.M., Monday to Friday. Alternatively, e-mail us at customs@gov.bm or visit our website www.customs.gov.bm.

9 Contacting Customs

9.1 Do you have any comments?

We would be pleased to receive any comments or suggestions you may have about this notice. Please write to:

**Customs Department
PO Box HM 2084
Hamilton HM HX
Bermuda**

Phone: (441) 295-4816

Fax: (441) 295-5392

E-mail: customs@gov.bm

Internet: <http://www.customs.gov.bm>

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