

## Alerts and Updates

### U.S. TO PROHIBIT DRAWBACK CLAIMS FOR EXCISE TAX ON IMPORTS?

October 21, 2009

U.S. Customs and Border Protection (CBP) has [proposed amendments](#) to its regulations that would preclude the filing of a "substitution drawback claim for internal revenue excise taxes paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawbacks of taxes under any other provision of the Internal Revenue Code" of 1986, as amended (the "IRC").

Under the current regulatory scheme, a drawback claimant can substitute an exported domestic qualifying product, upon which no excise tax was paid, for an imported product, upon which an excise tax was paid, and thus recover 99 percent of the excise tax paid when it was imported. Thus, according to CBP, there is a loss of revenue to the United States of 98 percent of the excise tax that would have otherwise been collected. CBP argues that such a process is contrary to the congressional intent of the drawback statute. It might appear that CBP is seeking to accomplish a legislative result via administrative action.

Industries and products affected include:

1. Distilled spirits, wines and beer
2. Tobacco
3. Gasoline, diesel fuel and other taxable fuel

The U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) has also [proposed amending its regulations](#) to conform to this proposed modification of Customs' regulations, relating to the drawback of excise taxes under the IRC paid on imported distilled spirits, wines, beer and tobacco products.

Both CBP's and TTB's notices of proposed rulemaking were published in the Federal Register on October 15, 2009. The comments to CBP must be received by November 16, 2009. The comments to TTB are due on or before December 14, 2009.

## For Further Information

If you have any questions about this topic or would like more information, please contact [Brian S. Goldstein](#), any [member](#) of the Duane Morris [International Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

*As required by United States Treasury Regulations, the reader should be aware that this communication is not intended by the sender to be used, and it cannot be used, for the purpose of avoiding penalties under United States federal tax laws.*