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## Contact

**Andrew Hudson** Partner

Hunt & Hunt Level 26, 360 Collins Street Melbourne VIC 3000

**T** +61 3 8602 9231 **F** +61 3 8602 9299 **E** [andrew\\_hudson@hunthunt.com.au](mailto:andrew_hudson@hunthunt.com.au) **W** [www.hunthunt.com.au](http://www.hunthunt.com.au)

## High Court Decision In Granite Arms And New ACN On Item 50A

There have been two new developments on these matters which will be of interest to readers. These are summarised as follows and will be subject to more detailed discussion in future updates.

### Who's an Importer? The High Court Decision in Granite Arms Case

Readers would be aware of earlier judgements in the "Granite Arms" case. The issue before the various courts was as to who was the "importer" of certain firearms and whether that person had the necessary permits for their importation. Basically, if the relevant importer of these firearms (as prohibited imports) did not hold the necessary permits then the goods would be deemed to be "special forfeited goods" and could be seized by Customs.

Put simply, a company known as Omeo Way wanted to import firearms but did not have the necessary police permits to import into Queensland. A Director of Omeo Way was friendly with a director of Granite Arms which held the necessary permit to allow the importation of firearms in Victoria. Granite Arms offered to assist with the importation of the firearms. It was shown as the "owner" of the firearms on the entry for home consumption and was also shown as the consignee of the goods on the air waybill.

The Federal Court had held that Granite Arms was the importer and had the necessary permit for the firearms. Accordingly, the firearms were not special forfeited goods and the seizure of the goods was invalid.

However, the High Court has overturned the Federal Court decision. In a joint judgement of all of the High Court judges, they found that Omeo Way was really the importer of the firearms for the purposes of the relevant regulations notwithstanding that Granite Arms was shown as the owner of the firearms on the customs entry and the consignee of the firearms on the air waybill. The High Court made this finding because, in all practicality, the firearms were imported for the benefit of Omeo Way to whom the goods would go immediately upon their release from Customs control. As Omeo Way was the importer and did not hold the relevant permits for their importation, then the firearms were special forfeited goods and could be seized in the manner contemplated by Customs.

The decision may have ramifications for other parts of the relevant import controls which refer to obligations upon "importers". The decision may expand the categories of those required to secure the permits. It may also have some ramifications for GST which imposes GST obligations on "importers". If an importer can be someone other than the owner shown on a Customs entry or a consignee shown on the transport documentation, then that person could become liable for GST obligations.

### New ACN on Item 50A – Refunds or recovery of 3% duty

A number of readers attended my recent Member Forums conducted in conjunction with the CBFCAs around Australia.

During those Member Forums, reference was made to a "loophole" which had arisen in respect of Item 50A to Schedule 4 to the Customs Tariff Act 1995.

Until 11 May 2005 (the last Federal Budget), Item 50A provided for the concessional entry with a "free" rate of customs duty of certain goods identified as "consumption goods" based on the United Nations Statistical Papers, Broad Economic Categories and Standard International Trade Classifications. Those documents identified consumption goods for those purposes.

The basic proposition was that between February 2003 and 11 May 2005, the UN classifications had changed but the administrative tables attached to Item 50A had not been amended by Customs. Accordingly, 3% duty had been recovered on goods where no duty was payable as those goods had become qualifying "consumption goods". This created a loophole allowing refunds to be sought. A number of consultants made application for refunds based on the loophole. Further, some goods had attracted no duty when 3% duty was properly payable as they had "fallen out" of the UN documents and were no longer consumption goods.

ACN 2005/49 has now been issued as discussed during the Member Forums. This provides advice on refunds where duty had been overpaid and on Customs recovery of duty underpaid. As predicted, Customs are using Section 165 to recover duty underpaid as it occurred due to Customs error. This places a 12 month limit on recovery.

Given the ACN issued by Customs, it will be interesting to determine that if persons voluntarily repay the underpaid duty, that will be sufficient to eliminate the possibility of administrative penalties. Hopefully, Customs cannot be considering administrative penalties against persons who, as it turns out, have underpaid the customs duty due to Customs own error.

Customs have also issued new ACN 2005/51 regarding changes to administrative arrangements for concessional items in Schedule 4 and other tariff related changes with the adoption of the Integrated Cargo System. This refers to new treatment code numbers. It is recommended that practitioners review these new arrangements.

As discussed, further details will be provided in due course regarding these matters. However, I thought that they merited more immediate consideration.