

EXCISE TAX ACT

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EXCISE TAX ACT

AN ACT TO PROVIDE FOR EXCISE TAX AND MATTERS INCIDENTAL THERETO¹

Commencement [1 February 2008]²

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Excise Tax Act.

2 Interpretation

In this Act, unless the context otherwise requires —

“**Minister**³” means the Minister responsible for revenue services;⁴

“**Customs**” means the Customs and Trade Division of the Ministry of Revenue;⁵

“**Customs control**” has the meaning ascribed to it in the Customs and Excise Management Act⁶;

“**Customs laws**” means the Customs and Excise Management Act, Customs Act⁷ and this Act;

“**Customs officer**” means any person employed as a customs officer to discharge any duty connected with the administration of customs laws;

“**Customs security**” means the securities authorised under Part 9 of the Customs and Excise Management Act;

“**entered**” has the meaning ascribed to it in the Customs and Excise Management Act;

“**entry**” in relation to the importation or manufacture means the lodging of the prescribed declaration with Customs;

“**excisable goods**” means goods imported into or manufactured in the Kingdom which are liable to excise tax under this Act;

“**excise tax**” means the excise tax imposed by this Act;

“**licensed manufacturer**” means a person who is licensed under this Act to manufacture excisable goods;

“**manufacture**” includes all processes in the manufacture of excisable goods including —

- (a) filtering, diluting or blending the excisable goods with other goods;
- (b) putting the excisable goods for the first time into a container in which they might be presented or from which they might be dispensed; and
- (c) labelling or marking, for the first time, of containers filled with the excisable goods;

“**manufactured**” in respect of excisable goods, means excisable goods manufactured in the Kingdom;”

“**movement**” in respect of excisable goods, means the point where the goods are removed from Customs control;

“**premises**” includes any place, vehicle, ship or aircraft; and

“**raw materials**” means all goods and materials, which are used in the manufacture of excisable goods; and

“**specified premises**” means the area approved for the purpose of manufacturing excisable goods and includes an area approved for the storage of manufactured excisable goods.

PART 2 - IMPOSITION, ASSESMENT AND PAYMENT OF EXCISE TAX

3 Excise tax⁸

- (1) The Minister shall, with the approval of Cabinet by Order —
 - (a) direct what shall be excisable goods;
 - (b) impose, revoke, suspend, reduce or increase excise tax on imported and manufactured excisable goods; and
 - (c) provide for exemptions from excise tax.
- (2) The Order under subsection (1) —
 - (a) shall comply with clause 19(b) of the Constitution; and
 - (b) may make different provision for different circumstances.

4 Imposition of excise tax

- (1) Excise tax shall be levied on the movement of excisable goods.
- (2) No excise tax shall be levied on the export of excisable goods.

5 Debt to the Crown

Excise tax imposed by this Act shall be —

- (a) a debt payable to the Crown and recoverable by the Crown;
- (b) payable to a Customs officer at the place where the Customs entry form is received and processed by Customs; and
- (c) payable in Tongan currency.

6 Timing of Liability

- (1) An import of excisable goods shall occur on the date on which the imported excisable goods are entered under the Customs and Excise Management Act.
- (2) The liability for excise tax in respect of excisable goods manufactured in the Kingdom, arises on movement of the goods from the specified premises.

7 Liability for excise tax

- (1) All importers shall pay excise tax prior to the movement of excisable goods from Customs control.
- (2) Licensed manufacturers shall pay excise tax prior to the movement of excisable goods from Customs control.
- (3) The following shall, together with the respective entity, be jointly and severally liable for excise tax due and payable by the respective entity —
 - (a) directors and chief executive officer of a company;
 - (b) the partners of a firm or partnership;
 - (c) the members of an association of persons;
 - (d) trustees of a trust; or
 - (e) members of any unincorporated body.

8 Assessment of excise tax

The excise tax payable by a licensed manufacturer in respect of the movement of excisable goods shall be assessed by multiplying the appropriate excise tax rate by the respective unit, weight or quantity of goods.

PART 3 - REFUNDS OF EXCISE TAX

9 Excise tax refund for raw materials

A licensed manufacturer who pays excise tax on imported excisable goods being raw materials for the purpose of manufacturing excisable goods may apply to the Minister for a refund of such excise tax on the movement of the manufactured excisable goods.

10 Refund of excise on re-exports

- (1) Excise tax paid on imported excisable goods may be refunded on the re-export of those imported goods or part thereof.
- (2) Applications for refunds under subsection (1) shall be made to the Minister on the prescribed form within 12 months from the date of re-exportation.
- (3) Any person who wilfully obtains any refund which is not payable commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding three years, or both.

10A⁹ Refunds in other circumstances

- (1) The Chief Commissioner may upon application approve refunds where he is satisfied that –
 - (a) the goods on which the excise tax has been paid have deteriorated or been damaged or destroyed while subject to the control of Customs;
 - (b) excise tax has been overpaid by the importer; or
 - (c) the Tax Tribunal rules that a Customs decision is incorrect and that excise tax paid is refundable to the importer.
- (2) Applications shall be made within 12 months of the payment of the excise tax.

PART 4 - LICENSING

11 License requirement

A person shall not manufacture any excisable goods in the Kingdom unless the person —

- (a) is the holder of a valid license for manufacturing those excisable goods on specified premises; and
- (b) has given an acceptable Customs security to the Minister.

12 Application for license

- (1) A person shall apply to the Minister in the prescribed form for a license to produce excisable goods at specified premises.
- (2) The applicant shall —
 - (a) pay to the Minister the prescribed application fee; and
 - (b) provide all information deemed necessary by the Minister including a description of any premises or part thereof to be used as a storage area for excisable goods prior to movement.

13 Grant or refusal

- (1) The Minister may grant or refuse a licence to manufacture which shall be renewed annually, on receipt of an application for a licence and any information requested under section 12.
- (2) A licence granted under subsection (1) shall be in the prescribed form subject to —
 - (a) such terms, conditions or restrictions as the Minister considers appropriate;
 - (b) the payment by the applicant of the prescribed licence fees; and
 - (c) the payment of the Customs security.
- (3) The Minister shall refuse an application if it does not comply with the provisions of this Act.

14 Failure to obtain licence

- (1) Notwithstanding subsection (2), a person who has not been issued with a licence as required under this Part, but manufactures excisable goods, shall be liable for excise tax on all such excisable goods manufactured.
- (2) Any person who manufactures excisable goods without a license commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years or both.

15 Revocation

- (1) The Minister may at any time revoke a licence to manufacture where the licensed manufacturer does not comply with the conditions of the licence.
- (2) Where a licence is revoked under subsection (1) the following may be forfeited to the Crown —
 - (a) the Customs security; and

- (b) all excisable goods on which excise tax is payable but not yet paid, remaining in the specified premises seven days after the date of revocation.
- (3) Where a licence has expired, all excisable goods on which excise tax has not been paid, remaining on the specified premises seven days after the expiry date of the licence, shall be forfeited.

16 Crown responsibility

The Crown shall not be responsible for any loss or damage to excisable goods stored in specified premises.

17 Assistance

The licensed manufacturer shall provide to Customs officers —

- (a) all necessary assistance in performing any activity required by this Act; and
 - (b) facilities required by them at the specified premises,
- and any cost incurred shall be borne by the licensed manufacturer.

18 Records

- (1) The licensed manufacturer shall maintain complete records to properly account for all excisable goods manufactured and stored at the specified premises.
- (2) The licensed manufacturer shall make available to Customs officers on request all records of excise goods manufactured, stored or moved into or from the specified premises.

19 Licensed manufacturer's liability

The licensed manufacturer is liable for the excise tax that would have been payable on excisable goods but for which he is unable to account for.

20 Unauthorised movement

Excisable goods shall not be moved from the specified premises unless in accordance with the Customs laws.

PART 5 - EXCISE STAMPS

21 Excise stamps

- (1) The licensed manufacturer shall affix a prescribed excise stamp to imported and manufactured excisable goods as prescribed prior to their movement.
- (2) Subject to subsection (1), any manufactured excisable goods which are —
 - (a) received for sale by any person; or
 - (b) placed on sale,without the prescribed excise stamps having been so affixed, shall be liable to seizure.

22 Printing of excise stamps

The Minister may authorise the manufacture of excise stamps and no person shall manufacture or print prescribed excise stamps without such authority.

PART 6 - MISCELLANEOUS

23 Regulations

- (1) The Minister with the consent of Cabinet may make Regulations required for the administration of this Act.
- (2) Notwithstanding section 10 of the Interpretation Act¹⁰ regulations made under this Act may prescribe penalties for any offence not exceeding a fine of \$10,000 or imprisonment for three years, or both.

24 Customs duty refund

If —

- (a) at the end of the last business day before commencement of this Act a licensed manufacturer held excisable goods, being raw materials;
- (b) those raw materials —
 - (i) were for use in the production of other excisable goods; or
 - (ii) had been used in the production of other excisable goods, which were still in Customs control on the date of commencement of this Act, whether under production or on completion of production;

- (c) the raw materials were acquired not more than four months before the commencement of this Act; and
- (d) the Minister is satisfied that a licensed manufacturer has paid Customs duty on the import of those raw materials pursuant to Customs and Excise Act (CAP. 67 of 1988 Revised Edition),

then, on the movement of the excisable goods manufactured with those raw materials, that person may apply for a refund of Customs duty shown to have been paid on those raw materials.

25 Pre-existing contracts

- (1) This section applies to a person manufacturing excisable goods before the commencement of this Act.
- (2) If a licensed manufacturer has entered into a contract to supply excisable goods prior to the commencement of this Act, that person shall be entitled to recover from the purchaser all excise tax payable on the excisable goods supplied by that person pursuant to the contract, after the commencement of this Act, and such excise tax shall be recoverable notwithstanding that the contract contained no provision for the recovery of such excise tax.
- (3) Notwithstanding Part 4 of this Act, any person manufacturing excisable goods before the commencement of this Act may continue to manufacture excisable goods and shall be liable for the excise tax on such goods, but shall apply for a licence under Part 4 within one month of commencement of this Act.

ENDNOTES

¹ Act 6 of 2007

² G. 4/2008

The Customs and Excise Act Repeal Act 2007 included the following saving provision “the Customs and Excise Act (CAP. 67) shall continue to apply for all purposes whatsoever in respect of any goods imported into or manufactured in the Kingdom or any license or appointment subject to the Customs and Excise Act before the date of commencement of the Customs and Excise Management Act 2007, Customs Act 2007 and the Excise Tax Act 2007.”

³ Change from Chief Commissioner to Minister by Act No 5 2012

⁴ Amended by Act 4 of 2010

⁵ Amended by Act 4 of 2010

⁶ Cap. 26.04

⁷ Cap. 26.03

⁸ Amended by Act 42 of 2010

⁹ New section inserted by Act 9 of 2012

¹⁰ Cap. 01.11