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EXCISE TAX ACT, 2009

(Act 25 of 2009)

I assent



A handwritten signature in black ink, appearing to read "Michel".

J. A. Michel
President

30th December, 2009

AN ACT to provide for the imposition and collection of excise tax and to provide for related matters.

ENACTED by the President and the National Assembly.

PART I - PRELIMINARY PROVISIONS

1.(1) This Act may be cited as the Excise Tax Act, 2009 and shall come into operation on 1st January 2010.

Short title and
commencement

(2) This Act shall apply to excisable goods imported into, or manufactured in, Seychelles only if –

- (a) the goods are imported or manufactured on or after the commencement date;
- (b) the goods were imported before the commencement date but are entered for use in Seychelles on or after the commencement date; or
- (c) the goods were manufactured before the commencement date but are removed from taxation control on or after the commencement date.

Interpretation

2.(1) In this Act, unless the context requires otherwise –

“associate” has the same meaning as in section 3 of the Business Tax Act 2009;

“bonded warehouse” means a warehouse of a registered person approved as a bonded warehouse under section 13;

“C.I.F. value” has the meaning given under the Customs legislation;

“comptroller” means the Comptroller of Trades Tax Imports appointed under the Customs legislation;

“commencement date” means the date specified in section 1(1);

“customs legislation” means the Trades Tax Act and any successor legislation dealing with customs;

“entered” has the meaning under the Customs legislation;

“excisable goods” means the goods specified in column 2 in Schedule 1, other than exempt goods;

“excisable value”, in relation to excisable goods, has the meaning determined under section 5;

“excise tax” means the excise tax imposed under this Act, and includes any amount required to be brought to account under this Act as excise tax or otherwise deemed under this Act to be excise tax;

“exempt goods” means goods specified in Schedule 2;

“export” has the meaning given under the Customs legislation;

“import” has the meaning given under the Customs legislation;

“importer” has the meaning given under the Customs legislation;

“manufacture” means to manufacture or produce goods and includes the application of any process in the course of manufacturing or producing the goods;

“Minister” means the Minister responsible for Finance;

“registered manufacturer” means a person to whom a Certificate of Registration has been issued under section 11;

“Seychelles” means the Republic of Seychelles as defined in the Constitution;

“taxation control” means –

- (a) the control of imported goods under the Customs legislation; and
- (b) the control of manufactured goods under this Act;

“Trades Tax Act” means the Trades Tax Act, 1992 (Act 10 of 1992);

“warehouse” means any place for the manufacture, deposit, keeping, and securing of excisable goods.

(2) The classifications and descriptions of goods specified in Schedule 1 shall be interpreted in accordance with the rules for interpretation set out in the General Rules for the Interpretation of the Customs Tariff based on the Harmonised Commodity Description and Coding System.

Fair market
value

3.(1) The fair market value of excisable goods at the time of removal from taxation control shall be the consideration (excluding excise tax) that a manufacturer of the goods could reasonably expect to fetch for the goods in an open market sale, at wholesale, freely transacted between persons who are not associates.

(2) If the fair market value of excisable goods cannot be determined under subsection (1), the fair market value may be determined using any method approved by the Comptroller for calculating an objective approximation of the consideration (excluding excise tax) that a manufacturer of the goods could reasonably expect to fetch for the goods in an open market sale, at wholesale, freely transacted between persons who are not associates.

PART II - IMPOSITION OF EXCISE TAX

4.(1) Subject to the provisions of this Act, excise tax shall be imposed, at the rates specified in column 4 of Schedule 1, on –

Imposition
of excise
tax

- (a) excisable goods removed from taxation control by a registered manufacturer; or
- (b) excisable goods imported into Seychelles.

(2) An export of excisable goods shall be subject to a zero rate of excise tax provided the goods have been entered for export under the Customs legislation.

(3) The excise tax payable under subsection (1)(a) shall be payable by the registered manufacturer to the Comptroller at the time and in the manner specified in section 15.

(4) The excise tax payable under subsection (1)(b) shall be payable by the importer at the time and in the manner specified in section 17.

5.(1) If column 3 of Schedule 1 specifies a rate of excise tax payable by reference to the excisable value of excisable goods, the excisable value shall be –

Excisable
value and
quantity

- (a) if the goods are imported, the sum of –
 - (i) the C.I.F value of the goods, whether or not trades tax is payable on the goods;
 - (ii) the amount of any trades tax imposed on the goods under the Customs legislation; and

- (iii) the amount of any other tax (other than excise tax), duty, fees, or other charges payable upon the entry of the goods into Seychelles; or
 - (b) if the goods are manufactured in Seychelles, the fair market value of the goods at the time of removal of the goods from taxation control.
- (2) If—
- (a) column 3 of Schedule 1 specifies a rate of excise tax payable by reference to a quantity measured by volume, weight or number;
 - (b) the goods are imported or removed from taxation control in a container intended for sale with, or of a kind usually sold with, the goods in a sale by retail; and
 - (c) the container is marked, labelled, or commonly sold as containing, or commonly reputed to contain, a specific quantity of such goods,

the container is deemed to contain not less than that specific quantity for the purpose of determining the excise tax payable in respect of the goods.

6.(1) A registered manufacturer who cannot account to the satisfaction of the Comptroller for any quantity of excisable goods manufactured or warehoused by the manufacturer shall be deemed to have removed those goods from taxation control in the month in which the discrepancy arose.

(2) A registered manufacturer shall be required to notify the Comptroller of any discrepancies between the manufacturer's actual and recorded inventory as soon as the manufacturer becomes aware of the discrepancy.

7.(1) The Comptroller may, upon application by an importer, grant permission to the importer for the temporary import of excisable goods without payment of excise tax if –

Temporary
importation

- (a) the goods are imported for temporary use or for a temporary purpose only, or the goods are the bona fide property, and are for the exclusive use of a person temporarily in Seychelles;
- (b) the goods will be exported within three months from the grant of the permission for their temporary import; and
- (c) the importer deposits with the Comptroller as security an amount equal to the excise tax payable on the goods.

(2) Notwithstanding subsection (1), the Comptroller may, if considered appropriate, allow such further period as the Comptroller determines for the export of goods referred to in subsection (1).

(3) If goods for which the Comptroller has granted permission under subsection (1) are exported within the time specified in subsection (1)(b), or within a further period allowed under subsection (2), the Comptroller shall refund the security deposit referred to in subsection (1)(c) to the importer.

(4) If goods imported in circumstances to which subsection (1) applies are not exported within the period specified in subsection (1)(b), or within such further period allowed under subsection (2), the Comptroller shall bring to account as excise tax the security deposit placed with the Comptroller under subsection (1) (c).

Relief
for raw
materials

8.(1) If the Comptroller is satisfied, on the basis of a certificate issued by a registered manufacturer in the prescribed form, that excisable goods, whether imported into, or manufactured in, Seychelles, are intended to be used by the registered manufacturer as raw materials for the manufacture of other excisable goods, the Comptroller may, in respect of such goods, instead of requiring payment of excise tax in full, require that the manufacturer deposit such security as the Comptroller thinks fit.

(2) If the Comptroller is satisfied that goods to which subsection (1) applied were used as raw materials for the manufacture, in Seychelles, of other excisable goods, the Comptroller may apply any security deposit given under subsection (1) against any excise tax that becomes payable on the removal of those other excisable goods from taxation control.

(3) If the Comptroller is satisfied that goods to which subsection (1) applied were applied to a purpose other than as raw materials for the manufacture of other excisable goods, the Comptroller shall apply any security deposit given under subsection (1) as payment of the excise tax liability that would have arisen were it not for the Comptroller's decision under subsection (1).

Relief for
damaged or
destroyed
goods

9. No excise tax shall be payable by a registered manufacturer in respect of excisable goods –

(a) destroyed by fire or other natural cause prior to removal from taxation control; or

- (b) that have deteriorated or have been damaged in storage in the manufacturer's warehouse and are securely disposed of in a manner approved by the Comptroller.

PART III - REGISTRATION OF MANUFACTURERS AND APPROVAL OF BONDED WAREHOUSES

10. A person shall not manufacture excisable goods in Seychelles unless –

Prohibition on
unauthorised
manufacture
of excisable
goods

- (a) the person is registered under this Act for the purpose of manufacturing those goods; and
- (b) the excisable goods are manufactured in a bonded warehouse.

11.(1) A person wishing to carry on the business of manufacturer of excisable goods shall apply to the Comptroller, in the prescribed form and manner, for registration as a manufacturer of excisable goods.

Registration

(2) The Comptroller shall register a person who has applied for registration under subsection (1) if –

- (a) the Comptroller is satisfied that the person will carry on the business of manufacturing excisable goods and will comply with the obligations imposed under the Act on registered manufacturers; and
- (b) the applicant has entered into a general bond, to continue in force while the manufacturer remains a registered manufacturer, with security in an amount determined by the Comptroller.

(3) The Comptroller may impose such terms, conditions, or restrictions as the Comptroller considers appropriate in relation to the registration of a person as a registered manufacturer for the purposes of this Act.

(4) The Comptroller shall issue each registered manufacturer with a Certificate of Registration in the approved form.

(5) Registration shall take effect from the date set out in the manufacturer's Certificate of Registration.

(6) A registered manufacturer shall notify the Comptroller, in writing, of –

- (a) any change in the name, address, place of business, constitution, or nature of the principal activity or activities carried on by the manufacturer, including a significant change in the nature or quantity of excisable goods manufactured; and
- (b) any period in which the manufacturer closes operations on a temporary basis.

(7) A notification under subsection (6) shall be given to the Comptroller no later than 21 days after the event requiring notification occurs.

Cancellation
of Registration

12.(1) A registered manufacturer who ceases to manufacture excisable goods shall, within seven days of the date of such cessation, notify the Comptroller in writing of that fact, stating –

- (a) the date on which the manufacturer ceased to manufacture excisable goods;

- (b) the date on which the manufacturer expects that no excisable goods will remain in the manufacturer's bonded warehouse; and
- (c) whether or not the manufacturer intends to recommence manufacturing excisable goods within twelve months from the date provided under paragraph (b).

(2) If the Comptroller receives a notification under subsection (1), the Comptroller shall, by notice in writing, cancel the registration of the manufacturer with effect from the first day on which there are no longer excisable goods in the manufacturer's warehouse unless the Comptroller has reasonable grounds to believe that the manufacturer will recommence manufacturing excisable goods at any time within twelve months from the date provided under subsection (1)(b).

(3) Any obligation or liability under this Act of a registered manufacturer in respect of anything done or omitted to be done by that manufacturer while the manufacturer is a registered manufacturer, including the obligation to pay excise tax and to file excise tax returns, shall not be affected by the cancellation of the manufacturer's registration.

(4) A registered manufacturer who sells a business of manufacturing excisable goods as a going concern shall notify the Comptroller, in writing, of that fact at least three days before the earliest of the dates on which –

- (a) the sale is completed;
- (b) the purchaser acquires any legal interest in the assets to be acquired; and

- (c) the assets of the going concern are transferred.

Approval of
bonded
warehouse

13.(1) A registered manufacturer shall apply to the Comptroller, in the prescribed form and manner, for the approval of a warehouse as a bonded warehouse for the purposes of this Act.

(2) The Comptroller shall approve a registered manufacturer's warehouse as a bonded warehouse for the purpose of manufacturing and selling excisable goods only if the warehouse meets the standards set out in the regulations.

(3) A registered manufacturer shall manufacture and sell excisable goods only from a warehouse approved under this section as a bonded warehouse.

(4) Excisable goods manufactured in a bonded warehouse shall be subject to taxation control under the Customs legislation as if they were imported goods.

(5) The provisions of the Customs legislation dealing with warehouses shall apply to a warehouse approved as a bonded warehouse under this section.

PART IV - EXCISE TAX PROCEDURES

Excise tax
returns

14.(1) A registered manufacturer shall file an excise tax return, in the prescribed form and manner, for each calendar month within 15 days after the end of the month, whether or not any excise tax is due for that month.

(2) A registered manufacturer shall keep such records as may be prescribed.

15.(1) A registered manufacturer that files an excise tax return for a calendar month is treated as having made a self-assessment of the excise tax payable by the person for the month as specified in the return.

Self-
assessment
of excise
tax

(2) The excise tax return filed by a registered manufacturer is treated as a notice of the self-assessment served by the Comptroller on the person on the date that the return was filed.

16.(1) The excise tax payable by a registered manufacturer under section 4(1)(a) for a calendar month shall be payable by the due date for furnishing the manufacturer's excise tax return for that month.

Payment
of excise
tax by
registered
manufacturers

(2) A registered manufacturer may not remove excisable goods from taxation control if the removal would result in the amount of excise tax payable by the manufacturer but not yet paid (including excise tax that has not been paid because the time allowed for payment under subsection (1) has not expired) exceeding the amount of security given under section 11(2)(a), unless –

- (a) the Comptroller, on application in writing by the manufacturer, gives permission for the removal;
- (b) the manufacturer, with the agreement of the Comptroller, increases the amount of the security given with the general bond prior to removal; or
- (c) in any other case, the manufacturer pays the excise tax payable on the goods before the excisable goods are removed from taxation control.

(3) If a registered manufacturer pays excise tax to the Comptroller under subsection (2)(c), the manufacturer shall include the excise tax in the manufacturer's excise tax return for the month following the making of the payment, but is entitled to a credit for the amount paid.

Payment
of excise
tax by
importers

17.(1) The excise tax payable on the import of excisable goods into Seychelles shall be payable by the importer to the Comptroller before the goods are entered for use in Seychelles.

(2) For the purposes of subsection (1) –

- (a) a passenger who imports baggage for which no entry is required shall be treated as having entered the baggage for use within Seychelles at the time the baggage is delivered to the passenger in Seychelles; or
- (b) the addressee of goods imported by post for which no entry is required shall be treated as having entered the goods for use within Seychelles at the time the goods are delivered to the addressee.

(3) For the purpose of collecting and enforcing the payment of excise tax on the importation of goods into Seychelles, the Customs legislation shall apply as if the excise tax were customs duty.

Temporary
closure of
business
premises

18.(1) If a registered manufacturer regularly fails –

- (a) to file an excise tax return; or
- (b) to pay excise tax,

on or before the due date, the Comptroller may notify the manufacturer, in writing, of the intention to close down part or the whole of the manufacturer's business unless the manufacturer files the return or pays the excise tax due (plus any interest or additional tax), as the case may be, within a period of seven days of the date of the notice.

(2) If a registered manufacturer fails to comply with a notice under subsection (1), the Comptroller may issue an order to close down part or the whole of the business of that person for a period not exceeding fourteen days.

(3) The Comptroller may, at any time, enter any premises described in an order issued under subsection (2) for the purposes of executing the order and may require a police officer to be present while the order is being executed.

(4) The Comptroller shall affix, in a conspicuous place on the front of the premises of the business or part of the business which has been closed under an order issued under subsection (2), a notice in the following words "CLOSED TEMPORARILY FOR NOT COMPLYING WITH EXCISE TAX OBLIGATIONS".

(5) If the excise tax return is delivered or excise tax due is paid, as the case may be, within the period of closure, the Comptroller shall immediately arrange for the removal of the notice referred to in subsection (4).

19. If the Comptroller has reasonable grounds to believe that a registered manufacturer is not complying with this Act, the Comptroller may seal an item of manufacturing plant and the plant may be operated only when the Comptroller removes the seal.

Customs
seal on
manufacturing
plant

20.(1) If a person who has imported excisable goods subsequently exports those goods or puts them on board a ship or aircraft for use as stores and the goods are in compliance with the conditions for payment of a drawback of duties under the Customs legislation, that person is entitled to a refund equal to the excise tax paid on the goods if the person applies for a refund within 4 years after the goods were exported or put on board the ship or aircraft.

Refunds

(2) An application for a refund of excise tax in circumstances to which subsection (1) applies shall be filed with the Comptroller in the prescribed form and manner.

(3) If the Comptroller is satisfied that a person who has made an application under subsection (1) is entitled to a refund, the Comptroller shall pay the refund in accordance with the Revenue Administration Act.

Offences

21.(1) A person who contravenes section 10 by manufacturing excisable goods in Seychelles without being registered is guilty of an offence and on conviction is liable for a fine of not less than SR 100,000 but not more than SR 1,000,000 or to imprisonment for not more than 12 months, or to both a fine and imprisonment.

(2) A registered manufacturer who –

- (a) contravenes sections 10 and 13 by manufacturing excisable goods in premises that are not a bonded warehouse;
- (b) fails to notify the Comptroller as required by section 6(2), 11(6), 12(1), or 12(4);
- (c) contravenes section 16(2);
- (d) enters premises the subject of an order under section 18 without the permission of the Comptroller; or
- (e) operates an item of manufacturing plant the subject of an order under section 19 without the permission of the Comptroller,

is guilty of an offence and on conviction is liable for a fine of not less than SR 250,000 or to imprisonment for not more than 60 months, or to both a fine and imprisonment.

PART V – FINAL PROVISIONS

22.(1) The Minister may make regulations –

- (a) prescribing any matter required to be prescribed for the purposes of this Act; and
- (b) for the proper and efficient administration of this Act.

(2) Without limiting the general effect of subsection (1), regulations made under that subsection may –

- (a) contain provisions of a saving or transitional nature consequent upon the making of this Act; or
- (b) prescribe penalties for the contravention of the regulations.

(3) If regulations made under this section are of a transitional nature and are made within six months after the commencement date, the regulations may provide that they take effect from the date on which the Act comes into force.

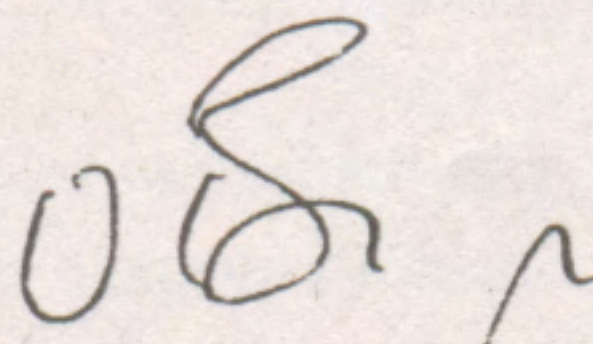
(4) The Minister may by regulations amend the Schedules to this Act.

Regulations
and
amendment
of Schedules

SCHEDULE 1
EXCISABLE GOODS AND RATES OF EXCISE TAX

SCHEDULE 2
EXEMPT GOODS

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 16th December, 2009.



Veronique Bresson
Clerk to the National Assembly