



Tonga

# CUSTOMS ACT

**Chapter 26.03**

**2016 Revised Edition**





## CUSTOMS ACT

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# CUSTOMS ACT

## AN ACT RELATING TO THE COLLECTION OF CUSTOMS DUTIES<sup>1</sup>

Commencement [1 February 2008]<sup>2</sup>

### PART 1 - PRELIMINARY

#### 1 Short title

This Act may be cited as the Customs Act.

#### 2 Interpretation

In this Act, unless the context otherwise requires —

“**agent**” includes, in relation to the master or owner of a ship or aircraft, a person who —

- (a) is a representative of the master or owner;
- (b) notifies the Minister in writing that he intends to act as an agent; or
- (c) signs any document required or permitted by Customs to be signed by an agent, or on whose behalf such a document is signed by a person authorised by such agent;

“**aircraft**” includes balloons, kites, gliders, aeroplanes, seaplanes, helicopters and hovercrafts;

“**airport**” means a place or geographical area for the landing and departure of aircraft appointed by the Minister under the Customs and Excise Management Act;<sup>3</sup>

“**container**” includes any bundle, package, box, cask, shipping container or other receptacle;

“**crew**” includes every person employed or engaged in any capacity on board any aircraft or ship, but does not include the master;

“**Customs**” means the Customs and Trade Division of the Ministry of Revenue and Customs;<sup>4</sup>

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

“**Customs duty**” is an amount payable to the Government in accordance with this Act;

“**Customs laws**” means the Customs and Excise Management Act, Excise Tax Act<sup>5</sup> and this Act;

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

“**declaration**” means the provision of all information to Customs whether verbal, in a document, or in electronic form by a person relating to particular imported or exported goods;

“**document**” —

- (a) means documents in any form, whether or not signed or initialled or otherwise authenticated by their maker; and
- (b) includes —
  - (i) all forms of written material;
  - (ii) all information recorded, transmitted, or stored by means of tape recorders, computers, or other devices, and all material subsequently derived from information so recorded or stored;
  - (iii) labels, marking and other forms of writing that identify any thing of which they form part or to which they are attached by any means;
  - (iv) books, maps, plans, graphs and drawings; or
  - (v) photographs, films, negatives, tapes and other devices in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced;

“**drawback**” means the return of Customs duty paid on imported goods where those goods are subsequently exported from the Kingdom;

“**dutiable goods**” means goods subject to Customs duty;

“**entered**”, in relation to goods imported, warehoused, exported or put on board an aircraft or ship as stores, means —

- (a) the acceptance and signature by the Customs officer of a declaration signed by the importer or exporter on the prescribed form in the prescribed manner, together with the payment to the Customs officer by the importer or exporter of all rents and charges due to the Crown in respect of the goods; and
- (b) in the case of dutiable goods (except on the entry of warehoused goods), the payment by the importer or exporter to the Customs officer of the full Customs duties due thereon, or else, where authorised, the deposit of a sum of money or the giving of Customs security for the duties as provided by law, or, in the case of goods for which security by bond is required on the exportation, putting on board a ship or aircraft of goods as stores or the removal of such goods, the giving of such security;

“**entry**”, in relation to the importation or exportation of goods, means the provision of the prescribed declaration to Customs;

“**export**” means the transportation of goods from the Kingdom;

“**exporter**” means the person exporting goods from the Kingdom;

“**export goods**” means goods which are to be or have been exported from the Kingdom;

“**goods**” includes documents, tangible personal property, commercial cargo, currency, livestock, motor vehicles, aircraft and ship’s stores, accompanied and unaccompanied baggage, aircraft and ships, including self-transported ships and aircraft;

“**import**” means to bring goods or cause goods to be brought into the Kingdom;

“**importer**,” in relation to imported goods, means the consignee, owner, agent, buyer or any person holding a beneficial interest in those goods when they arrive in the Kingdom and includes any person making a declaration under any Customs laws concerning those goods;

“**master**” means the person in charge or in command of an aircraft or ship but does not include a person appointed to pilot ships into or out of any port;

“**Minister**” means the Minister responsible for revenue and customs;<sup>6</sup>

“**owner**” in respect of goods includes any person other than a Customs officer being or holding himself out to be the owner, importer, exporter, consignee, agent, buyer or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods;

“**passenger**” means any person other than a crew member who is or has been on any aircraft or ship involved in an international voyage;

“**ship**” includes a vessel of any description and includes sailing boats, motorboats, or pleasure craft;

“**ship’s stores**” means goods which are intended for consumption on an aircraft or ship and includes fuel, spare parts, and other articles or equipment, whether or not for immediate use;

“**time of importation**” means the time that an aircraft or ship carrying imported goods with the intention to discharge cargo, arrives at the first airport or port within the Kingdom;

“**time of exportation**” means the time that an aircraft or ship leaves the territory of the Kingdom with the intention of making an international voyage; and

“**warehoused goods**” means goods which are under Customs control and are placed in a Customs warehouse or Crown’s warehouse under the Customs and Excise Management Act.

## **PART 2 - IMPOSITION OF CUSTOMS DUTIES**

### **3 Customs duties<sup>7</sup>**

- (1) The Minister shall, with the approval of Cabinet by Order —
  - (a) impose, revoke, suspend, reduce or increase Customs duty on imported or exported goods; and
  - (b) provide for exemptions from Customs duty.<sup>8</sup>
- (2) The Order under subsection (1) —
  - (a) shall comply with clause 19 of the Constitution; and
  - (b) may make different provision for different circumstances.

### **4 Imposition of Customs duties**

- (1) All importers shall pay Customs duty prior to the release of goods from Customs control.
- (2) Exporters shall pay export duty prior to export.

### **5 Debt to the Crown**

Customs duties 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 ***Repealed by Act 9 of 2012***<sup>9</sup>

## 7 **Payment of Customs duty**

Customs duty shall be paid on —

- (a) imported goods, when they are entered;
- (b) exported goods, when they are accepted by Customs for export; and
- (c) goods not accounted for to the satisfaction of the Minister in accordance with the Customs laws.

## 8 **Full duty payable**

Subject to this Act and any individual conditions imposed, if a person approved to —

- (a) pay reduced Customs duty on goods; or
- (b) exempted from customs duty on goods,

by the Minister does not comply with the conditions imposed under this Act, he shall pay the full amount of customs duty owed so reduced or exempted.

# PART 3 - CUSTOMS VALUATION OF IMPORTED GOODS

## 9 **Interpretation**

- (1) In this Part, unless the context requires otherwise —

“**buying commission**” in relation to imported goods, means an amount paid or payable by or on behalf of the purchaser of the goods directly or indirectly to a person who, as an agent of the purchaser, represented the purchaser in the purchase of the imported goods;

“**computed value**” in relation to imported goods, has the meaning given by section 16;

“**customs value of imported goods**” means the value of goods for the purposes of levying *ad valorem* duties of customs on imported goods;

“**deductive value**” in relation to imported goods, has the same meaning given by section 15;

“**exporter’s goods**” in relation to the computed value of imported goods means goods —

- (a) whose owner has, before the payment of duty in respect of the goods (whether before or after any determination of a value of the goods) requested the Minister to take their customs value to be their computed value in preference to their deductive value; and
- (b) whose computed value can be determined by the Minister;

“**family**” means, in relation to an individual, the husband or wife of the individual, a relative of the individual, and a relative of the individual’s husband or wife, and “**relative**” means mother, father, child, brother, sister, or other ancestor or lineal descendant and for the purposes of this definition, a legally or customarily adopted child is treated as a natural child by or as a sibling to the individual;

“**finance costs**” includes any costs or charges related to the purchase of finance for imported goods;

“**foreign inland freight**” means the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of goods to the place in the country of export from which the goods were shipped to the Kingdom;

“**foreign inland insurance**” means the cost of any insurance relating to foreign inland freight;

“**goods of the same class or kind**” means goods which fall within a group or range of goods produced by a particular industry or industry sector and includes identical or similar goods.

“**identical goods**”, in relation to imported goods, means goods that the Minister is satisfied —

- (a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods;
- (b) were produced in the same country as the imported goods; and
- (c) were produced by or on behalf of the producer of the imported goods,

but does not include goods in relation to which —

- (i) art work, design work, development, or engineering work undertaken or substantially undertaken in the Kingdom; or
- (ii) models, plans, or sketches prepared or substantially prepared in the Kingdom,

was or were supplied, directly or indirectly, by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production;

“**overseas freight**”, in relation to imported goods, means amounts (but not an amount of overseas insurance) paid or payable in respect of the transportation of the goods from their place of export to the Kingdom;

“**overseas insurance**”, in relation to imported goods, means amounts paid or payable in respect of insurance of the goods from their place of export to the Kingdom;

“**place of export**”, in relation to imported goods, means —

- (a) the place where the goods were posted for export to the Kingdom;
- (b) the place in the country of export to the Kingdom that the goods were packed into a shipping container;
- (c) in the case of goods, not being goods referred to in (a) or (b), that were exported from a country by air or sea — the place where the goods were placed on board a ship or aircraft for export to the Kingdom; or
- (d) in any other case, a place determined by the Minister;

“**price**” in respect of imported goods, means the price of all amounts actually paid or payable, directly or indirectly, for the goods by or on behalf of the purchaser to or for the benefit of the vendor;

“**production materials**” in relation to imported goods, means —

- (a) materials, components or other goods that form part of the production process and are part of the imported goods; and
- (b) materials consumed in the production process of the imported goods;

“**royalty**” in relation to imported goods includes an amount paid or credited (however described and whether the payment or credit is periodical or not) being consideration for —

- (a) any rights associated with making, using, licensing or selling an invention;
- (b) the use of or the right to use a design, trademark, confidential information, or any machinery, implements, apparatus or other equipment;
- (c) the supply of scientific, technical, industrial, commercial or other knowledge or information; or
- (d) any forbearance in respect of any matter described in paragraphs (a)-(c);

“**similar goods**”, in relation to imported goods, means goods that the Minister is satisfied —

- (a) closely resemble the imported goods in respect of their component materials and characteristics;
- (b) are functionally and commercially interchangeable with the imported goods;
- (c) were produced in the same country as the imported goods; and
- (d) were produced by or on behalf of the same producer as the imported goods,

but does not include goods in relation to which —

- (i) art work, design work, development, or engineering work undertaken or substantially undertaken in the Kingdom; or
- (ii) models, plans, or sketches prepared or substantially prepared in the Kingdom,

was or were supplied, directly or indirectly, by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production;

“**trader**” in relation to goods, means a vendor, exporter, purchaser or importer of the goods;

“**vendor**” in relation to imported goods, means the vendor under the import transaction that caused the goods to be imported; and

“**use**”, in relation to imported goods, includes the lease, hire, temporary use, or rental of the goods.

- (2) For the purposes of this Part, two persons are related persons if —
  - (a) both being natural persons —
    - (i) they are connected by family; or
    - (ii) one of them is an officer or director of a company controlled, directly or indirectly, by the other;
  - (b) both being companies —
    - (i) that are controlled, directly or indirectly, by a third person (whether or not a company);
    - (ii) that together control, directly or indirectly, a third company; or
    - (iii) where the same person (whether or not a company) is in a position to cast, or control the casting of 5 per cent or more of the maximum number of votes that might be cast at a general meeting of each company;
  - (c) one person being a company is, directly or indirectly, controlled by the other person (whether or not a company);
  - (d) one person being a natural person, is an employee, officer, or director of the other person; or
  - (e) they are members of the same partnership.
- (3) For the purposes of this Part, an event occurs about the same time as another event if the first event occurs —
  - (a) on the same day as the other event; or
  - (b) within the 45 days immediately before, or the 45 days immediately after the day on which the other event occurs.

## 10 Customs value

- (1) For the purposes of any Act under which any import duty is imposed on imported goods by reference to their value, the value of the goods for customs purposes is the customs value determined in accordance with this Part.
- (2) Subject to this Part, the customs value of imported goods is the transaction value of the goods as determined under section 12.
- (3) If the Minister cannot determine the transaction value of imported goods or the transaction value cannot be used as a result of section 11, the customs value of the goods is determined in accordance with the following methods, applied in the order set out below —
  - (a) the transaction value of identical goods as determined under section 13;
  - (b) the transaction value of similar goods as determined under section 14;
  - (c) the deductive value of the goods determined under section 15; or
  - (d) the computed value of the goods determined under section 16.
- (4) An importer may apply, in writing, to the Minister for the order of consideration of the methods in sections 15 and 16 to be reversed.
- (5) An application under subsection (4) shall be made before the Minister commences to determine the customs value of the goods.
- (6) If the customs value of imported goods cannot be determined using the valuation methods described in subsection (3), the customs value shall be determined under section 17.
- (7) Where the Minister is not satisfied that there is sufficient reliable information available to him, being information of a kind that will enable him to determine the customs value of imported goods in accordance with a provision of this Part, the Minister may determine, in writing, that he is not satisfied and the Minister shall thereupon be taken to be unable to determine that first-mentioned value in which case, the importer shall produce further relevant documentation in order that the Minister is able to make such a determination of customs value.

## 11 Transaction value of imported goods not to apply

The transaction value of imported goods will not determine the customs value if —

- (a) there is a restriction on the disposition or use of the goods by the purchaser, other than a restriction —
  - (i) imposed by Tongan law;
  - (ii) limiting the geographical area in which the goods may be resold;  
or
  - (iii) that does not substantially affect the value of the goods;

- (b) the sale or price of the imported goods is subject to a condition or consideration for which a value cannot be determined;
- (c) part of the proceeds of any disposal, use or resale of the goods by the purchaser accrues, directly or indirectly, to the vendor, unless an appropriate adjustment can be made in terms of section 12(2)(g); or
- (d) the vendor and purchaser are related persons at the time the goods were sold for export unless —
  - (i) the Minister is satisfied that the relationship did not influence the price paid or payable for the goods; or
  - (ii) the importer satisfies the Minister that the transaction value of the goods closely approximates the transaction value, deductive value, or computed value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in the Kingdom at or about the same time as the goods to be valued.

## **12 Transaction value of imported goods**

- (1) The transaction value of imported goods is the price actually paid or payable for the goods at the time they are sold for export to the Kingdom adjusted by the amounts specified in subsection (2) and (3).
- (2) For the purposes of determining the transaction value of imported goods, the price actually paid or payable for the goods is increased by the sum of the following amounts paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods to the extent that the amount is not already included in the price —
  - (a) commission and brokerage, other than buying commission;
  - (b) packing costs, including any labour and material costs;
  - (c) the cost of containers that are treated as being one with the goods;
  - (d) royalties or licence fees payable as a condition of sale, other than for the right to reproduce the goods in the Kingdom;
  - (e) the cost of foreign inland freight and foreign inland insurance;
  - (f) the cost of overseas freight and overseas insurance;
  - (g) the whole or any part of the proceeds of any subsequent use, resale or disposal of the goods by or on behalf of the purchaser that accrues to the vendor;
  - (h) finance cost to purchase the finance for imported goods; and
  - (i) the value of any of the following goods and services supplied, directly or indirectly, by the purchaser free of charge or for a reduced consideration for use in connection with the production and sale for export of the imported goods, apportioned to the goods in a reasonable manner and in accordance with generally accepted accounting principles —

- (i) any materials, components, parts, and other goods incorporated in the production of the imported goods;
  - (ii) any tools, dies, moulds, and other goods utilised in the production of the imported goods;
  - (iii) any materials consumed in the production of the imported goods; and
  - (iv) any engineering work, development work, art work, or design work, plans or sketches undertaken outside the Kingdom and necessary for the production of the goods.
- (3) For the purposes of determining the transaction value of imported goods, the price actually paid or payable for the imported goods is decreased by the sum of the following amounts to the extent only that these amounts are separately identified in the price paid or payable for the goods —
- (a) any expenditure incurred for the construction, erection, assembling or maintenance of, or technical assistance provided in respect of the goods after importation;
  - (b) the cost of transportation (including loading, unloading, handling and other expenses associated with transportation) of the goods after importation, and the cost of any insurance relating to such transportation;
  - (c) any duties or taxes paid or payable by reason of the importation or sale of the goods in the Kingdom; and
  - (d) financing costs paid or payable to the supplier in connection with the purchase of the imported goods.

### 13 Transaction value of identical goods

- (1) If the customs value of imported goods cannot be determined under section 12, the customs value is the transaction value of identical goods in a sale of those goods for export to the Kingdom if —
- (a) the transaction value of the identical goods is the customs value of those goods; and
  - (b) the identical goods were exported to the Kingdom on or about the same time as the imported goods and were sold to a purchaser —
    - (i) at the same or substantially the same trade level as the imported goods; and
    - (ii) in the same quantities as the imported goods.
- (2) If subsection (1) does not apply solely because identical goods were not sold under the conditions specified in paragraph (1)(b), the customs value of the imported goods may be determined by reference to the transaction value of identical goods in a sale of those goods for export to the Kingdom if the identical goods were sold under any of the following conditions —

- (a) to a purchaser at the same or substantially the same trade level, but in different quantities from the imported goods;
  - (b) to a purchaser at a trade level different from the purchaser of the imported goods, but in the same or substantially the same quantities as the imported goods; or
  - (c) to a purchaser at a trade level different from the purchaser of the imported goods and in different quantities from the imported goods.
- (3) The customs value of imported goods under this section shall be the transaction value of identical goods referred to in subsections (1) or (2) adjusted to take account of —
- (a) commercially significant differences in the foreign inland freight and foreign inland insurance costs of the identical goods and those costs for the imported goods attributable to differences in distance and modes of transport; and
  - (b) if subsection (2) applies, differences in the trade levels, quantities, or both, as the case may be.
- (4) If, in relation to imported goods, there are two or more transaction values for identical goods that meet the requirements of subsections (1) or (2), as the case may be, the customs value of the imported goods shall be determined on the basis of the lowest of such transaction value.
- (5) Goods shall not be regarded as identical goods unless they were produced in the same country as the goods being valued.
- (6) Goods produced by a different person shall be taken into account only when there are no identical goods produced by the same person as the goods being valued.

#### **14 Transaction value of similar goods**

- (1) If the customs value of imported goods cannot be determined under sections 12 or 13, the customs value shall be the transaction value of similar goods in a sale of those goods for export to the Kingdom if —
- (a) the transaction value of the similar goods is the customs value of those goods; and
  - (b) the similar goods were exported to the Kingdom on or about the same time as the imported goods and were sold to a purchaser —
    - (i) at the same or substantially the same trade level as the imported goods; and
    - (ii) in the same quantities as the imported goods.
- (2) Section 13(2) to (6) applies for the purposes of this section on the basis that the reference to “identical goods” is a reference to “similar goods”.

**15 Deductive value**

- (1) Subject to section 10, if the customs value of imported goods cannot be determined under sections 12, 13 or 14, the customs value shall be the deductive value of the goods.
- (2) If —
  - (a) the imported goods, or identical or similar goods are sold in the Kingdom at or about the time of importation of the imported goods;
  - (b) the goods were sold in the Kingdom in the same condition in which they were imported;
  - (c) the sale was made at the first trade level after importation; and
  - (d) the Minister is satisfied that the purchaser in the sale was not related to the importer and did not incur any costs referred to in section 12(2)(h) in relation to the goods sold,

the deductive value of the imported goods is the unit price of the imported goods, or identical or similar goods, as the case may be, at which the greatest number of the goods are sold, at the earlier date after importation, reduced by the following amounts determined on a per unit basis —

- (i) the amount of any commission;
  - (ii) an amount for profit and general expenses, including all costs of marketing the goods based on sales in the Kingdom of goods of the same class or kind as the goods sold;
  - (iii) the cost of transportation of the goods in the Kingdom (including loading, unloading, handling and other expenses associated with transportation) and insurance in relation to such transportation to the extent not deducted under subparagraph (ii); and
  - (iv) any amount referred to in 12(3)(c).
- (3) If —
    - (a) the imported goods, or identical or similar goods are not sold on or about the same time as the time of importation but are sold within 90 days after the time of importation; and
    - (b) subsection (2)(b) to (d) are satisfied,

the deductive value of the imported goods is determined in accordance with subsection (2) by reference to such later sale.

- (4) If —
  - (a) the imported goods, or identical or similar goods are not sold in the Kingdom at the time of importation or within 90 days after that time;
  - (b) the goods are sold in the Kingdom, after being assembled, packaged, or further processed, within 90 days after the time of importation; and
  - (c) subsection (2)(b) to (d) are satisfied,

the deductive value of the imported goods shall be determined, at the request of the importer, in accordance with subsection (2) by reference to such sale and making a reduction on a per unit basis for the value added attributable to the assembly, packaging or further processing in the Kingdom.

- (5) Subsection (4) shall not apply if the Minister has insufficient information to determine the amount of the value added attributable to the assembly, packaging or further processing in the Kingdom.

## **16 Computed value**

- (1) If the customs value of imported goods cannot be determined under sections 12, 13, 14 or 15, the customs value shall be the computed value of the goods.
- (2) The computed value of the imported goods, being the exporter's goods, shall be the sum of the following amounts —
- (a) the cost or value of materials used in producing the goods;
  - (b) the cost of manufacture or processing to produce the goods;
  - (c) any costs referred to in section 12(2)(c), (f) and (g);
  - (d) the value of any goods or services referred to in section 12(2)(h); and
  - (e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation and are the exporter's goods.

## **17 Fall back value**

If the customs value of imported goods cannot be determined under sections 12, 13, 14, 15 or 16, the fall back method shall be used and is such value as the Minister determines, having regard to the preceding methods of valuation in this Part in the order in which those methods would ordinarily be considered and of such other matters the Minister considers relevant but not including the following —

- (a) the selling price in the Kingdom of goods produced in the Kingdom;
- (b) any system that provides for the acceptance for valuation purposes of the higher of two alternative values;
- (c) the selling price of goods on the domestic market of the country of exportation of the imported goods;
- (d) the cost of production, other than computed value of identical or similar goods in accordance with section 14;
- (e) the price of the goods for export to a country other than the Kingdom;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

**18 Importer advised of method of determination**

The Minister shall, upon written request, advise the importer, by notice in writing, of the method used to determine the customs value of imported goods.

**19 Value of goods to be declared in Tongan currency**

- (1) The customs value shall be expressed in a customs declaration in the currency of the Kingdom.
- (2) Where the conversion of currency is necessary for the determination of the customs value the rate of exchange to be used is the rate published for the relevant country of export by the National Reserve Bank of Tonga as last notified before the goods were entered.

**20 Review of customs value determinations**

- (1)
  - (a) At any time after the making of a determination or other decision by a Customs officer under this Part in relation to imported goods, the Minister may review the determination or other decision and may —
    - (i) affirm the determination or other decision;
    - (ii) vary the determination or other decision; or
    - (iii) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods in accordance with this Part;
  - (b) Where, by reason that the Minister, under paragraph (a), has varied or revoked a determination or other decision of a proper officer, —
    - (i) the amount of duty that was levied is less than the amount that should have been levied; or
    - (ii) the amount of duty that was refunded is greater than the amount that should have been refunded,a letter of demand will be issued by the Minister for the payment of the amount of duty so short levied or so erroneously refunded, as the case may be.
- (2) Where a Customs value has been reviewed and a re-determination made, the re-determined Customs value shall be taken to be the correct Customs value.

**21 False information**

Any person who knowingly gives to a Customs officer false information relating to the Customs value or the tariff classification of imported goods 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.

## PART 4 - REFUNDS, REMISSIONS AND DRAWBACKS

### 22 Refunds, remissions and drawbacks<sup>10</sup>

- (1) The Minister may upon application in the prescribed form approve refunds, remissions or drawbacks as prescribed by Regulations.
- (2) Applications shall be —
  - (a) made within 12 months of the payment of the Customs duty; and
  - (b) subject to the payment of the prescribed application fee.
- (3) *repealed*
- (4) *repealed*
- (5) Where the Minister has approved a refund or drawback, he may direct that the amounts of the refund or drawback be used to offset any existing Customs liability of the applicant.

### 23 Drawback payable

No drawback shall be payable until the Minister is satisfied that the goods have been exported from the Kingdom.

### 24 Unauthorised drawback, refund or remission

Any person who wilfully obtains any drawback, refund, or remission 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 3 years, or both.

## PART 5 - MISCELLANEOUS

### 25 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 Act<sup>11</sup> regulations made under this Act may prescribe penalties for any offence not exceeding a fine of \$10,000 or imprisonment for 3 years, or both.

**26 Savings**

Any reference in any law in the Kingdom to the Customs and Excise Act (CAP. 67, 1988 Revised Edition) shall be deemed to be a reference, so far as the context applies, to this Act.

**ENDNOTES**<sup>1</sup> **Act 5 of 2007**

<b>Amendments</b>	<b>Commencement</b>
Act 6 of 2010	21 May 2010
Act 42 of 2010	24 November 2010
Act 5 of 2012	30 July 2012
Act 9 of 2012	21 September 2012
Act 11 of 2013	1 July 2013

<sup>2</sup> 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.”

<sup>3</sup> Cap. 26.04<sup>4</sup> Amended by Act 6 of 2010 and 11 of 2013<sup>5</sup> Cap. 26.07<sup>6</sup> Inserted by Act 5 of 2012 and Amended by Act 11 of 2013<sup>7</sup> Amended by Act 42 of 2010<sup>8</sup> Orders made under this section are omitted<sup>9</sup> Repealed by Act 9 of 2012<sup>10</sup> Amended by Act 9 of 2012<sup>11</sup> Cap. 01.11