



Tonga

**CUSTOMS AND EXCISE MANAGEMENT
(AMENDMENT) ACT 2012**

Act No. 8 of 2012



CUSTOMS AND EXCISE MANAGEMENT (AMENDMENT) ACT 2012

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AN ACT TO AMEND THE CUSTOMS AND EXCISE MANAGEMENT ACT 2007

I assent,
GEORGE TUPOU VI,
17th September 2012.

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short Title

- (1) This Act may be cited as the Customs and Excise Management (Amendment) Act 2012.
- (2) The Customs and Excise Management Act 2007, as amended, is in this Act referred to as the Principal Act.

2 Section 2 amended - Interpretation

The Principal Act is amended by deleting the following definitions in section 2 and replacing them with the following –

“**customs area**” means any place appointed under section 124(1)(a);

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

3 Section 7 replaced – Unauthorised entry – approved place

Section 7 of the Principal Act is deleted and replaced with the following;

“No person shall enter any place containing customs controlled goods without Customs authorisation.”.

4 Section 11(1) amended – Advance notice for aircraft

Section 11(1) of the Principal Act is amended by inserting the words “at least” before the words “one hour”.

5 Section 12(1) amended – Advance notice for ships

Section 12(1) of the Principal Act is amended:

- (a) in the English version only, by inserting the words “at least” before the figure “24”; and
- (b) in the Tongan version only, by inserting the words “‘o ‘ikai toe si’i hifo” before the words “‘i ha houa ‘e 24”.

6 Section 14 replaced – Embarkation and disembarkation

Section 14 of the Principal Act is amended by replacing it with the following –

- “(1) No person shall disembark from or embark onto an aircraft or ship arriving or departing on an international voyage into or from the Kingdom at any place other than a place appointed under section 124(1)(a).
- (2) Any person disembarking from or embarking onto an aircraft or ship arriving in or departing on an international voyage into or from the Kingdom at any place other than a place appointed under section 124(1)(a), 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.”.

7 Section 15 amended – Loading and unloading cargo

Section 15 of the Principal Act is amended by:

- (a) deleting subsection (1)(a) and replacing it with –

- “(a) at ports, airports, wharves or sufferance wharves appointed or approved under section 124; and”; and
- (b) deleting subsection (2)(b) and replacing it with –
 - “(b) at ports, airports, wharves or sufferance wharves appointed or approved under section 124; and”.

8 Section 17(4) amended – Unloaded cargo

Section 17(4) of the Principal Act is amended:

- (a) in the English version only, by deleting the words “Customs area” as they appear second and replacing them with “approved place”; and
- (b) in the Tongan version only, by deleting the words “‘elia Tute” as they appear first and replacing them with “‘feitu’u kuo fakangofua”.

9 Section 22 amended – Passenger’s departure declaration

Section 22 of the Principal Act is amended –

- (a) in subsection (1) by inserting after the word “shall” the words “as required”; and
- (b) in subsection (2):
 - (i) in the English version only, by deleting the word “A” and replacing it with “Subject to subsection (1), a”.
 - (ii) in the Tongan version only, by deleting the words “Kuo pau” and replacing them with “Fakatatau ki he kupusi’i (1), kuo pau”.

10 Section 23(2) amended – Customs clearance

Section 23(2) of the Principal Act is amended by deleting the word “or” after paragraph (b) and replacing the full stop after paragraph (c) with “; or” and inserting a new paragraph (d) as follows –

“(d) any other law states that clearance should be refused.”.

11 Section 25 amended – Export cargo manifest or loading list

Section 25 of the Principal Act is amended by inserting the word “and” after paragraph (a), deleting paragraph (b) and renumbering the current paragraph “(c)” as “(b)”.

12 New section 30A inserted – Recovery from importer

Section 30 of the Principal Act is amended by inserting after sub-section (4) the following new section 30A –

“30A Recovery from importer

- (1) For the purposes of this section –
“**associate**” in relation to an importer, means any other person who acts or may act in accordance with the directions, requests, suggestions or wishes of the importer, and such person shall be an associate of the importer.
- (2) Where customs duty, excise tax or any penalty imposed under Part 12 Division 1 of this Act remains payable by an importer in respect of a particular importation, the importer or his associate shall pay the amount outstanding prior to the Customs release of that importer’s or his associate’s subsequent importations.

13 Section 60 amended – Unauthorised movement

Section 60 of the Principal Act is amended by –

- (a) inserting the word and comma “, customs area” after the word “warehouse”; and
- (b) deleting the word “moved” and replacing it with “delivered, altered or interfered with”.

14 Section 82 amended – False or misleading statement or declaration

Section 82 of the Principal Act is amended by –

- (a) deleting the words “amount of duty and excise tax short paid” and replacing them with “value of the goods to which the false or misleading statement or declaration relates to or \$1,000 whichever is the greater amount”; and
- (b) renumbering the current section as subsection (1) and inserting the following new subsections –
 - “(2) For the purposes of this section, “misleading in a material particular” means that the statement or declaration contains an error or omission in relation to any of the following matters –
 - (a) the identity of the overseas supplier;
 - (b) the identity of the importer;
 - (c) the identity of the person making the entry or the declaration;
 - (d) the identification of the importing/exporting craft or its voyage number;

- (e) the Bill of Lading, Air Waybill, or container identification details;
 - (f) the supplier's invoice number and date, invoice details and invoice amount;
 - (g) any permit number or code;
 - (h) the tariff item in which the goods are classified;
 - (i) description of goods;
 - (j) the statistical unit and quantity of the goods;
 - (k) the country of currency in which the goods are traded;
 - (l) the country of origin of the goods;
 - (m) the value for duty expressed in the currency in which the goods are traded;
 - (n) the value for duty expressed in Tongan pa'anga and exchange rate used to convert the foreign currency into Tongan currency;
 - (o) the country for which the goods have been exported;
 - (p) the sum of the cost insurance and freight (CIF) value;
 - (q) the working slip showing how the CIF value or duty has been calculated;
 - (r) details of terms of trade;
 - (s) details of commissions and discounts (including any special discounts);
 - (t) details of any payments made but not invoiced, any additional payments to be made but not invoiced, any additional payments to be made or remittances of proceeds that will be made; or
 - (u) details of duties, taxes, fees and charges payable.
- (3) Notwithstanding anything in this Act, if it is proven to the satisfaction of the Commissioner that the importer or exporter had provided the correct information to the customs broker but that the declaration was false or misleading in a material particular, the penalty shall be payable by the customs broker."

15 Section 84 amended – Dishonoured cheques

Section 84 of the Principal Act is amended by deleting the "\$1,000" and replacing it with "100% of the amount stated on the cheque or \$1,000 whichever is less".

16 Section 85(1) amended – Failure to account

Section 85(1) of the Principal Act is amended by deleting the words "Any person" and replacing them with "An owner".

17 Section 88 amended - Miscellaneous

Section 88 of the Principal Act is amended by inserting the following new subsection (4) –

“(4) The Chief Commissioner may, upon application or of his own motion, remit, in whole or in part any penalty payable by a person.”.

18 Section 93 amended – False or misleading statement

Section 93 of the Principal Act is amended by renumbering the current section as section 93A and inserting the following new section 93B –

“93B Any person who knowingly makes a declaration that is false or misleading regarding the country of origin of any imported goods shall be liable upon conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 10 years or both.”.

19 Section 99 amended – Failure to account

Section 99 of the Principal Act is amended:

- (a) in the English version only, by inserting after the word “control” the words “or who fails to retain or maintain documents in accordance with this Act”; and
- (b) in the Tongan version only, by inserting after the word “kasitomu” the words “pe ‘oku ‘ikai ke ne ma’u mai pe tauhi ‘a e ngaahi tohi ngaue ‘o fakatatau ki he Lao ni.”.

20 Section 107 amended – Forfeiture of aircraft and ships

Section 107 of the Principal Act is amended by deleting the word “Chief” wherever it appears.

21 Section 108 amended – Goods forfeited

Section 108 of the Principal Act is amended by –

- (a) deleting the word “Chief”.
- (b) deleting the “or” after paragraph (l) and deleting the fullstop after paragraph (m) and replacing it with “; or”; and
- (c) inserting the following new paragraph (n) -
“(n) goods in contravention of any other Act.”.

22 Section 117 amended – Smuggling prosecutions

Section 117 of the Principal Act is amended by inserting the words “or counterfeit” after the word “smuggling”.

23 Section 122 amended - Deeming

Section 122 is amended by renumbering the current section as sub-section (1) and inserting the following new sub-section-

“(2) Notwithstanding subsection (1), where a false or misleading declaration has been made to Customs and it is proven to the Chief Commissioner that the fault was not that of the owner but by the customs broker, the declaration shall be treated as made by the customs broker.”.

24 Section 125 amended - Confidentiality

Section 125 is amended by inserting the following new sub-section (3) –

“(3) Nothing in this section shall prevent the disclosure of any document or information to –

- (a) the Tax Tribunal or Supreme Court in relation to proceedings under this Act;
- (b) any person in the service of Government where such disclosure is necessary for the performance of the person’s official duties;
- (c) the Auditor General or any person authorised by the Auditor General where such disclosure is necessary for the performance of official duties;
- (d) the Governor of the National Reserve Bank of Tonga or any person authorised by the Governor where such disclosure is necessary for the performance of official duties;
- (e) international customs agencies with which Customs has an agreement to the extent permitted under that agreement.”.

25 Section 128 amended – Payable to the Crown

Section 128 of the Principal Act is amended by inserting the following new section 128A and 128B –

“128A Payment by instalments

- (1) An importer may apply in writing to the Chief Commissioner to pay any customs duty, excise tax or penalty due in instalments.
- (2) The Chief Commissioner shall serve the importer with a written notice of his decision.

- (3) Where an importer is permitted to pay the customs duty, excise tax or penalty by instalments and the importer defaults in payment of any instalment, the whole balance of the amount owing shall become immediately payable.
- (4) Notwithstanding the above, any amount of customs duty, excise tax or penalty due shall be paid in full before subsequent importations of the importer is released from Customs.

128B Conditions of exemption

An importer who is granted an exemption from customs duty or excise tax under the Customs laws shall be liable for the customs duty or excise tax payable at the date of importation if the conditions for which the goods were exempted are not observed, or if the goods are at any time within 5 years of the date of importation used for any other purpose or sold or transferred to any other person.”.

Passed by the Legislative Assembly this 30th day of August 2012.