EXCISE DUTY BILL, 2026

A Bill

For

An Act to repeal the Customs and Excise Act, 1982[1], to make provision for excise control of all locally manufactured and excisable goods for consumption, or leaving Lesotho or South African Customs Union; provide for the levying of excise duties; facilitate the implementation of other legislation applicable to such goods; and to provide for connected matters.

ENACTED by the Parliament of Lesotho.

Short title and commencement

1. This Act may be cited as the Excise Duty Act, 2026 and shall come into operation on the date to be published by the Minister by notice in the Gazette.

PART I- PRELIMINARY

Interpretation

2. In this Act, unless the context otherwise requires-

"assessment" means the determination of an amount of excise duty which is undeclared, under-declared or unpaid issued by the Commissioner General to the person or persons who is or are liable to pay the excise duty;

"Commissioner General" has the same meaning as assigned to it by section 2 of Revenue Services Lesotho Act, 2022[2];

"display" means the keeping of samples of packaged excisable goods by the Commissioner General for brand reference purposes;

"excise duty" means a duty of excise levied on the goods liable to excise duty by virtue of Schedule 1 Part 2 of the Customs and Excise Tariff as set out in the Act relating to Customs;

"excise duty point" means the time when the excise duty on excisable goods becomes payable to the Commissioner General. The excise duty point is the earlier of the time when-

(a) excisable goods are imported or produced in Lesotho;

(b) there is a contravention of any of the provisions of this Act which pertains to producing, holding or moving goods under duty suspension;

(c) excise duty on the goods cease to be suspended;

(d) excisable goods are consumed; and

(e) excisable goods are identified as being in the market place with and no excise duty is paid on the goods;

"excisable goods" means the goods listed in Schedule 1 Part 2 of the Customs and Excise Tariff as set out in the Act relating to Customs as goods liable to excise duty;

"excise control" means the excise control in terms of this Act;

"excise duty suspension" means the deferral of an excise duty payment due to the Commissioner General;

"excise stamp" means a physical or digital marking issued by the Commissioner General which is designed to be affixed to retail containers of any type of excisable goods, or create an embossed image on the packaging;

"excise warehouse" means premises licensed by the Commissioner General where excisable goods listed on the excise warehouse license may be produced and stored under excise duty suspension;

"export" in relation to goods, means transporting, taking, sending or removing goods out of the SACU;

"flowmeter" means an instrument for measuring the rate of flow of a fluid, especially through a pipe;

"forfeiture" means the transfer of the title to the goods and equipment which is already seized by the Commissioner General;

"licensed excise trader" means a trader who deals in excisable goods, but who is not a licensed producer;

"licensed producer" means a person who is licensed by the Commissioner General to produce excisable goods under excise duty suspension in Lesotho;

"seal" means a strip or fastener used for locking vehicles or excise warehouses containing excisable goods;

"seizure" in relation to goods, means to take physical possession of the goods without divesting a person of ownership of the goods;

"stakeholders" means representatives of the Revenue Services Lesotho (RSL), licensed producers and licensed excise traders in Lesotho;

"surety" means any type of financial guarantee, financial security or bond where a financial institution guarantees to pay any amount of excise duty not paid by the principal; and

"Public International Organisations" has the same meaning as assigned to it by section 3 of the VAT Act 2001[3].

Application of this Act

3. This Act applies to all excisable goods that are subject to excise control.

PART II- POWERS AND DUTIES OF COMMISSIONER GENERAL AND EXCISE OFFICERS

Delegation of duties and powers of Commissioner General

4. The Commissioner General may, in writing, delegate his powers to the excise officers.

General powers and duties of the Commissioner General

5. The Commissioner General has the power to –

(1) implement provisions of this Act; and

(2) advise the Minister in the development and implementation of excise duty policies and connected matters.

Commissioner General to hold consultations with stakeholders

6. The Commissioner General shall hold regular consultations with stakeholders on excise duty and connected matters.

Commissioner General to give directions

7. The Commissioner General shall –

(a) take such steps as he may consider fit to control and regulate the manufacture, use, storage, removal and sale of excise goods; and

(b) issue written directions to an excise trader, licensed producer or to a person who is, under this Act or any other legislation, authorised to deal in excisable goods or to use excisable goods in the manufacture of non-excisable goods.

Control measures on the premises or containers

8. The Commissioner General may, for the purpose of exercising control over excisable goods –

(a) place an excise warehouse under lock;

(b) affix seals or marks on an excise warehouse or on any excisable goods;

(c) require, where applicable, a licensed producer to –

(i) equip his excise warehouse with a flowmeter, an apparatus or equipment to record the flow, or the number of containers of excisable goods;

(ii) install a closed –circuit television (CCTV) system in his excise warehouse at such places as the Commissioner General may direct; or

(iii) give, to the Commissioner General, online access to the CCTV system;

(d) require an excise trader or a licensed producer to affix or cause to affix excise stamps on excise goods as may be specified by the Commissioner General in such form, manner and conditions as may be prescribed by regulations;

(e) require an excise trader or a licensed producer to put markings as an alternative to excise stamps on such prescribed excisable goods and in such form and manner and on such conditions as the Commissioner General may determine; and

(f) require an excise trader or a licensed producer to remit excise duty due on the goods-

(i) where goods are destroyed under the Commissioner General`s control and supervision;

(ii) where the Commissioner General is satisfied that the excisable goods are accidentally destroyed while they are –

(aa) in the excise warehouse;

(bb) transported under Commissioner General's excise control from one excise warehouse to another; or

(cc) exported under Commissioner General's control.

Power to require information

9. (1) The Commissioner General shall request an excise trader or a licensed producer or his representative to furnish him with such information as he may determine for purposes of verification and collection of excise duty.

(2) Where an excise trader or a licensed producer fails to declare excise duty for Commissioner General to verify, the Commissioner General shall, make his

own assessment and request the licensed producer to pay the excise duty due to the Commissioner General.

Power to examine records

10. The Commissioner General may, for the purpose of ascertaining the excise duty payable on any goods, request an excise trader or a licensed producer to produce for –

(a) examination, at such time and place as he may specify, any records or documents which he considers necessary; and

(b) retain for such period as he considers necessary, any records or documents referred to in paragraph (a).

Power to examine goods, apparatus or equipment

11. (1) The Commissioner General may, for the purpose of ascertaining the excise duty payable on any excisable goods, request an excise trader or a licensed producer to produce for examination–

(a) such goods at such time and place as he may specify;

(b) any apparatus, equipment, flowmeter or CCTV system in an excise warehouse; or

(c) the recordings of the CCTV system in respect of any period, subject to a time frame prescribed in the regulations.

(2) The licensed producer or an excise trader shall bear all costs and risks relating to transportation of the goods to the place of examination and the measuring, weighing, counting, unpacking and repacking and opening and closing of the packages.

Right of access to excise warehouse

12. Where the Commissioner General reasonably suspects the commission of an offence under this Act, he shall, at any time and without warrant –

(a) enter an excise warehouse;

(b) enter an unlicensed excise warehouse; or

(c) use force where access is denied.

Search warrant

13. (1) The Commissioner General may apply for a search warrant to the Magistrate for purposes of enforcing provisions of this Act to premises outside excise controlled areas.

(2) Where the Commissioner General obtains a search warrant issued pursuant to subsection (1), he may–

(a) enter–

(i) any area, premises or facility which is not under excise control and any other business area, premises or facility for purpose of enforcing provisions of this Act; or

(ii) aircraft, train, railway carriage or vehicle; and

(b) search-

(i) a business area, premises or facility; or

(ii) aircraft, train, railway carriage or vehicle.

Power to request assistance

14. The Commissioner General may, in executing his duties and powers under this Act or any other revenue Acts, request the assistance of any police officer or any other relevant official.

Power to stop and search any vehicle

15. (1) The Commissioner General may, on reasonable suspicion, stop and search any vehicle for the purpose of ascertaining whether it contains any evidence of the commission of an offence under this Act.

(2) The driver of a vehicle who fails to stop or fails to permit such search whenever required by the Commissioner General, commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule** .

Powers of arrest

16. Where the Excise Officer suspects that a person has committed or is likely to commit an offence in terms of this Act, he may carry out an arrest.

Manner and effect of arrest

17. (1) Where a person being arrested submits to custody, the Excise Officer may arrest the person with or without a warrant.

(2) Where a person being arrested resists arrest, the Excise Officer may arrest the person by actually touching the body of the person, and where necessary forcibly confine the person's body.

(3) The Excise Officer when effecting the arrest pursuant to subsection (1), shall at the time of effecting the arrest–

(a) inform the arrested person of the cause of the arrest; or

(b) in the case of an arrest effected by virtue of a warrant, hand the person a copy of the warrant where the person arrested so demands.

Arrest of persons without warrant

18. The Excise Officer when carrying out an arrest pursuant to Section 16 of this Act may, without a warrant, arrest a person who -

(a) impersonates the Excise Officer;

(b) obstructs an Excise Officer in the execution of his duties under this Act;

(c) refuses to comply with a lawful instruction of the Excise Officer in performing his functions under this Act; or

(d) on reasonable grounds, suspects that he has contravened the provisions of this Act.

Arrest of persons under authority of warrant

19. (1) The Commissioner General may apply to any magistrate for a warrant authorising the arrest of a person who has contravened the provisions of this Act.

(2) A magistrate may issue a warrant in terms of subsection (1), only on written application by the Commissioner General.

(3) The application made pursuant to subsection (1) shall set out the following;

(a) the offence allegedly committed by the person;

(b) the grounds for suspicion of commission of an offence; and

(c) the offence allegedly committed within the area of jurisdiction of the magistrate.

(4) A warrant of arrest issued by a magistrate pursuant to subsection (1), shall be executed by the Commissioner General in accordance with provisions of this Act.

(5) The Commissioner General shall, within a period prescribed in the regulations, refer the person to a police station.

Power to seize goods

20. (1) The Commissioner General may seize goods within a period prescribed in the regulations, where –

(a) the goods are liable to seizure;

(b) the goods are or may be submitted as evidence in a court of law; or

(c) in any other circumstances as may be determined by the Commissioner General.

(2) Goods seized in terms of subsection (1) shall**,** following the prescribed time limits in the regulations, be –

(a) destroyed;

(b) sold by public auction;

(c) donated to charity organisations; or

(d) disposed of by any other means as the Commissioner General may determine.

(3) Where the Commissioner General reasonably suspects that any excisable goods seized under subsection (1) contain a substance which is, or which renders or is likely to render the excisable goods injurious to health**,** he may cause the goods to be destroyed.

Notice of seizure

21. (1) The Commissioner General shall, when seizing excisable goods in terms of this Act, issue a notice of seizure, in the case -

(a) of goods that are detained, to the person to whom the notice of detention was issued;

(b) of seized goods, to the person—

(i) who submitted the clearance declaration; or

(ii) in whose possession the goods were, at the time of seizure.

(c) where goods are detained at the excise warehouse, to the licensed producer or an excise trader to whom the notice of detention was issued.

(2) Subsection (1) does not apply where a person to whom the notice was issued is unknown or cannot be found.

(3) Notice of seizure issued in terms of subsection (1), shall be signed by the Commissioner General.

Termination of seizures

22. (1) The Commissioner General shall terminate the seizure of goods, where –

(a) a person whose goods are seized has applied for termination of seizure and the application is granted;

(b) the goods are seized in error; or

(c) a court of law so orders.

(2) Where the seizure of goods is terminated in terms of subsection (1), the Commissioner General shall, in writing, notify the person to whom the notice of seizure was issued.

Termination of seizure on application by the owner of goods

23. (1) A person whose goods are seized in terms of section 21, may apply to the Commissioner General for termination of the seizure.

(2) The Commissioner General may, after considering the application made in terms of subsection (1), approve the application subject to such conditions as he may impose.

(3) Where the Commissioner General approves the application pursuant to subsection (2), the applicant shall pay any-

(a) outstanding excise duty, interest on the excise duty and an administrative penalty that may be payable on or in respect of the excisable goods; and

(b) expenses incurred by the Commissioner General in connection with the seizure, and initial detention of the goods.

(4) The Commissioner General may, after considering the application made in terms of subsection (2), refuse the application.

(5) Where an application is refused in terms of subsection (4), the Commissioner General shall notify the applicant, in writing, of his decision and reasons to refuse the application.

Court proceedings

24. (1) Notwithstanding section 23 (1), the person who is issued with a notice of seizure by the Commissioner General may, within the time limits prescribed in the regulations, institute proceedings in the courts of law.

(2) Where a person who is issued with a notice of seizure does not institute proceedings against the seizure, and –

(a) the excisable goods are not the subject matter of any criminal proceedings, the Commissioner General shall cause the seized goods to be disposed of in terms of section 20 (2); or

(b) the goods are the subject matter of criminal proceedings, and are subject to wasting or other forms of loss in value or the cost of storage or maintenance of the goods is likely to exceed its value, the goods may be sold by the Commissioner General in accordance with section 20 (2).

Surety for seized goods

25. (1) Where excisable goods are seized pursuant to section 20 and an action is instituted in the court of law against the Commissioner General, the court may order the release of the goods upon payment of surety demanded by the Commissioner General.

(2) The surety provided pursuant to subsection (1) shall be an amount equivalent to the value of excisable goods inclusive of any excise duty payable.

Forfeiture

26. (1) Where a person is convicted of an offence under this Act, the court shall order the forfeiture of any excisable goods, raw materials and equipment used in the production of excisable goods.

(2) Subject to subsection (1), the court may, upon the conviction of any person, order the forfeiture of any excisable goods, apparatus, material, vehicle or other article seized under section 20 be produced to the court.

Offences under Part II

27. (1) Where the excise trader or a licensed producer fails to comply with provisions under this Part, he shall on conviction, be liable**, to an applicable fine and imprisonment as prescribed in Schedule .**

(2) An Excise Officer who –

(a) makes any collusive seizure or delivers or makes any agreement to deliver or not to seize any excisable goods or any other goods liable to seizure under this Act; or

(b) directly or indirectly accepts any payment or reward, whether pecuniary or otherwise, from any person on account of any act relating to the exercise of his duties under this Act,

commits an offence and is liable, **, to an applicable fine and imprisonment as prescribed in Schedule .**

(3) A person who makes any collusive agreement with an Excise Officer to induce him in any way to do or to neglect or not to perform his duties under this Act, commits an offence and is liable, **, to an applicable fine and imprisonment as prescribed in Schedule .**

(4) A person who interferes with an arrest, a search or a seizure made under this Act commits an offence and is liable, **, to an applicable fine and imprisonment as prescribed in Schedule .**

(5) A person who –

(a) makes or subscribes or produces or causes to be made, subscribed or produced any declaration, certificate or other instrument required for the purposes of this Act which is incorrect or false in any material particular;

(b) refuses or fails to produce to an officer or to a police officer a permit or a written authorisation issued by the Commissioner General under this Act or a document required to be kept under section 60;

(c) fails to pay excise duty or any part of the duty;

(d) unlawfully obtains a drawback of an excise duty;

(e) misleads an officer or a police officer in any way likely to affect him in the exercise of his duties under this Act;

(f) fails to comply with a direction or requirement issued or made by the Commissioner General;

(g) removes or damages a notice affixed by the Commissioner General or who causes the notice to be removed or damaged; or

(h) otherwise contravenes or fails to comply with any other provision of this Act,

commits an offence and is liable, **, to an applicable fine and imprisonment as prescribed in Schedule .**

(6) a person who fails to affix excise stamps on excisable goods in terms of section 8 (4) is liable, **, to an applicable fine and imprisonment as prescribed in Schedule .**

PART III: LIABILITY TO EXCISE DUTY

Charge to excise duty

28. (1) The Commissioner General shall charge an excise duty on goods listed in Schedule 1 Part 2 of the Customs and Excise Tariff as set out in an Act relating to Customs

(2) The rate of excise duty charged shall be the rate in force at the time the excise duty becomes due.

(3) Excisable goods become liable to excise duty in Lesotho when the excisable goods-

(a) enter Lesotho from a Southern African Customs Union (SACU) country where no evidence that any excise duty is paid in the SACU country;

(b) are imported into Lesotho from a country outside SACU; and

(c) are produced in Lesotho.

Excise duty point

29. (1) The Commissioner General shall charge an excise duty at the earlier of the following, the time when the excisable goods -

(a) are produced;

(b) are imported from a country outside of SACU;

(c) enter Lesotho from a SACU country but there is no evidence of payment of excisable goods in the SACU country of production;

(d) are found outside excise warehouse but no excise duty is paid on the goods; or

(e) on which no excise duty is paid are found in an unlicensed excise warehouse.

(2) The Commissioner General shall charge excise duty when excisable goods are produced in or released from an excise warehouse.

(3) An excise duty charged pursuant to subsection (1) shall be charged at the time when:

(a) goods are consumed in an excise warehouse;

(b) stock discrepancy is identified at an excise warehouse and the licensed producer cannot explain how the discrepancy occurred;

(c) for goods found in Lesotho, with no excise duty payment at the time when they are identified; or

(d) the goods are found with no evidence of export or receipt by a properly approved exempt user.

Person liable to pay excise duty in Lesotho

30. (1) The Commissioner General shall charge an excise duty to a person who is liable to pay the excise duty under this Act.

(2) The following persons shall be liable to pay excise duty:

(a) the person in possession of goods at the time of importation;

(b) the person in possession of goods at the unlicensed excise warehouse;

(c) the licensed producer from whose excise warehouse the goods are removed; or

(d) a person who is involved in the release of excisable goods without payment of excise duty.

Determination of excise duty

31. (1) Where a person is licensed as a licensed producer by the Commissioner General to operate an excise warehouse, the Commissioner General shall charge excise duty on all excisable goods warehoused.

(2) The licensed producer of excisable goods shall-

(a) account for all excise duty on excisable products on each day of each month on a form to be determined by the Commissioner General;

(b) submit a declaration to the Commissioner General in line with the accounting period determined by regulations;

(c) pay any excise duty due to the Commissioner General on submission of the declaration and within the timelines as determined in the regulations; and

(d) not remove excisable goods from the excise warehouse without the excise duty having been accounted for.

Declaration of excise duty

32. A person who imports excisable goods, shall declare such goods and pay excise duties and taxes due to the Commissioner General on clearance of the goods for customs purposes.

Accounting Period

33. (1) The excise duty due on goods removed from an excise warehouse in each calendar month shall be declared on the declaration form prescribed in the regulation.

(2) The excise duty due shall be paid by the 20th day of the month following the accounting period, following the calendar month in which the goods were released from the excise warehouse.

Calculation of excise duty

34. (1) When excisable goods reach an excise duty point, the licensed producer shall calculate excise duty payable on excisable goods.

(2) Excise duty calculated pursuant to subsection (1), shall be-

(a) computed by reference to the taxable base of the goods at the rate corresponding to the goods as specified in Schedule 1 Part 2A or 2B to the Customs and Excise Tariff as set out in the Act relating to Customs; and

(b) payable to the Commissioner General at the time specified in section 33 of this Act.

(3) The goods described in Schedule 1 Part 1 to the Customs and Excise Tariff as set out in the Act relating to Customs shall, be rebated on fulfillment of any conditions laid down under that Part.

(4) Notwithstanding subsection (3), goods which do not fulfil any conditions laid down under terms of rebate shall be subjected to payment of excise duty.

(5) Where there is no evidence of proper use of rebated goods, the excise duty due on the goods shall be paid.

(6) Where goods described in Schedule 1 Part 1 to the Customs and Excise Tariff as set out in the Act relating to Customs are imported by a Public International Organisation, the Commissioner General shall grant the Public International Organisation a rebate from payment of any excise duty.

(7) Where the excise duty rate is specified as an *ad valorem* rate, the price used to calculate the excise duty due will be the price at which the goods are sold on removal from the excise warehouse in Lesotho.

(8) The price used to calculate excise duty shall be an arm's-length-price.

(9) Where the sale from the excise warehouse is to an affiliated company, International Transfer Pricing rules shall be used when establishing the reasonable price to be used to calculate the excise duty.

(10) Where the price used to calculate an excise duty is found by the Commissioner General to be less than a reasonable arm's-length-price, the Commissioner General shall assess the under declared excise duty.

(11) Where the excise duty is calculated by reference to a specific method of taxation for -

(a) alcohol, the labelled quantity and alcohol strength;

(b) tobacco products, the labelled quantity of tobacco products in a container; and

(c) any other excisable goods, the labelled quantity shown in the relevant weight or volume denominations as specified in the Customs and Excise Tariff,

shall be used.

(12) The Commissioner General may take samples of the packaged excisable goods to determine alcohol strength.

(13) Where the results of the test indicate that the alcohol strength or quantity of excisable goods is higher than that declared on a label, the Commissioner General shall request the licensed producer to pay the excise duty due on the higher quantity.

(14) Where the licensed producer fails to pay any excise duty due on the higher quantity, the Commissioner General shall issue the licensed producer with an assessment for payment of the excise duty.

Issue of an Assessment

35. (1) The Commissioner General shall issue to licensed producer or person dealing with excisable goods, a notice of assessment when any excise duty has been due to be paid but has not been paid to the Commissioner General.

(2) The Commissioner General shall issue to the excise warehouse keeper or any person dealing with excisable goods, a notice of assessment stating:

(a) the amount of excise duty underpaid;

(b) a penalty underpaid; and

(c) interest on the amount underpaid at the rate specified in the regulations , per month or part of the month from the date of the validated bill of entry to the date of payment.

(3) The Commissioner General may, in addition to the assessment, impose penalties.

(4) A notice of assessment issued in terms of sub section (1) shall be made within a period specified in the regulations.

(5) The amount assessed shall be paid to the Commissioner General within a period prescribed in the regulations.

Objection in relation to assessment

36. (1) Where a licensed producer or any other person dealing with excisable goods is dissatisfied with an assessment issued by the Commissioner General under this Act, in relation to-

(a) payment of excise duty;

(b) under declared excise duty on excisable goods;

(c) under payment of excise duty due;

(d) lost excisable goods and the licensed producer cannot provide a reason for the loss; or

(e) removal of goods from an excise warehouse without supervision of the Commissioner General,

he may lodge an objection to the Commissioner General within a period prescribed in the regulations.

(2) Notwithstanding the provisions of subsection (1), the licensed producer or a person dealing with excisable goods shall pay the sum demanded by the Commissioner General pending finalization of an objection raised.

(3) The Appeals Review Committee established in terms of Act relating to Customs shall consider an objection made pursuant to subsection (1) and review the decision, and may –

(a) allow or disallow it in whole or in part; and
(b) where appropriate, amend the decision to conform with its determination.

Penalty for late payment

37. (1) Where the licensed producer of excisable goods fails to pay an excise duty due on the last day of which it is payable, he shall be liable to pay to the Commissioner General, in addition to the excise duty, the penalty at a rate prescribed under the regulations.

(2) The Commissioner General may waive the whole or part of any penalty payable under subsection (1), if he is satisfied that failure to pay an excise duty within the specified period was due to causes beyond the control of the licensed producer.

Offences under Part III

38. A person who-

(a) manufactures;

(b) sells or stores; or

(c) exposes or offers for sale,

excisable goods on which no excise duty or no sufficient excise duty is paid, commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule .**

PART IV: LICENSING OF LICENSED PRODUCERS

Licensing of licensed producers

39. (1) A person who wishes to manage, operate or use excise premises or facilities under this Act, shall make an application for a license to the Commissioner General.

(2) A person who receives excisable goods for use in a process where a product which is not liable to an excise duty is produced, or the excisable goods are used in an industrial process, shall be licensed under this section.

(3) The Commissioner General may, by regulations, require a person other than a producer of the excisable goods to be licensed to carry on an excise trade.

(4) A person who contravenes this section commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule** .

Application for licensing

40. (1) A person who wishes to carry on the following businesses shall, make an application for a license to the Commissioner General:

(a) producer of excisable goods;

(b) customs broker;

(c) transporter who transports excisable goods under excise duty suspension; and

(d) stores supplier.

(2) An application made pursuant to subsection (1) shall –

(a) be on an application form as may be prescribed by regulations;

(b) contain information that may be determined by the Commissioner General;

(c) be signed by the applicant; and

(d) be accompanied by such supporting documents or information as may be determined by the Commissioner General.

Consideration and decision of application

41. (1) The Commissioner General shall, after considering an application for a license and being satisfied that the person applying is a fit and proper person, approve the application and issue the license with such terms and conditions as he may determine.

(2) Where –

(a) an application made pursuant to section 40-

(i) does not meet the requirements;

(ii) contains false or misleading information;

(iii) is accompanied by false or misleading supporting documents; or

(iv) omitted to state a fact, which is material to the consideration of the application;

(b) an applicant has not paid duties or taxes which are due;

(c) an applicant has been convicted of an offence under this Act; or

(d) an applicant has been convicted of an offence involving fraud or dishonesty,

the Commissioner General may refuse to issue a license to the applicant.

(3) The fit and proper test means that the applicant or any person dealing with excisable goods has a record of the following;

(a) sufficient evidence of commercial viability and credibility;

(b) satisfactory due diligence procedures; and

(c) extensive knowledge on excise matters.

(d) **not** previously involved in revenue non-compliance or fraud;

(e) **no** penalties for wrongdoing or other civil penalties;

(f) **no** previous revocation or refusal of approvals;

(g) **not** disqualified as a director of the company;

(h) directors or shareholders with no criminal convictions of offences involving any dishonesty or links to organized criminal activities;

(i) **no** false or misleading information;

(j) **no** persistent or negligent failures to comply with any record-keeping requirements; or

(k) **not** directors or shareholders attempted dealing with excisable goods in contravention of this Act.

(5) A person shall not be licensed under this Act, unless the person passes the "fit and proper" test.

Offences under Part IV

42. A person who –

(a) manufactures excisable goods-

(i) without a licence;

(ii) in a place other than in an excise warehouse;

(b) forges or counterfeits a license, a permit or a written authorisation issued by the Commissioner General under this Act;

(c) forges a document required to be kept under section 60;

(d) makes use of or knowingly has in his possession any such forged or counterfeit license, permit, authorisation or document;

(e) without lawful authority, imports or has in his possession a lock, seal, label or mark used, issued or approved by the Commissioner General;

(f) has in his possession, excisable goods which contain a substance which is or which renders or is likely to render the excisable goods injurious to health;

(g) except with the Commissioner General's written authorisation, has in his possession spirits of more than fifty per cent of alcohol by volume;

(h) displays or stores any excisable goods on his business premises or other premises which is not a licensed excise warehouse under this Act; or

(i) tampers or adulterates any excisable goods,

commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule .**

PART V: LICENSING OF EXCISE WAREHOUSES

Licensing of excise warehouses

43. (1) A licensed producer of excisable goods may only produce excisable goods at the premises which are licensed under this Act.

(2) A licensed excise trader shall apply for premises where excisable goods are received.

(3) Where the Commissioner General is satisfied that the premises are suitable to carry on production of excisable goods, he shall issue a license.

(4) Where a license is issued pursuant to this Part, the license shall be in conspicuous place in the licensed excise warehouse.

(5) An application for an excise warehouse license, shall be submitted to the Commissioner General at the same time as the application to become a licensed producer.

(6) The application shall be in such form and manner as prescribed in the regulations.

(7) The application shall be submitted within the time limits prescribed in the regulations, and prior to the expected commencement of production of activities.

(8) The Commissioner General shall make a decision to issue or reject the excise warehouse application within the timeframe prescribed in the regulations.

(9) A separate application shall be submitted for every premises on which excisable goods are intended to be produced.

(10) A licensed producer may perform the activities on the license at the approved excise warehouse as listed on that license, as may be approved by the Commissioner-General; or

(11) The excise duty liability on the goods shall be accounted for on removal of the goods from the excise warehouse in line with Part III.

Alteration of a license

44. Where the licensed producer is issued with the license in terms of section 43 (3), the licensed producer shall not alter-

(a) any specifications or measurements of the premises as contained in the license issued by the Commissioner General;

(b) any terms and conditions relating to excisable goods as contained in the license issued by the Commissioner General, unless authorised by the Commissioner General; or

(c) any type of excisable goods which the license allows the licensed producer to produce.

Surety of stored goods in excise warehouse

45. Where excisable goods are held and stored at the approved excise warehouse under excise duty suspension, the Commissioner General may require a licensed producer to provide surety to cover any duty or tax risks in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the licensed producer or by a person for whom the licensed producer acts as a representative.

Communication of decisions on application

46. The Commissioner General shall, where he considers the application and makes a decision on such application, notify the person, in writing, about his decision to-

(a) issue the license;

(b) reject the license; or

(c) ask for more information in relation to the decision.

Issuing of licenses

47. (1) The Commissioner General shall, where he approves the application, issue the license to the person with such terms and conditions as he may determine.

(2) A person who is issued with a license under this section shall not transfer the license to any other person.

(3) The license issued pursuant to subsection (1) shall be valid for a period of one year from the date of issue.

Rejection of an application

48. (1) Where the Commissioner General rejects an application made pursuant to Section 43-

(a) he shall provide reasons for refusing the application; and

(b) the applicant may submit, after receipt of notice of decision, a representation within the period prescribed in the regulations.

(2) Where the Commissioner General upholds the original decision to reject the application, the applicant may appeal against that decision, within the timeframe prescribed in the regulations.

Transfer of license

49. (1) Where a license is issued pursuant to section 43, the licensee shall not transfer the license to any other person, except with the approval of the Commissioner General.

(2) Where the Commissioner General approves the transfer of a license, the transferee shall meet the terms and conditions that may be issued by the Commissioner General.

(3) Where a license is transferred under subsection (2), the Commissioner General shall amend the license with respect to the licensed producer's name, or amended details in relation to the excise warehouse.

Application for renewal of license

50. (1) An excise warehouse license issued by the Commissioner General shall be valid for a period of one year and may be renewed on or before 1 January each year.

(2) A person issued with a license pursuant to section 43, shall before the license lapses, and no later than a period prescribed in the regulations, apply for the renewal of the license.

(3) The Commissioner General shall, upon approval of an application made pursuant to subsection (2), renew the license.

(4) The Commissioner General shall, where a person issued with a license pursuant to subsection (2) is not engaged in the activity for which the license is issued for a period of at least one year preceding the date of the application for the renewal of a license, refuse to renew the license.

(5) The Commissioner General may refuse to renew a license in circumstances where the licensed producer has failed to comply with its legal obligations under this Act.

(6) Where a licensed producer fails to apply for renewal of a license within a time specified by regulations, the licensed producer shall stop producing excisable goods and apply for a new license as though it was a new business.

Amendment of a license

51. (1) A license issued pursuant to section 43, shall be amended –

(a) on application by the holder of the license;

(b) by the Commissioners General, where he considers it necessary;

(c) in order to extend or limit the purposes for which the license is issued;

(d) in order to update or change any detail on the license; or

(e) in order to correct a technical or editorial error.

(2) The Commissioner General shall, before amending the license pursuant to subsection (1) -

(a) notify the licensed producer about the proposed amendment;

(b) provide reasons for the proposed amendment;

(c) give the licensed producer an opportunity to submit representations on the proposed amendment within a timeframe as prescribed in the regulations; and

(d) inform the licensed producer that he may appeal against the decision of the Commissioner General.

(3) An amendment to a license issued shall take effect on a date as may determined by the Commissioner General.

Purposes for amendment of licenses

52. The license issued pursuant to section 43, shall be amended –

(a) if it is necessary –

(i) to protect the Government from any loss of duty and tax that may occur on goods received, stored, handled or transported by a licensed producer;

(ii) for the surety of the goods; or

(iii) to ensure that this Act is complied with; or

(b) if any circumstances which are material to the initial granting of the license have changed.

Grounds for withdrawal or suspension of licenses

53. (1) The Commissioner General shall withdraw a license, where a person –

(a) acquired the license under false and misleading information;

(b) is no longer entitled to a license in terms of this Act;

(c) is sequestrated or liquidated;

(d) is no longer engaged in the activity for which the license was issued;

(e) sells, alienates or ceases to operate at any of the premises to which his license relates;

(f) fails to pay his license fees under this Act;

(g) is or becomes disqualified from holding a license; or

(h) fails to comply with any notice given by the Commissioner General under any revenue laws administered by him.

(2) The Commissioner General may suspend the license issued in terms of section 43, where the person –

(a) is in breach of the terms and conditions of his license;

(b) fails to pay to the Commissioner General on or before the date on which any duties, taxes or security are due;

(c) is in breach of a provision of this Act;

(d) is convicted of an offence under this Act;

(e) is convicted of an offence involving fraud or dishonesty;

(f) has transferred, assigned or sublet the license or is only nominally the true licensee;

(g) is no longer a fit and proper person;

(h) acted in a dishonorable, improper, fraudulent, dishonest or immoral manner, or has engaged in any violent conduct on the premises to which the license relates; or

(i) is convicted of permitting drunkenness or violent, riotous, disorderly or immoral conduct on premises to which the license relates.

(3) Where in the opinion of the Commissioner General, the excise warehouse to which the license relates-

(a) ceases to be suitable for the purposes to which the license was issued; or

(b) is conducted in such a way as to be a danger to public health, public order or public safety, the Commissioner General shall suspend such a license.

(4) The Commissioner General shall, before he suspends or withdraws a license issued in terms of section 43-

(a) notify the person, in writing, about his decision and reasons for the suspension or withdrawal of the license;

(b) request the person to submit representations within the timeframe prescribed in the regulations;

(c) inform the person that he may appeal against the decision of the Commissioner General; and

(d) give the person an opportunity to submit representations on the proposed suspension or withdrawal within the timeframe prescribed in regulations.

(5) A person shall not use an expired, lapsed, suspended or withdrawn license.

Reinstatement of a suspended license

54. (1) The Commissioner General may reinstate a suspended license where the licensee has fulfilled the terms and conditions of the suspension.

(2) Where the Commissioner General suspends a license, a refund of the license fee shall not be made or compensation paid in respect of the period of the suspension or the unexpired period of the license.

Surrender of a license

55. Where the Commissioner General revokes or cancels a license, the licensed producer shall on receipt of a notification issued in terms of section 53 (4) (a),

surrender the license to the Commissioner General within such period as may be prescribed in the regulations.

Provision of surety to cover unpaid excise duty

56. The Commissioner General may require a licensed producer to provide surety to cover any duty or tax risks in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the license producer or by a person for whom the licensed producer acts as a representative.

Commissioner General's powers following expiry, lapsing, suspension or withdrawal of licenses

57. The Commissioner General may, where the license has expired, suspended or withdrawn-

(a) take control of all or any specific goods in the custody of the person -

(i) for the recovery of duties and taxes payable on the goods; or

(ii) to ensure that this Act is complied with in relation to the goods.

(b) require the person or person in whose custody the goods are, to remove the goods to an excise duty controlled area specified by the Commissioner General;

(c) require or allow the goods to be cleared for home use or any other customs procedure; or

(d) require the person to pay any costs incurred by the Commissioner General in carrying out any action in terms of this section.

Offences under Part V

58. (1) A person who contravenes section 53 (5) commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule** .

(2) A person who-

(a) forges or counterfeits a lock, seal, label, excise stamp or mark apparatus or equipment, CCTV system used, issued or approved by the Commissioner General;

(b) makes use of, or knowingly has in his possession any such forged or counterfeit lock, seal, label, excise stamp or mark apparatus or equipment, CCTV system;

(c) without lawful authority, breaks, alters, erases or otherwise interferes with a flowmeter, lock, seal, label or mark apparatus or equipment, CCTV system used, issued or approved by the Commissioner General; or

(d) without lawful authority, alters excisable goods by the addition of any substance or by the extraction of any of the ingredients;

commits an offence and is liable, on conviction **to an applicable fine and imprisonment as prescribed in Schedule** .

PART VI: CONTROL OF EXCISE WAREHOUSE AND EXCISABLE GOODS

Records

59. (1) A licensed producer shall keep at the licensed excise warehouse, records pertaining to the receipt of goods, production, storage, losses, and removal of excisable goods as prescribed in regulations.

(2) The records as required under subsection (1) and any other records which the Commissioner General may direct the licensed producer to keep, shall be kept in an electronic format or manually in a legible and auditable manner, in an official language of Lesotho.

(3) All records kept pursuant to subsection (1) shall be kept for a minimum of five years.

Right of access to and taking samples from excisable goods

60. (1) The Commissioner General shall have a right of access to excise warehouses to take samples from excisable goods in order to determine excise duties due to him.

(2) Samples taken pursuant to subsection (1) for laboratory testing may be removed for testing without any excise duty payment.

(3) While goods are under the control of the Commissioner General, the licensed producer may, with the approval of the Commissioner General –

(a) have access to the goods;

(b) take samples of the goods, or

(c) perform any other action in relation to the goods for purposes of testing for verifying the following:

(i) the nature or characteristics of the goods;

(ii) the quality or content of the goods;

(iii) the tariff classification, customs value or origin of the goods;

(iv) evidence in a court of law; or

(v) any other matter that may be determined by the Commissioner General for the purposes of this Act.

(4) While excisable goods are imported or at the premises of the licensed producer, the Commissioner General may-

(a) have access to the goods;

(b) take samples of the goods, or

(c) perform any other action in relation to the goods for purposes of testing for verifying the following:

(i) the nature or characteristics of the goods;

(ii) the quality or content of the goods;

(iii) the tariff classification, customs value or origin of the goods;

(iv) evidence in a court of law; or

(v) any other matter that may be determined by him for the purposes of this Act

(5) Where a person submits a clearance declaration and is not satisfied with the results of tests made by the Commissioner General, he may, with the approval of the Commissioner General –

(a) have access to the goods;

(b) take samples of the goods; and

(c) perform any other action in relation to the goods.

(6) The Commissioner General may allow the licensed producer to import a limited quantity of excisable goods as samples, as prescribed in Regulations to this Act.

(7) The samples imported in terms of sub section (4), may be used for testing-

(a) the behavior of a product; and

(b) the market of the product.

(8) The samples imported pursuant to subsection (4) shall only be used for purposes for which it was intended for.

(9) The tests performed pursuant to subsections (1), (2) and (3) shall be carried out at any laboratory or any other place as may be designated by the Commissioner General.

(10) The samples taken pursuant to subsection (1), (2) and (3) may be –

(a) examined, analysed or tested;

(b) subjected to a chemical, mechanical or technological process;

(c) used for obtaining advice, including expert or technical advice on the goods; or

(d) used for any other purpose that may be determined by the Commissioner General in terms of this Act.

(11) The Commissioner General shall not clear, for home use or any other customs procedure, samples taken from excisable goods in terms of subsection (1).

(12) The Commissioner General may, under his supervision, allow access to sampling of or any other action taken in relation to excisable goods pursuant to subsection (1).

(13) For purposes of assessing excise duty, the Commissioner General shall, where samples of excisable goods are taken pursuant to subsection (1), include the samples in the quantity of goods cleared for home use or any other customs procedure.

Samples for commercial purposes

61. (1) Where samples are removed from the excise warehouse for consumption or commercial purposes, the licensed producer shall be liable to pay an excise duty.

(2) The samples removed without triggering a cost to the customer are also liable to an excise duty.

(3) Where the samples of excisable goods liable to an *ad valorem* rate of excise duty are removed, the price used to calculate the excise duty due on those free samples must be the arm's- length- price relevant for any free market sale.

Samples of imported goods

62. (1) The samples taken in terms of section 379 of the Act relating to Customs shall, if the goods are subsequently cleared for—

(a) home use, be included in the quantity cleared for home use; or

(b) a customs procedure, for tax or any purpose is regarded as cleared for home use.

(2) The samples of imported goods taken in terms of section 379 of the Act relating to Customs, already-

(a) cleared for home use, do not affect the amount of any tax paid or payable on the goods; or

(b) under a customs procedure, shall for tax purposes and any other purpose be regarded as cleared for home use.

(3) A person who cleared the goods for a customs procedure shall amend the clearance declaration to exclude the samples from the declaration.

(4) Subsections (1), (2) and (3) do not apply to samples temporarily removed and samples shall for all purposes be regarded to remain part of the excisable goods from which they were taken.

(5) Excisable goods taken pursuant to section 379 of the Act relating to Customs for sampling, shall be returned to the owner within a year after goods were taken for sampling or any other period as the Commissioner General may determine.

Display of samples of excisable goods

63. The Commissioner General may request the licensed producer of excisable goods to provide samples from the premises free of excise duty for display.

Samples of goods cleared for export

64. (1) The samples taken pursuant to section 379 of the Act relating to Customs shall, for excise duty purposes, be regarded as goods in free circulation, if the -

(a) goods are in free circulation before they are cleared for export; and

(b) samples of the goods are taken before they are exported from Lesotho.

(2) An exporter who submits clearance declaration of the goods for export shall, amend the clearance declaration to exclude the samples from the declaration.

(3) Subsection (1) does not apply to samples temporarily removed from the excisable goods.

(4) The samples taken from the goods pursuant to subsection (1), shall remain part of the excisable goods from which they were taken.

Stocktaking and excise duty unpaid

65. (1) The Commissioner General may, as he may determine, request the licensed producer to undertake stocktaking of any excisable goods.

(2) A stocktaking done under sub-section (1), shall be conducted within a period prescribed in the regulations.

(3) The Commissioner General shall be notified of the stock take occurrence within a time period specified in the regulations.

(4) Where stocktaking is done pursuant to subsection (1), and a discrepancy is identified by the Commissioner General, he shall impose an excise duty for the discrepancy identified by the issue of an assessment.

(5) Where the Commissioner General considers that having regard to –

(a) the quantity or weight of goods or materials used as input in the manufacture of excisable goods;

(b) the manner in which excisable goods are measured or weighed;

(c) the number of excise seals, if any, issued to a manufacturer; or

(d) any other circumstances,

the excise duty chargeable is not paid, the Commissioner General may claim from the manufacturer such amount of an excise duty as he may consider.

(6) Where a discrepancy is identified pursuant to subsection (4), the licensed producer shall pay the excise duty claimed within the date prescribed in the regulations.

(7) Where the licensed producer proves to the satisfaction of the Commissioner General that the excise duty unpaid was paid, the Commissioner General shall not demand payment of that excise duty.

(8) Where a dispute arises on the amount of the excise duty claimed pursuant to subsection (4), the licensed producer may, within a period prescribed in the regulations, object to the claim in a form approved by the Commissioner General.

(9) Where a licensed producer makes an objection pursuant to subsection (8), he shall specify in the form, the detailed grounds of the objection.

(10) Where it is proved to the satisfaction of the Commissioner General, that the licensed producer fails to make an objection within a specified period due to unforeseen circumstances, the Commissioner General may consider the objection.

(11) Where the Commissioner General refuses to consider an objection made pursuant to subsection (10), he shall, within the prescribed period give notice of the refusal to the licensed producer.

(12) Where the Commissioner General makes a claim pursuant to subsection (4), the licensed producer shall prove to the satisfaction of the Commissioner General that such a claim is incorrect.

Inspection of excisable goods

66. Where excisable goods are imported by a licensed producer, the Commissioner General may allow the goods under excise duty suspension to move to a licensed excise warehouse, subject to conditions imposed by the Commissioner General.

Interference with the premises and excisable goods

67. Where a licensee is issued with the license in terms of section 43, the licensee shall not amend-

(a) any specifications or measurements of the premises as contained in the license issued by the Commissioner General; or

(b) any terms and conditions relating to excisable goods as contained in the license issued by the Commissioner General, unless authorized by the Commissioner General.

Surety

68. The Commissioner General shall request the licensed producer to furnish him with a surety in such an amount as the Commissioner General may determine.

Offences under Part VI

69. (1) A person who contravenes section 53 (1) commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule** .

(2) A person who, without lawful authority –

(a) has in his custody, possession or control;

(b) keeps, allows or causes to be kept; or

(c) acquires possession of, or removes, sells, conceals or deals with any apparatus or excisable goods manufactured, removed, sold, transferred or obtained in contravention of this Act,

commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule** .

(3) A person who-

(a) fails to deliver excisable goods to its intended destination;

(b) uses excisable goods for a purpose other than an exempt purpose; or

(c) sells the goods to an unauthorized person,

commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule** .

(4) A person who fails to keep records in terms of section 59 commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule** .

PART VII: REMOVAL OF GOODS WITH NO EXCISE DUTY

Removal of excisable goods

70. (1) A licensed producer may not remove excisable goods from a licensed excise warehouse, unless an excise duty has been accounted for in line with the monthly or quarterly production records.

(2) Where excisable goods are-

(a) destroyed;

(b) destined for export outside the SACU;

(c) destined for an organisation or public international organisation that is approved to receive the goods without excise being paid;

(d) destined for a duty free shop at an airport; or

(e) any other case as may be determined by the Commissioner General in writing,

the excise duty shall be paid on production, but a claim for the excise duty so removed may be submitted as long as the claim is in the requirements of regulations.

(3) Excisable goods removed in terms of subsection (1), shall be accompanied by commercial movement documents as prescribed by regulations.

(4) The Commissioner General shall request the licensed producer to keep in his records, evidence that excisable goods were exported or received by the intended recipient.

(5) Where the licensed producer fails to produce evidence pursuant to subsection (4), the Commissioner General shall demand payment of an excise duty.

(6) A licensed producer may, without payment of excise duties, remove excisable goods.

Drawback of excise duty

71. (1) A person who intends to apply for a drawback of an excise duty paid in excess shall make an application to the Commissioner General-

(a) in a form approved by the Commissioner General;

(b) within a period; and

(c) under the conditions,

prescribed in regulations.

(2) Where the Commissioner General is satisfied that the applicant is entitled to a drawback, he shall allow the licensed producer to offset the amount of the drawback on the prescribed excise duty declaration form.

(3) Where an application for the drawback of excise duty is made and the Commissioner General is not satisfied that the applicant is entitled to a drawback, he shall give a written notice to the applicant of his decision.

(4) A drawback of excise duty which is less than the amount specified in the Schedule 5 of the Customs and Excise Tariff as set out in the Act relating to Customs shall not be made.

Excise stamps

72. (1) The Commissioner General may require all excisable goods of the description provided in the regulations to have excise stamps.

(2) Excise stamps may be in any form as specified in the regulations and on any excisable goods so specified.

General criminal and administrative penalty

73. (1) A person who contravenes a provision of this Act where no specific penalty is stipulated, commits an offence and is liable, on conviction, **to an applicable fine and imprisonment as prescribed in Schedule** .

(2) A person who fails to comply with any provision of this Act where no specific provision is stipulated as an offence commits an omission, and shall, if found by the Commissioner General, not to have complied with the provisions of this Act, is liable to pay the following-

(a) any customs duty, excise duty, and value added tax due on the goods;

(b) the license fee payable; and

(c) a penalty of fifty percent of the value of the excisable goods.

Cessation of business

74. (1) Where the licensed producer specified in Schedule 2 of Part I or Part II of Customs and Excise Tariff as set out in the Act relating to Customs, intends to cease carrying on business, he shall provide a written notice of cessation to the Commissioner General.

(2) Where a licensed producer ceases to carry on the business, he shall –

(a) submit all entries and pay to the Commissioner General the excise duty due on all excisable goods remaining in his premises not later than a period prescribed in the regulations; or

(b) with the approval of the Commissioner General, transfer the excisable goods to other premises.

(3) For the purposes of subsection 2 (a), the excise duty and any other taxes due to the Commissioner General shall be paid at such stage of their manufacture as may be prescribed in the regulations.

(4) Where a licensed producer ceases to carry on the business pursuant to subsection (1), he shall with the approval of the Commissioner General sell, store, expose or offer for sale all excisable goods within a period prescribed in the regulations.

Erroneous payment

75. Where a person has benefited or lost through an error made from any transaction relating to payment of an excise duty, the Commissioner General shall request the person to pay or be paid the amount of the excise duty erroneously gained or lost within such a period as may be determined by the Commissioner General.

Regulations

76. (1) The Minister may make regulations for the general implementation of this Act

(2) Notwithstanding the generality of subsection (1), the Minister may by regulations –

(a) **amend fines and penalties in the Schedule, however, such amendments shall be debated in Parliament before implementation;**

(b) set fees;

(c) set periods and timeframes; and

(d) provide for any other matter that needs to be prescribed.

under this Act..

(3) For purposes of this Act, the Commissioner General may make implementing rules in respect of any matter with which it is expressly indicated that such matter is to be dealt with in accordance with rules made by him.

Repeals

77. The Customs and Excise Act of 1982, as amended is repealed.

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[1] Act No.10 of 1982 as amended
[2] Act No.14 of 2001 as amended by Act No. 12 of 2022
[3] Act No.9 of 2001 as amended