



SAMOA

EXCISE TAX (DOMESTIC ADMINISTRATION) ACT 1984

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**EXCISE TAX (DOMESTIC ADMINISTRATION) ACT
1984**

1984

No.18

AN ACT to provide for the levying and collection of excise duties on goods manufactured in Samoa.

[Assent date: 25 February 1984]

[Commencement date: 27 February 1984]

PART 1
PRELIMINARY

1. Short title and commencement – This Act may be cited as the Excise Tax (Domestic Administration) Act 1984 and comes into force on a date appointed by Order of the Head of State.

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

“Comptroller” has the meaning in the Customs Act 2014;

“Court” means:

(a) the District Court in any proceeding concerning goods valued at not more than \$1000; and

(b) in all other proceedings, the Supreme Court;

“drawback” means a refund of all or part of an excise duty paid in respect of goods exported or used in a manner or for a purpose prescribed as a condition for granting drawback;

“excise duty” means duty chargeable under this Act;

“excisable goods” means any goods specified in the Schedule of the Excise Tax Rate Act 1984;

“manufacture” with its grammatical variations and cognate expressions means to make or produce or to cause to be made or produced for sale any excisable goods and includes any intermediate or uncompleted process in the making or production of excisable goods and any modification, blending, varying of excisable goods;

“Minister” means the Minister of Revenue;

“Officer” means a person employed in the Samoa Customs Service;

“person” includes a corporation solo, and also a body of persons, whether corporate or unincorporated;

“prescribed” means prescribed by regulation made under this Act; and, in relation to forms, includes forms prescribed by the Comptroller;

“proper officer” in relation to any matter, means an officer acting or employed in that matter by the order or with the concurrence (whether precedent or subsequent) of the Comptroller;

“regulations” means any regulations made under this Act;

“Revenue Board” means the National Revenue Board established under the Public Finance Management Act 2001;

“spirits” includes alcohol, low wines, feints and every other description of spirituous liquor;

(2) A reference in this Act to contravention of any provision of this Act, or of any regulation, licence, requirement, condition or direction thereunder, includes a reference to a failure to comply with that provision.

PART 2 ADMINISTRATION

3. Act to bind Government – This Act binds the Government.

4. Functions of Comptroller and officers – (1) Subject to the control of the Minister, the Comptroller is responsible for the due administration of this Act.

(2) An officer concerned with the administration of this Act shall perform such duties and follow such procedures as the Comptroller may by instructions direct.

(3) The Comptroller may authorise an officer to exercise any of the powers conferred or to perform any of the duties imposed by this Act upon the Comptroller, except for the powers conferred upon the Comptroller under section 64.

(4) An act required by law to be done by, or with, a particular officer nominated for such purpose, if done by or with a person appointed by the Comptroller to act for such particular officer, is taken to be done by or with such particular officer.

5. Authority to be produced by person acting for another – (1) Whenever a person shall make application to an officer to transact any business with the Comptroller relating to excise on behalf of any other person, such officer may require the person so applying to produce a written authority from the person on whose behalf such application is made and in default of production of such authority may refuse to transact such business; and a document required by this Act or prescribed by regulations made under this Act to be signed by a particular person, if signed by a person authorised as aforesaid on behalf

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of the person required to sign the same, is taken for all purposes to be signed by the person required to sign the same:

PROVIDED THAT the Comptroller may in his or her discretion refuse to allow any such application as aforesaid.

(2) Where a document or declaration is required by this Act or prescribed by regulations under this Act to be signed in the presence of the Comptroller or a particular officer, if such document or declaration is signed in the presence of a witness whose signature is known to and who is approved by the Comptroller or the officer who receives the same, then in such case such document or declaration is as valid as if it had been signed in the presence of the Comptroller or the officer in whose presence it is required to be signed.

PART 3
MANUFACTURE OF EXCISABLE GOODS

6. Licence required to manufacture excisable goods –

(1) Subject to this Act, no person shall manufacture any excisable goods except under and in accordance with the provisions of a licence in the prescribed form issued by the Comptroller, and at the place of manufacture specified in such licence.

(2) An application for a licence is in the prescribed form.

7. Licence under Customs Act – A person who manufactures excisable goods in a Customs controlled area, for which a licence for manufacturing has been issued under section 12 the Customs Act 2014 is also required to have a licence in the prescribed form issued for the purposes of this Act.

8. Persons not bound by Act – (1) This Act does not apply to a person who manufactures excisable goods on a minor scale at his or her place of residence and does not employ any other person in the manufacture of such goods.

(2) Despite subsection (1), the Comptroller may deem a person to be a manufacturer for the purposes of this Act by notification in writing, and such person shall cease manufacturing excisable goods unless the person applies within 1 month of such notification for a licence to manufacture excisable goods.

(3) The Comptroller may deem a person who, within any period of 3 months, purchases excisable goods for resale from more than 1 of the persons mentioned in subsection (1) by notification in writing, to be a manufacturer. Such person shall cease to purchase such excisable goods unless he or she applies within 1 month of notification for a licence to manufacture excisable goods.

(4) During the period referred to in subsection (2) or (3) if an application has been made within such period or thereafter until the Comptroller has issued or refused a licence under section 6 or, in the case of an appeal, under section 88 a decision has been given by the Minister, the premises, if any, on which a person manufactures goods is taken to be licensed premises and the person shall comply with this Act as if the person was licensed.

9. Time for compliance with licensing provisions – (1) A manufacturer is required to apply for a licence under section 6 within 1 month of the date of commencement of this Act.

(2) When an excise duty is imposed on any goods which were previously free of such excise duties, a manufacturer of such goods is required to apply for a licence under section 6 within 1 month of such imposition.

(3) During the periods referred to in subsections (1) and (2) if an application has been made within such period or thereafter until the Comptroller has issued or refused a licence under section 6 or, in the case or an appeal under section 88, a decision has been given by the Minister:

- (a) the unlicensed person who manufactures excisable goods is treated to be licensed and shall comply with this Act as if he or she were licensed; and
- (b) the premises on which he or she manufactures the goods is treated to be licensed premises.

10. Licence: General – (1) A licence issued under this Act expires on 31 December next following the commencement date shown on the licence.

(2) The Comptroller may refuse to issue a licence under this section without assigning any cause for such refusal.

(3) A licence shall only authorise the person to whom it is issued to manufacture excisable goods in 1 set of premises to be specified in the licence (in this Act referred to as the licensed

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premises) and the whole of the licensed premises is adjoining and held together for the same purpose.

(4) A holder of a licence may apply to the Comptroller for a transfer of the manufacture of excisable goods to other premises, and the Comptroller may grant such transfer and the licence is, thereupon, treated to authorise manufacture on that other premises, and shall no longer authorise manufacture on the premises originally licensed.

(5) On the issue or transfer of any licence the Comptroller may impose such conditions as the Comptroller thinks fit and charge such fees as may be prescribed.

11. Amendment and cancellation – (1) The Comptroller may amend the conditions of a licence and suspend, cancel or refuse to renew such licence issued under this Act.

(2) Where the Comptroller amends the conditions of any licence or suspends, cancels or refuses to renew a licence, the Comptroller shall forthwith give notice in writing to the licensee.

(3) When a licence is cancelled, suspended or has expired, the licensee shall:

- (a) forthwith cease to manufacture the excisable goods specified in such licence;
- (b) forthwith pay the duty on the excisable goods manufactured under such licence; and
- (c) not dispose of any materials which are on the premises to which such licence relates except in accordance with such conditions as the Comptroller may impose.

12. Securities – The Comptroller may require a person being granted a licence under this Act to give such security for the due compliance by that person with the provisions of this Act and generally for the protection of the excise revenue as the Comptroller thinks fit; and pending the giving of any such security the Comptroller may refuse to issue a licence.

13. Transfer of licence – (1) A person to whom a licence is granted under section 6 may apply to the Comptroller to have the licence transferred to any other person, and, in any such

case, the other person shall join in the application and shall provide such further particulars as the Comptroller may require.

(2) On the death of a person to whom a licence has been granted under section 6, the licence may, subject to this Act, be transferred by endorsement by the Comptroller to the licensed person's trustee or administrator.

14. Penalty for manufacture without a licence – A person who manufactures excisable goods without a licence issued under this Act, or breaches the terms or any such licence commits an offence and is liable on conviction therefor to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 1 year, or both, and the following are forfeited:

- (a) all excisable goods so manufactured; and
- (b) any goods and materials which are capable of being used in the manufacture of those excisable goods.

15. Disqualification from obtaining a licence – Except with the approval of the Minister, no licence is issued or transferred to a person:

- (a) who has been convicted in Samoa of an offence under this Act;
- (b) under the age of 21 years; or
- (c) whose licence has been cancelled under this Act, or, during his or her life to that person's spouse or to a member of that person's family resident with him or her.

16. Comptroller may station officer on licensed premises – The Comptroller may station an officer in or upon any licensed premises for the purpose of watching the process of manufacture therein and of enforcing compliance with this Act and a manufacturer shall provide accommodation at or adjacent to the licensed premises for such officer as required by the Comptroller.

PART 4
STORAGE, POSSESSION AND REMOVAL OF
EXCISABLE GOODS.

17. Storage, and possession of excisable goods – No person shall without lawful authority store or keep or have in his or her possession or control any excisable goods in respect of which duty has not been paid, except on premises specified in a licence issued under section 6 or in a warehouse specified in a licence under section 18 or in such other place as may be specially authorised by the Comptroller.

18. Warehouse licence – (1) The Comptroller may on payment of such fees as may be prescribed grant a licence to a person who has been granted a licence under section 6, for warehousing without payment of duty, any excisable goods in such place (in this Act referred to as a licensed warehouse) for such period, and subject to such conditions as may be specified in such licence.

(2) The Comptroller may require a warehouse keeper to enter into a bond for the security of the excise duty on any goods that may be warehoused in his or her warehouse.

(3) The Comptroller may revoke a licence relating to any warehouse on giving to the warehouse keeper notice in writing of the revocation and the notice addressed to the warehouse keeper at such warehouse is treated to be the notice to all persons interested in any excisable goods therein or any other contents or such warehouse.

(4) A warehouse keeper shall within 3 months from the date of a notice issued under subsection (3) pay the excise duty on any excisable goods remaining in the warehouse.

(5) The Comptroller may by notice in writing suspend, cancel or refuse to renew a licence issued under this section.

(6) The Comptroller may on the application of a warehouse keeper:

- (a) transfer his or her licence to any other person and, in any such case, such other person shall join in such application; and
- (b) amend his or her licence to specify any other place and where the Comptroller has granted any such application, the Comptroller shall, on surrender of the existing licence and on payment of the prescribed fee, make the necessary endorsement

thereon or issue a fresh licence, as the Comptroller may think fit.

19. Removal to and from warehouse – With the prior written permission of the Comptroller and subject to section 21 and to such conditions as the Comptroller may think fit, any goods warehoused under this Act may be removed without payment of duty to any other licensed warehouse or returned to the licensed premises of the manufacturer thereof.

20. Packing, sorting, and altering of warehoused goods – No packing, sorting, alterations, or other similar operation shall be performed with respect to any excisable goods stored in a licensed warehouse, without the prior written permission of the Comptroller.

21. Delivery of excisable goods – No excisable goods shall be delivered from any licensed premises or licensed warehouse for any purpose whatsoever except as recorded in the prescribed form or in accordance with regulations.

PART 5 LEVYING OF EXCISE DUTIES

22. Imposition of excise duty – Subject to the provisions of this Act, excise duty shall be imposed, collected and paid on all excisable goods manufactured in Samoa.

23. Basis for duty – (1) An excise duty imposed under this Act shall be charged at the relevant rate specified for such goods in the Excise Tax Rate Act 1984 which may prescribe a specified rate or be charged on the price paid or payable to the licensed manufacturer for the excisable goods.

(2) Where the Comptroller is of the opinion that the price paid or payable to the manufacturer in respect of any excisable goods is less than the price that such goods would fetch on an open market by a buyer and seller independent of each other, the Comptroller shall fix a fair market price.

(3) In fixing a fair market price under subsection (2), the Comptroller shall have regard to the following factors:

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- (a) the price is the sole consideration and excludes transport and delivery charges from the licensed premises or warehouses to the buyer;
- (b) the price is not influenced by any financial or other relationship between the buyer and the seller other than the relationship created by the sale;
- (c) no part of the proceeds of any subsequent resale, other disposal or use of the goods will accrue either directly or indirectly to the manufacturer or a person associated in business with him or her;
- (d) the sale is a sale of the quantity to be valued;
- (e) any other factor which the Comptroller may consider relevant.

(4) For the purposes of this section, persons are taken to be associated in business with one another if whether directly or indirectly either of them has any interest in the business or property of the other, or both have a common interest in any other property or business, or some third person has some interest in the business or property of both of them.

24. Assessment of excise duty – (1) A proper officer may do or cause to be done all things necessary for the purpose of ascertaining the amount of excise duty imposed on any excisable goods.

(2) The amount of excise duty ascertained by the proper officer is presumed to be correct until the contrary is proved.

(3) All necessary operations relating to the ascertaining of the amount of excise duty are to be performed by or at the expense of the owner of the excisable goods.

25. Payment of excise duty – (1) Subject to this Act, the excise duty on excisable goods shall be imposed and due when the goods liable to the excise duty:

- (a) are removed from licensed premises or from a licensed warehouse; or
- (b) are used at the place of manufacture specified in a licence issued under section 6 or in a licensed warehouse, otherwise than as materials in the production of excisable goods and shall be paid

at that time or at such other time as may be prescribed.

(2) The Commissioner may upon the manufacturer giving such security by bond or otherwise as he or she may require defer the payment of excise duty for a period not exceeding 1 month.

26. Payment of duty by one person not to affect liability of other persons – The liability of a person under any provision of this Act for the payment of duty on any goods is not to be extinguished or affected by the payment of the duty by any other person who may be liable for it under any other provision, whether or not the duty so paid has been refunded.

27. Joint and several liability of directors, etc. for excise duty – If an excise duty has become due and payable by:

- (a) a company;
- (b) a firm;
- (c) a partnership;
- (d) an association of persons; or
- (e) any other body corporate or unincorporated,–

the directors of such company, or the partners of such firm or partnership or the members of such association of persons or other body corporate or unincorporated as the case may be, shall together with the respective entity be jointly and severally liable for such excise duty which has become due and payable.

28. Returns to be submitted by manufacturer – A manufacturer shall, within 10 days of the close of each month or other prescribed period, deliver to the Comptroller in the approved form an account of:

- (a) all materials in or received into his or her licensed premises;
- (b) all excisable goods manufactured, delivered, used, removed, to or from another licensed premises or to or from a warehouse;
- (c) goods lost by evaporation, leakage or other cause or otherwise disposed of;
- (d) stocks of excisable goods; and
- (e) any duties which shall have become due or have been paid during that month or other prescribed

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period on any goods manufactured by him or her and shall subscribe a declaration at the foot of such account that all particulars contained therein are true.

29. Remission of excise duty payable on goods exported or shipped as stores – On application to the Comptroller and subject to such conditions as the Comptroller may see fit to impose, the Comptroller may remit excise duty or allow drawback on any goods manufactured in Samoa and:

- (a) shipped or to be shipped as stores on an aircraft or proceeding to a place outside Samoa; or
- (b) exported or to be exported by the manufacturer thereof.

30. Refunds: general – (1) If an excise duty, fee or other charge has been paid and repayment of such excise duty, fee or other charge, or any portion thereof is claimed on the ground that the duty, fee or other charge was paid by mistake or any other error and the Comptroller is satisfied that such claim is correct, the excess excise duty, fee or other charge shall be refunded and the refund shall be a charge upon the Treasury Fund.

(2) No refund referred to in subsection (1) shall be made by the Comptroller when such claim is made after 1 year from the date of the payment.

(3) If an amount of excise duty, fee or other charge has been erroneously refunded, the Comptroller may:

- (a) within 1 year from the date upon which the sum was refunded demand repayment of the sum; and
- (b) recover the sum in a Court of component jurisdiction.

31. Exemptions – Despite anything contained in this Act, any goods specified in Schedule 1 are exempt from excise duty.

31A. Distress for unpaid duty – If an excise duty remains unpaid after the time within which the same has become payable, the Commissioner may authorise the levying of a distress under section 32 or impose and additional excise duty under section 32A, or do both.

32. Comptroller may distrain for excise duties – (1)

Where an excise duty remains unpaid after the time within which the same has become payable, the Comptroller may authorise the levying of a distress on any or all of:

- (a) the goods, chattels and effects of the manufacturer;
- (b) the goods in respect of which the excise duty remains unpaid; and
- (c) all machinery, plant, tools, ships, vehicles, animals, goods and effects used within Samoa in the manufacture, sale or distribution of excisable goods found in any premises or on any lands in the use or possession of such manufacturer or of a person on his or her behalf or in trust for him or her.

(2) The authority to distrain under this section is to be in the form specified in Schedule 2 and the authority shall be a warrant and authority to charge by distress the amount of any excise duties due.

32A. Additional duty imposed – (1) If an excise duty falls due under section 25 and remains unpaid, 10% of the amount of unpaid excise duty is to be added thereto by way of additional duty and shall be payable accordingly.

(2) If an excise duty remains unpaid at the expiration of 1 month after the date it falls due under section 25, a further additional excise duty of 2% of the amount of unpaid excise duty shall be added thereto and thereafter an additional duty of 2% of the amount of unpaid excise duty shall be added for each subsequent month that the said excise duty remains unpaid, and these additional duties shall be payable accordingly.

32B. Recovery of debt – All unpaid excise duty, whatever the amount involved, shall be recoverable as a debt in the District Court by the Comptroller suing in his official name on behalf of the Government.

32C. Deductions by third persons – (1) Where a person who is liable to pay excise duty has made default in payment of an excise duty payable by him or her, the Comptroller may by notice in writing require a person:

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- (a) to deduct from any amount payable or to become payable by that person to the person who is liable to pay excise duty such sum as may be specified in the notice; and
 - (b) to pay any sum so deducted to the Comptroller to the credit of the person who is liable to pay the duty within such time as may be specified in the notice.
- (2)** This section binds the Government.
- (3)** A notice under this section:
- (a) may be revoked by the Comptroller by a subsequent notice to the person to whom the original notice was given (hereinafter in this section referred to as the “debtor”); and
 - (b) shall be so revoked at the request of the person who is liable to pay excise duty at any time when the Comptroller is satisfied that all excise duty then due and payable by the person who is liable to pay excise duty has been paid.
- (4)** A copy of the notice given under this section in respect of a person who is liable to pay excise duty and or revocation or any such notice is to be given to that person by the Commissioner.
- (5)** Whenever pursuant to a notice under this section a deduction is made from an amount payable to a person who is liable to pay excise duty, that person is entitled to receive from the debtor a statement in writing of the fact of the deduction and of the purpose for which it was made.
- (6)** The sum deducted from an amount pursuant to a notice under this section is treated to be held in trust for the Government and, without prejudice to any other remedies against the debtor or any other person, shall be recoverable in the same manner in all respects as if it were excise duty payable by the debtor.
- (7)** A person commits an offence and is liable on conviction to a fine not exceeding 50 penalty units who:
- (a) fails to make a deduction required by a notice under this section to be made from an amount payable by him or her to a person who is liable to pay excise duty;
 - (b) fails after making any such deduction to pay the sum deducted to the Comptroller within the time specified in that behalf in the notice.

PART 6

OBJECTIONS TO EXCISE DUTY OR DRAWBACK

33. Objections to amount of excise duty or drawback –

(1) Subject to section 38, a person may object to the amount of excise duty ("the duty") imposed on his or her goods by the Comptroller or the amount of drawback ("the drawback") calculated to be due to him or her by the Comptroller by delivering or posting to the Comptroller a written notice of objection stating shortly the grounds of his or her objection so that it reaches the Comptroller not later than 1 month after the date on which notification of the amount of the duty or the drawback as the case may be is given.

(2) No notice of objection given after the time specified in subsection (1) is to be of any force or effect unless the Comptroller in his or her discretion accepts the same and gives notice to the objector accordingly.

34. Comptroller to consider objections – (1) The Comptroller shall consider the objection and either disallow or allow it wholly or in part and where appropriate amend the duty or the drawback to conform with his or her determination.

(2) Following determination of the objection the Comptroller shall cause notice thereof to be given to the objector.

35. Objection may be submitted to Supreme Court – (1)

If the objector is dissatisfied with the determination by the Comptroller (under section 34) of an objection under section 33, he or she may within 2 months after the date on which notice of the determination is given, by notice in writing to the Comptroller require the Comptroller to state a case for the opinion of the Supreme Court.

(2) The Comptroller shall thereupon state a case accordingly setting forth the facts as alleged by the Comptroller, the connections of the parties and the question to be decided, and shall file it in the Supreme Court. The Comptroller may file an amended case. A copy of the case and any amended case is to be served on the objector.

(3) Within 1 month after the copy of the case is served on the objector, or within such further time as the Comptroller or

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the Supreme Court may allow, the objector may, if he or she thinks fit, file an answer to the case, setting forth the facts as alleged by the objector. The objector shall serve a copy of the answer on the Comptroller.

(4) Neither the case as stated and filed by the Comptroller nor any answer filed by the objector is conclusive as to the matters set forth therein, either against the objector or the Comptroller, except so far as agreed to in writing by or on behalf of the Comptroller and the objector.

(5) On the hearing and determination of the objection the objector is limited to the grounds stated in the objection, and the burden of proof is on the objector who is liable to pay the duty as imposed save insofar as he or she establishes the duty is incorrect.

(6) The Court may receive such evidence as in its opinion may assist it to deal effectually with the proceedings before it, whether or not the same would be otherwise admissible in a Court of Law.

(7) Subject to subsections (5) and (6), the procedure at the hearing before the Supreme Court of any such case stated shall be the same, with the necessary modifications, as if the case were an action in which the objector is the plaintiff and the Comptroller is the defendant.

(8) On hearing any such case stated, the Court may confirm or cancel or vary the duty or the drawback or reduce or increase the amount thereof and the duty or the drawback is altered by the Comptroller accordingly.

36. Obligations to pay duty not suspended by objection –

The obligation to pay and the right to recover a duty shall not be suspended by an objection and no notice of objection shall be of any force or effect until the duty has been paid.

37. Determination of objection not to affect other goods

– The determination of an objection under this Part:

- (a) shall relate solely to the goods which are the subject of the duty or the drawback objected to; and
- (b) shall not affect the right of the Comptroller to impose excise duty or calculate drawback on any other goods of the objector.

38. Objections to which this Part does not apply – The provisions as to objections in this Part shall not confer any right of objections with respect to:

- (a) a matter which is left to the discretion, opinion, approval or determination of the Minister or an act, matter or thing done or omitted by the Minister under this Act;
- (b) a determination of the Comptroller made in exercise of any power or discretion conferred on the Comptroller to enlarge or extend the time for giving a notice, making an application, delivering a statement, or doing any other act, matter or thing under this Act; or
- (c) a matter in respect of which it is expressly provided that there is no right of objection to the determination of the Comptroller.

PART 7 POWERS OF OFFICERS

39. Access to licensed premises or warehouses – (1) A proper officer shall for the purposes of this Act at all reasonable times have access to any premises or warehouse licensed under this Act.

(2) If a proper officer enters upon any licensed premises or warehouse under this section, he or she may:

- (a) require the licensee to produce, either forthwith or at a time to be fixed by him or her, the licence of the licensee or a book, document, or thing which relate to any excisable goods or materials;
- (b) examine any such book, document or thing and take copies of any such book or document;
- (c) seize and detain any such book document or thing, if in his or her opinion it may afford evidence of the commission of an offence under this Act;
- (d) require such licensee or a person employed by the licensee to answer questions relating to any such book, document or thing, or to any entry in such book or document, or to any excisable goods or materials;

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- (e) require a container, envelope, or other receptacle, in any such premises or warehouse to be opened;
- (f) at the risk and expense of the licensee, open and examine a package, or any excisable goods or materials, in any such premises or warehouses;
- (g) take and retain such reasonable samples of any excisable goods or materials as he or she may think necessary for the performance of his or her duties; and
- (h) lock up, seal, mark or otherwise—
 - (i) any building, room, place, receptacle, or item of plant, in any such premises or warehouse;
 - (ii) any excisable goods or materials in any such premises or warehouse.

(3) Where a proper officer acting under this section is unable to obtain free access to any licensed premises or warehouse, or to any receptacle contained therein, he or she may, enter such premises, and open such receptacle, in such manner, if necessary by force, as he or she may think necessary.

40. Officer may examine stock of vendor – An officer may during the day time enter into any premises made use of by a person selling or offering for sale any excisable goods upon such premises, and take an account of any excisable goods which may be in the custody or possession of such person, and take samples of any such excisable goods, paying for the same the usual price therefor, and if the person selling or offering for sale any excisable goods on any premises shall not with a sufficient number of his or her servants aid and assist to the utmost of his or her power such officer in measuring and taking an account of all excisable goods in or upon such premises, he or she shall for every such default be liable on conviction therefor to a fine not exceeding 2 penalty units.

41. Judge may issue search warrant – (1) Without prejudice to any other powers under this Act, where an officer declares on oath before a District Court Judge, that the officer has reasonable cause to believe that in a dwelling house, shop, building or place, or on board an aircraft or ship, there are concealed or deposited any goods liable to forfeiture under this

Act, or in respect of which an offence under this Act may have been committed, the District Court Judge may issue a warrant authorising an officer named therein, and with or without assistance to enter such dwelling house, shop or other building, place, aircraft or ship and then to search for and seize any goods suspected of being liable to forfeiture under this Act, or as to which any offence under this Act may have been committed, and any books or documents which the officer may reasonably believe to have a bearing on the matter.

(2) An officer to whom a search warrant has been granted may if it is necessary so to do:

- (a) break open an outer or inner door of such dwelling house, shop building or place or an aircraft, boat or ship and enter every part thereof, if necessary forcibly;
- (b) remove by force an obstruction to such entry to search, seizure and removal as he or she is empowered to effect; and
- (c) detain a person found in such dwelling house, shop, building, place, aircraft, boat or ship until the search has been completed.

42. Powers of entry, detention and seizure without search warrant – When an officer observes an act being committed which the officer has reasonable grounds to suspect may be an offence under this Act, the officer may enter a building or place where the offence is suspected of being committed, using whatever force may be necessary to secure entry, and may:

- (a) detain a person found to be in such building or place who may be suspected of being involved in the commission of the suspected offence;
- (b) seize any goods which may be the subject of the suspected offence; and
- (c) seize any documents in relation to the goods which are the subject of the suspected offence.

43. Power to stop vehicle, boat, etc. suspected of conveying excisable goods, etc. – (1), If a proper officer has reasonable grounds to suspect that an aircraft, ship, boat, vehicle, animal or other means of conveyance, is conveying any

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excisable goods, in relation to which an offence has been committed under this Act, the officer may;

- (a) stop and search the vehicle, boat or other means of conveyance; and
- (b) for the purposes of the search, require a vehicle, boat or other means of conveyance, to be unloaded at the expense of the owner of the vehicle, boat or other means of conveyance.

(2) A proper officer who is unable to obtain free access to any place or container in the course of a search under the section may, if necessary, use force.

(3) Where, on the search of an aircraft, ship, boat, vehicle, animal or other means of conveyance under this section, goods are found in relation to which an offence under this Act has been committed, the goods are liable to forfeiture.

(4) A person-in-charge of an aircraft, ship, boat, vehicle, animals or other means of conveyance who refuses to stop or to permit the vehicle to be searched under this section commits an offence.

44. Power to take samples – (1) The proper officer may, if his or her duties so require, take samples of any goods to ascertain whether they are goods of a description liable to an excise duty or to ascertain the excise duty payable on such goods, or for such other purposes as the officer may deem necessary, and such samples may be disposed of in such manner as he or she may direct.

(2) Payment is to be made for a sample taken under subsection (1), and the proper officer shall give a receipt for any such sample.

45. Information to be furnished on request of Comptroller – (1) A person (including an officer or employee employed in or in connection with a department of the Government or by a public authority, and any other public officer) shall, if required by a proper officer furnish in writing any information and produce any books and documents which the Comptroller considers necessary or relevant for any purpose relating to the administration or enforcement of this Act, and which may be in the knowledge, possession, or control of that person.

(2) The Comptroller may require any written information or particulars furnished under this section to be verified by statutory declaration or otherwise.

(3) A person who fails or refuses to comply with a request made under this section commits an offence and is liable to a fine not exceeding 5 penalty units.

46. Power to require certificate of audit – (1) The Comptroller may require an licensed manufacturer to submit annually, or at any other time specified by the Comptroller, a certificate of audit by an accountant approved by the Comptroller and not being an employee of the manufacturer.

(2) A certificate of audit shall certify the correctness of all the books and records required by or under this Act to be kept by the licensed manufacturer.

(3) A licensed manufacturer who without reasonable excuse fails to submit a certificate of audit as required under this section is liable on conviction therefor to a fine not exceeding 2 penalty units.

47. Power to detain and search persons – (1) Subject to subsections (2) and (3), a proper officer may, if the officer has reasonable grounds to suspect that a person has in his or her possession, whether upon his or her person or in his or her baggage, any excisable goods upon which duty has not been paid, detain and search that person; and the proper officer may, for that purpose use all reasonable force.

(2) A female shall not be searched except by a female.

(3) Where, on the search of a person under this section, excisable goods upon which duty has not been paid are found in his or her possession whether upon his or her person or in his or her baggage, such goods shall be forfeited.

48. Arrest of offenders – (1) An officer or member of the Police Service who has reasonable cause to suspect that a person has committed an offence against this Act with intent to defraud the excise revenue may within 7 days after the supposed date of the offence, arrest that person without warrant.

(2) The person so arrested shall not be tried for the offence except on an information laid by the Comptroller in accordance with this Act.

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(3) Pending the laying of such an information, the Remanding Officer before whom the accused is produced under Article 6(4) of the Constitution, may adjourn the matter for a period not exceeding 48 hours, and may either remand the accused in custody or release him or her on bail, and recognizance, with or without sureties, conditional upon his or her appearance at the time and place to which the matter has been so adjourned in the same manner, so far as may be, as if an information could have been and had been laid against the accused by the officer by whom he or she has been so arrested.

(4) If at the time to which the matter has been so adjourned no information for an offence against this Act has been laid by the Comptroller in accordance with this Act, the accused shall be discharged.

(5) The arrest or discharge of a person under this section shall not take away or in any manner effect the right of proceeding against that person for the recovery of a penalty for the offence for which he or she was so arrested.

49. Assistance to be afforded to officers – If:

- (a) on demand of an officer, safe and convenient ladders of a length sufficient to enable such officer to ascent to and examine a vessel or utensil in a factory or warehouse or to gauge or ascertain the contents or capacity of a vessel or utensil therein, is not be provided and conveniently and firmly placed; or
 - (b) the ladder is not fixed at or in any part of the vessel or utensil where the officer requires; or
 - (c) sufficient aid and assistance is not supplied on demand of an officer for the purpose of his or her gauging or ascertaining the contents or capacity of a vessel or utensil or of searching for or gauging and taking into account of all excisable goods and materials therefor in any such factory or warehouse, as well by night as by day, –
- the manufacturer or warehouse keeper in whose licensed premises or warehouse the contravention has occurred is liable on conviction therefor to a fine not exceeding 2 penalty units.

PART 8

50. Penalty for making incorrect statements and falsifying document – A person who:

- (a) wilfully or negligently makes, orally or in writing, or signs a statement, certificate or other document required for the purpose of this Act which is untrue or incorrect in any particular;
 - (b) wilfully or negligently makes, orally or in writing, or signs a statement or document, for consideration of an officer on an application presented to him or her, which is untrue or incorrect in any particular;
 - (c) counterfeits or falsifies, or uses, when counterfeited or falsified, a document which is or may be required under this Act or a document used in the transaction of a business or matter relating to this Act; or
 - (d) fraudulently alters a document or counterfeits the seal, signature, initials or other mark of, or used by, an officer for the verification of any such document or for the security of any goods or any other purpose in the conduct of business relating to this Act; or
 - (e) knowingly obtains a remission, rebate or refund of duty which he or she is not entitled to obtain,-
- commits an offence and is liable on conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 1 year, or both.

51. Penalty for refusing to answer questions, etc. – A person who, when required under this Act to answer any question put to him or her fails or refuses to answer it, or does not truly answer it or fails or refuses to give information which it is in the power of such persons to give, commits an offence and is liable on conviction to a fine not exceeding 100 penalty units.

52. Penalty for evasion of duty and for illegal manufacture of excisable goods – A person who with intent to evade payment of excise duty:

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- (a) contrary to this Act, receives into or has in his or her possession, custody or control, any excisable goods or goods manufactured in contravention of the provisions of this Act;
- (b) assists or is otherwise concerned in the illegal removal or withdrawal of any excisable goods from any place of manufacture of excisable goods or from a licensed warehouse in which excisable goods may have been deposited;
- (c) buys, receives, harbours, keeps, conceals or permits, causes to be bought, received, harboured, kept or concealed any excisable goods which have been illegally removed;
- (d) is in any way concerned in conveying, removing, depositing or dealing with any excisable goods with intent to defraud the Government of any excise duties thereon, or to evade any of the provisions of this Act;
- (e) is in any way concerned in manufacturing any excisable goods in contravention of the provisions of this Act; or
- (f) except by authority, opens, breaks, alters, or in any way interferes with, any lock, seal, mark, or other fastening, placed by the proper officer in accordance with this Act,–

commits an offence and is liable on conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding 1 year, or both, and the goods shall be forfeited.

53. Deficiency in stocks or excisable goods – If at any time when an account is taken by a proper officer and a balance struck and any deficiency in the excisable goods which should be in stock is found which cannot be accounted for to the satisfaction of the Comptroller, the manufacturer or warehouse keeper commits an offence, and is liable on conviction to a fine not exceeding 20 penalty units and excise duty on such deficient excisable goods shall thereupon be deemed to become due and shall, despite any other provision of this Act, be paid forthwith.

54. Bribing, influencing or resisting officer – A person who:

- (a) corruptly gives or offers or agrees to give a bribe to an officer with intent to influence the officer in respect of an act or omission by the officer in the discharge of his or her duty; or
- (b) by threats or demands, attempts to influence or does influence an officer in the discharge of his or her duty; or
- (c) assaults, or by force resists, obstructs, intimidates, or endeavours to intimidate an officer or a person acting in the officer's aid in the execution of his or her duties,—

commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 5 years, or both.

55. Obstruction of officers, etc. – A person who:

- (a) obstructs, hinders, molests or uses threatening language to an officer in the performance of a duty or the exercise of a power imposed or conferred on the officer by this Act or a person acting in the officer's aid;
- (b) does anything which impedes or is intended to impede the carrying out of a search for anything liable to seizure under this Act or the detention, seizure or removal of any such thing;
- (c) removes, damages or destroys anything liable to forfeiture, or does anything intended to prevent the procuring or giving of evidence as to whether or not anything is so liable to forfeiture; or
- (d) prevents the arrest of a person by a person duly engaged or acting as aforesaid or rescues a person so arrested,—

commits an offence and is liable on conviction to a fine not exceeding 100 penalty units, or to imprisonment for a term not exceeding 1 year or both.

56. Penalty for abuse of authority – An officer who:

- (a) corruptly accepts or obtains, or agrees or offers to accept, or attempts to obtain a bribe for himself or herself or any other person in respect to an act

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- done or omitted, or to be done or omitted in the discharge of his or her duty;
- (b) conspires or connives with a person to do an act or thing whereby the excise revenue is or may be defrauded, or which is contrary to this Act or the proper execution of his or her duty;
 - (c) makes an agreement not to deliver up or seize an aircraft or ship or other means of conveyance or any goods liable to seizure;
 - (d) knowingly demands from a person an amount in excess of the authorised excise duty;
 - (e) withholds for his or her own use or otherwise, a portion of the amount of excise duty collected;
 - (f) renders a false return, whether orally or in writing, of the amounts of excise duty collected or received by him or her;
 - (g) defrauds a person, embezzles any money, or otherwise uses his or her position to deal fraudulently with excise duty; or
 - (h) not being authorised under this Act to do so, collects or attempts to collect excise duty, –
- commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years.

57. Joint and several liability of directors, general manager, secretary or other officer for offences – Where an offence against this Act is committed a company, firm, partnership, association of persons or any other body corporate, or unincorporated, a person who at the time of the commission of the offence was director, general manager, secretary or other similar officer of such company, firm partnership or other body corporate or unincorporated, as the case may be, or was purporting to act in any such capacity, also commits such offence unless such person proves that he or she exercised all diligence required in order to prevent such offence being committed.

58. Court may order payment of money in respect of duty – (1) In any proceedings for an offence under this Act, if the Court is of the opinion that the offence has been committed for the purpose of enabling the destruction or concealment of an

evidence that would support a claim for duty or other money due to the Government under this Act, it may, in addition to any other penalty, order the offender to pay to the Government such further sum in respect of that claim as it thinks fit.

(2) An order for payment under this section may be enforced in the same manner as a fine.

(3) The recovery of an amount under this section in respect of a claim is not to be deemed to extinguish the claim, but is taken into account in determining the amount (if any) to be awarded in any subsequent proceedings that may be taken in respect of that claim.

59. Penalties independent of forfeitures – All penalties under this Act are in addition to and independent of any forfeiture, and all forfeitures under this Act shall, except where otherwise provided, be independent of any proceedings in respect of an offence.

60. General penalty – A person who commits an offence against this Act for which no other penalty is provided is liable to a fine not exceeding 10 penalty units, and the goods, if any, which are the subject matter of the offence are liable to forfeiture.

61. Attempts – An attempt to commit an offence against this Act is an offence against this Act punishable as if the offence so attempted had been committed.

62. Officers not liable for acts done in good faith – No officer or other person acting under his direction is liable for an action taken by him or her in good faith in accordance with a provision of this Act.

PART 9 LEGAL PROCEEDINGS

63. Limitation of proceedings – (1) Any proceedings for an offence against this Act may be commenced and anything liable to forfeiture under this Act may be seized within 3 years after the date of the commission of the offence.

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(2) Any information for an offence against this Act shall be laid by the Comptroller.

(3) Any proceedings for the recovery of an excise duty or other charge shall be instituted within 3 years after the date when such duty or charge became due and payable.

64. Power of Comptroller to compound offence by agreement – (1) Subject to such procedure as may be prescribed, if the Comptroller is satisfied that a person has committed an offence against this Act for which a pecuniary penalty is provided or for which any goods are liable in forfeiture, the Comptroller may:

(a) compound the offence; and

(b) order—

(i) the person to pay such sum of money, not exceeding the maximum amount of the pecuniary penalty to which the person would have been liable if the person had been prosecuted and convicted for the offence, as the Comptroller may think fit; and

(ii) any goods liable to forfeiture in connection therewith to be condemned.

(1A) The Comptroller shall not exercise the powers under this section without consulting the Attorney-General and unless the person under subsection (1) in writing:

(a) admits to committing the offence;

(b) agrees to the penalty proposed by the Comptroller; and

(c) requests the Comptroller to deal with the offence under this section.

(2) An order made under subsection (1) shall:

(a) be in writing and have attached to it the request to the Comptroller to deal with the matter;

(b) specify the offence and the penalty imposed by the Comptroller; and

(c) be copied to such person if he or she so requests.

(3) A person against whom an order is under this section is not liable to any further proceedings or prosecution in respect of the offence after he or she has paid the penalty imposed by the Comptroller.

65. Protection of officers, etc., in relation to seizure and detention of goods, etc. – Neither the Government nor an officer is liable for the loss of or damage to any goods occasioned by anything done or omitted to be done or purporting to have been done by an officer in the exercise of any power conferred on him or her by this Act, unless he or she has not acted in good faith or has acted without reasonable care: **PROVIDED THAT** nothing in this subsection affects a right of a person to the return of the goods seized or detained or to compensation in respect of a damage to or loss in value of the goods or in respect of the destruction thereof.

PART 10
SEIZURES AND FORFEITURES

66. Forfeited goods – The following things are forfeit to the Government:

- (a) all goods manufactured or partly manufactured by a person who is not a licensed manufacturer;
- (b) all goods that—
 - (i) are used, or capable of being used, in or in connection with the manufacture of goods; and
 - (ii) are found on any premises where the manufacture of goods is unlawfully carried on;
- (c) all goods subject to the control of the Comptroller that are moved, altered or interfered with otherwise than by the authority of, and in accordance with this Act;
- (d) all aircraft, ships, boats, vehicles, animals or other means of conveyance, conveying, or having packed in or on them, any forfeited goods;
- (e) all animals and harness used in drawing any vehicle to which paragraph (d) relates;
- (f) all packages in which forfeited goods are contained.

67. Special provisions as to forfeiture of aircraft and of large ships – (1) Despite any other provision of this Act, an aircraft or a ship of 20 or more tons register, is not liable to

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forfeiture under this Act unless the offence in respect of or in connection with which the forfeiture is claimed:

- (a) was substantially the object of the flight or voyage in connection with which the offence was committed; or
- (b) in the case of a ship, was committed while the ship was under chase by a ship employed in the enforcement of this Act after failing to heave to when summoned to do so.

(2) The exemption from forfeiture of an aircraft or ship under this section does not affect a liability for forfeiture of goods carried therein.

68. Forfeiture to relate back – When it is provided by this Act that any goods are forfeited and the goods are seized in accordance with this Act, the forfeiture shall for all purposes relate back to the date of the act or event from which the forfeiture accrued.

69. Seizure of forfeited goods – (1) An officer or member of the Police may seize any forfeited excisable goods or any goods which he or she has reasonable and probable cause for suspecting to be forfeited.

(2) In any case such force may be used as is reasonably necessary for effecting the seizure and securing the goods.

(3) All goods so seized shall be taken to a Government warehouse or to such other place of security as the Comptroller or other proper officer directs.

(4) No goods shall be so seized at any time except within 3 years after the cause of forfeiture has arisen.

70. Where goods may be seized – Goods may be seized as forfeited wherever found within the territorial limits of Samoa.

71. Rescue of seized goods – A person who, without the permission of the Comptroller or other proper officer, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away, or otherwise converts to his or her own use, any goods which have been seized as forfeited, at any time before they have been declared by competent authority to have been seized

without due cause, is taken to have stolen the goods as if they were the property of the Government, and shall be guilty of theft accordingly.

72. Notice of seizure – When any goods have been seized as forfeited, the Comptroller shall, except when the goods are seized in the presence of some person having or claiming an interest therein, give immediate notice of seizure, in the prescribed form, to the manufacturer or some other person known or believed to have an interest in the goods, either by delivering the notice personally or by letter addressed to him or her and delivered at or transmitted by post to his or her last known place of abode or business; but no seizure shall be invalidated or rendered illegal by any failure to give such notice.

73. Condemnation without suit – (1) All goods seized as forfeited are taken to be condemned, as if by suit and judgment of condemnation, unless within 1 month after the day of the seizure some person gives notice in the prescribed form to the Comptroller that he or she, or someone on whose behalf he or she acts, is entitled to the goods or to an interest therein, and intends to dispute their forfeiture.

(2) The burden of proving in any proceedings that any such notice was duly given shall be on the person alleging it.

(3) Proceedings for the condemnation of any goods seized as forfeited any be commenced and prosecuted to judgment whether any such notice has been given or not.

74. Condemnation by Court – (1) Proceedings for the condemnation of any goods seized as forfeited may in any case be instituted in any Court having jurisdiction by information by the Attorney-General.

(2) The procedure on any such information shall, subject to this Act, be in accordance with rules of Court to be made in that behalf, and in default of such rules or so far as they do not extend, then in accordance with the usual practice of the Court in civil proceedings at the suit of the Attorney-General so far as applicable, or so far as not applicable, then in accordance with the directions of the Court or a Judge thereof.

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(3) On the filing of any such information in the Court by the Attorney-General, the Court or a Judge shall fix a time and place for the hearing of the information, and notice of the proceedings and of the time and place so fixed shall be served on or given to such persons and in such manner as the Court or a Judge thereof directs.

(4) A person claiming an interest in the goods to which the information relates may, at any time within 1 month after the filing of the information, or within such further time as the Court or a Judge allows, file a statement of defence, and shall thereupon become a party to the proceedings.

(5) A statement of defence shall set out the interest claimed by the defendant in the goods to which the information relates, and is to be accompanied by an affidavit verifying the existence and nature of that interest.

(6) If no such statement of defence is duly filed by a person, judgment of condemnation of the goods to which the information relates shall be entered.

(7) On any such information costs may be awarded to or against the Attorney-General or any other party to the proceedings.

(8) An appeal from the decision of a District Court Judge, whether to make an order of condemnation or to refuse to make such an order, and whether based on law or fact, shall lie to the Supreme Court at the suit of a party to the proceedings, irrespective of the value of the property in question, subject to compliance with subsection (9).

(9) Such an appeal shall be commenced by the serving of notice of motion of the appeal on every party to the proceedings directly affected by the appeal, the filing of a duplicate of the notice in the District Court, and the filing of another duplicate of the notice in the Supreme Court, all within 28 days from the time when the decision of the District Court Judge is given, irrespective of whether reasons for the decision or costs are given at a later date, and irrespective of whether any formal steps to sign, enter or otherwise perfect the decision are necessary or are afterwards taken.

75. No other action completed while condemnation proceedings pending – While any proceedings for condemnation are pending no action or other proceeding for the

recovery of damages for the seizure or the detention of the goods, or for the recovery of the possession of them, or for the recovery of money deposited instead thereof, or of the proceeds of their sale, shall be commenced, or, if already commenced, shall be continued, without the leave of the Attorney-General or Judge of the Supreme Court.

76. Conviction to operate as a condemnation of forfeited goods – (1) Despite anything in the foregoing provisions of this Part relating to condemnation, but subject to subsection (2), when it is provided by this Act that on the commission of an offence any goods are forfeited, the conviction of a person of that offence has effect as a condemnation, without suit or judgment, of any goods that have been seized in accordance with this Act, or in respect of which the offence was committed.

(2) Subsection (1) does not limit the right of a person, not being the convicted person or a person acting on his or her behalf, to claim that he or she is entitled to the goods or to an interest in them and to dispute their forfeiture under section 73.

77. Delivery of goods seized on deposit of value – (1) When any goods have been seized as forfeited, the Comptroller may, if the Comptroller thinks fit, at any time before their condemnation, deliver them to the owner or other person from whom they were seized, on the deposit with the Comptroller of a sum equal to their duty-paid value as determined by the Comptroller.

(2) The money so deposited is taken to be substituted for the goods so seized, and all the provisions of this Act with respect to condemnation, so far as they are applicable, shall extend and apply to the money accordingly, as if a claim thereto had been duly made under section 73 by the person depositing it.

78. Sale of perishable goods seized – (1) When any goods which, in the opinion of the Comptroller are of a perishable nature, have been seized as forfeited, the Comptroller may, if the Comptroller thinks fit, sell the goods so seized before their condemnation.

(2) The net proceeds of such sale are taken to be substituted for the thing so sold and all the provisions of this Act with

respect to notice of claim and condemnation apply to those proceeds accordingly.

79. Disposal of forfeited goods – All forfeited goods shall, on forfeiture, become the property of the Government, and shall be sold by public auction or destroyed as the Minister may direct.

80. Waiver of forfeiture by Head of State – (1) When a forfeiture has accrued under this Act, the person who, but for the forfeiture, would be entitled to the forfeited goods or property may apply in writing to the Minister for the consent of the Head of State for a waiver of the forfeiture.

(2) An application for a waiver under this section may be made:

- (a) before or after the seizure or condemnation of the goods or property; but
- (b) not later than 3 months after the date on which the condemnation of the goods or property takes effect.

(3) On any such application the Head of State may, on and subject to such terms and conditions (if any) as the Head of State may determine waive the forfeiture either in whole or in part, and direct the restoration of any goods or property so seized. Without limiting subsections (1) and (2), any such waiver may be made subject to the condition that there is paid to the Government in respect of the goods or property a sum equal to the whole or any part of any one or more of the following, namely:

- (a) any costs or expenses incurred by the Comptroller;
- (b) an excise duty not already paid;
- (c) an excise duty already refunded;
- (d) the value of the goods or property, as determined by the Comptroller.

**PART 11
EVIDENCE**

81. Incriminating questions and documents – (1) In any civil proceedings in a Court under or in pursuance of any provision of this Act, whether for the recovery of a duty or tax, or in relation to a forfeiture, or otherwise, no person, whether a party to the proceedings or not, shall be excused from answering any question put to him or her by interrogation or otherwise, or from producing or making discovery of a document on the ground that the answer to the question or the production or discovery of the document may incriminate or tend to incriminate him or her.

(2) In any proceedings in a Court for an offence against any provisions of this Act, a person called as a witness (including a person charged with the offence and called as a witness on his or her own application) shall not be excused from answering any questions put to him or her touching the alleged offence, on the ground that the answer may incriminate or tend to incriminate him or her.

(3) A statement made, in any proceedings to which subsection (1) or (2) applies, by a person (other than the person charged with the offence in proceedings to which the subsection (2) applies) in answer to any such question, or a document of which production or discovery is so made by him or her in any such civil proceedings, is not, in any criminal proceedings, admissible in evidence against him or her except on a charge of perjury in respect of his or her sworn testimony or on a charge of making a false statement on oath or on a charge of knowingly making a false declaration under this Act.

82. Source of information need not be disclosed – No officer or member of the Police Service and no witness for the Government in a prosecution for an offence against this Act, or in any proceedings relative to the seizure, detention or condemnation of aircraft, ships, boats, vehicles, animals or other means of conveyance, or goods under this Act, shall be compelled to disclose the fact that he or she received any information, or its nature or source, or to produce or disclose the existence or nature of any reports made by or received by him or her in an official or confidential capacity.

83. Burden of proof in proceedings under this Act – (1)

In any proceedings under this Act instituted by or on behalf of or against the Comptroller or the Government (other than criminal prosecution in the Supreme Court) an allegation made on behalf of the Comptroller or the Government in a statement of claim, statement of defence, plea or information, and relating to the identity or nature of any goods, or to their value, or to the country or time of their exportation, or to the fact or time of their importation, or to their place of manufacture, production or origin, or to the payment of any duty on them, or to an act done or omitted with respect thereto by a person, is presumed to be true unless the contrary is proved.

(2) The presumption shall not be excluded by the fact that evidence is produced on behalf of the Comptroller or the Government in support of any such allegation.

(3) For the purpose of this section a prosecution in the District Court for an offence against this Act is taken to be a proceeding instituted on behalf of the Comptroller or the Government.

(4) For the purposes of this section, a proceeding instituted by or against the Comptroller or the Government in which any question arises as to the rights, powers, obligations or liabilities of the Comptroller or the Government or any other person under this Act, is taken to be a proceeding under this Act.

(5) This section extends and applies to proceedings in which the existence of an intent to defraud the Government of excise duty is in issue.

84. Burden of proof of justification – In all proceedings which are instituted against the Government, or against the Minister or an officer or member of the Police Service or any other person, for any seizure, arrest or other act done in pursuance of this Act, and in which the existence of reasonable or probable cause or of any other justification for such act is in issue, the burden of proving the want of reasonable or probable cause or the absence of such justification shall be on the plaintiff.

85. Presumption of authenticity of documents – All documents purporting to be signed by or on behalf of the

Minister or Comptroller or to be sealed with the seal of the Customs shall in all Courts and in all proceedings, under this Act, be deemed to have been so signed or sealed with due authority unless the contrary is proved.

86. What evidence receivable – In an action or other proceeding under this Act, whether civil or criminal (other than a criminal prosecution in the Supreme Court), the Court may, in proof of any fact in issue, admit and accept as sufficient such evidence as it thinks fit, whether such evidence is legally admissible in other proceedings or not.

87. Declaration under this Act – (1) A declaration required or authorised by this Act shall be made in the prescribed form.

(2) Whereby any such form it is indicated that the declaration shall be made before a person, it may be made before the Comptroller or other officer or before a person, authorised by or under the Oaths, Affidavits and Declarations Act 1963 to take declarations, or before any other such person as may be prescribed.

PART 12 MISCELLANEOUS

88. Appeals to Minister for refusal to grant licence – (1)
Where under this Act the Comptroller:

- (a) refuses to issue a licence;
- (b) issues a licence subject to conditions; or
- (c) suspends, amends, cancels, refuses to renew or transfer a licence,–

the applicant or licensee may, if he or she thinks fit, appeal to the Minister.

(2) Notice of appeal under this section shall be given in writing to the Comptroller within 14 days of notice of the Comptroller's decision to the applicant or licensee, or within such further time as may be allowed by the Comptroller.

(3) On any such appeal the Minister shall, after giving a reasonable opportunity to the appellant to be heard, make a decision on the appeal, and the Minister's decision is final.

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89. Service of notices – (1) A document or notice required or authorised to be served on or given to a person by the Comptroller under this Act may be served or given by:

- (a) delivering it personally to him or her; or
- (b) leaving it at or sending it by post to his or her usual or last known place of abode or business address.

(2) Where a document or notice is served by post, service is taken to have been effected:

- (a) if it is sent to any address (including a post office) within Samoa, 7 days after the date of posting, or on the day when it is actually delivered, whichever is the earlier; and
- (b) if it is sent to any address (including a post office) outside Samoa, 21 days after the date of posting, or on the day when it is actually delivered, whichever is earlier,–

and in proving service it is sufficient to prove that the envelope containing the document or notice was properly addressed and was duly posted.

90. Rewards of seizures and conviction – The Minister may order to be paid or distributed to or among any officers or other persons by or through whom any seizure is made or fine recovered under this Act, such rewards as the Minister thinks fit, and any sum so ordered to be paid or distributed shall be charged on the Treasury Fund and be statutory expenditure, and may be paid or distributed accordingly:

PROVIDED THAT, where any such seizure or fine results from an attempt to defraud the revenue of excise, such rewards shall be determined by the Minister but may not exceed in the aggregate half the value of the goods seized or, as the case may be, half the amount of the fine.

91. Securities for payment of duty and compliance with Act – (1) The Comptroller has the right to require and take securities for the payment of duty and generally for compliance with this Act and for the protection of the excise duty and pending the giving of the required security he or she may refuse to do an act in the execution of his or her office in relation to any matter in respect of which the security is required.

(2) A security under this Act may, as required by the Comptroller, be by bond (with or without sureties) or guarantee to Government or by a deposit of cash, or by all or any of those methods, to the satisfaction of the Comptroller.

(3) A security may be given in relation to a particular transaction, or generally with respect to any class of transactions or to all transactions and for such period and amount as the Comptroller thinks fit, and under such conditions as to forfeiture, penalty, or otherwise as the Minister may direct.

(4) A bond or other security entered into or given under this Act by a person under the age of 21 years (otherwise than as a surety or guarantor) has the same force, effect, and validity as if that person had been of full age.

92. All bonds and securities entered into to be valid – (1)

All bonds and other securities entered into by a person or persons for the performance of a condition, order or matter relative to excise duties or incidental thereto shall be valid in law and upon breach of any of the conditions thereof may be sued and proceeded upon.

(2) All bonds relating to this Act or for the performance of any conditions or matter incidental thereto shall be taken to be for the use of the Government.

(3) All such bonds may after the expiration of 3 years from the date thereof or from time, if any, limited therein for the performance of the condition thereon be cancelled by the order of the Comptroller.

(4) It is not necessary for the validity of any of such bonds or securities that they shall be sealed or that they shall be signed or delivered in the presence of a witness.

93. Surety to be deemed a principal debtor – (1) Without prejudice to any rights of a surety under any bonds required by this Act against the person for whom he or she is surety, a surety is, under the bond executed by him or her, taken to be a principal debtor and not merely a surety and accordingly shall not be discharged nor shall his or her liability be affected by any giving of time for payment or by an omission to enforce the bond or by any other act or omission or means whereby the liability of the surety would not have been discharged if he or she had been a principal debtor.

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(2) Whenever a person bound under a bond required by this Act pays the whole of the sum for which he or she is bound but the bond is not totally discharged, or pays any part of the sum for which he or she is bound, or being a surety:

- (a) dies;
 - (b) departs from Samoa without leaving sufficient property therein to satisfy the whole amount for which he or she is bound; or
 - (c) for any other reason is in the opinion of the Comptroller unable or likely to be unable to satisfy the bond if called upon,—
- the Comptroller may if the Comptroller thinks fit require a new bond to be executed.

94. Monies to be paid to Treasury Fund – All monies received by the Comptroller under the provisions of this Act shall be paid into the Treasury Fund.

95. Provisions relating to the furnishing of information by manufacturers and official secrecy – (1) A person who, being in possession of any information given or evidence produced by a manufacturer under the provisions of this Act and relating to the cost of production or manufacturer's profits in respect of any excisable goods, at any time communicates such information or evidence to a person:

- (a) other than a person to whom he or she is authorised by the Comptroller to communicate such information or evidence; or
 - (b) otherwise than for the purposes for this Act,—
- commits an offence and is liable on conviction therefor to a fine not exceeding 10 penalty units.

(2) No person shall be prosecuted for an offence against the provisions of subsection (1) without the written consent of the Director of Public Prosecutions.

96. Power to make regulations – The Head of State may make regulations under this Act for all or any of the following purposes:

- (a) the powers and duties to be exercised and performed by an officer;

- (b) the conduct of all matters relating to the collection of excise duties;
- (c) the procedure for the issue and transfer of licenses;
- (d) the charging of rent, fees and other charges and the amounts thereof;
- (e) the procedures to be used in respect of the drawback or refund of the whole or any part of the excise duty payable or paid in respect of excisable goods and for the withdrawal, wholly or in part, of such drawback or refund;
- (f) the forms to be used under and for purposes connected with this Act including the form of certificates and other documents to be used in relation to excisable goods intended to be used as materials in the manufacture of goods in Samoa;
- (g) the days and times during which an excise office, or licensed warehouse may be open for business;
- (h) the procedures for the deposit, storage, custody and removal of goods in and from premises licensed under section 6 and licensed warehouses, and the management and control of the same;
- (i) the inspection, supervision, management and control of premises licensed under section 6 and the fittings, implements, machinery and apparatus to be maintained therein, including such scales and weights, lights ladders and other equipment, as may be necessary in order to enable the proper officer to take account of, or check by weight, gauge or measure, all excisable goods or materials in such factory;
- (j) the hours during which manufacture may or may not take place and during which goods may be removed from premises licensed under this Act;
- (k) what accommodation and equipment a person licensed under this Act shall provide either free or cost or at a rental to be approved by the Comptroller for such officers as the Comptroller may deem to be necessary for the control of the licensed premises;
- (l) the method of blending, compounding, varying and bottling of intoxicating liquors in a distillery or

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in a licensed warehouse, and the fixing of the fees to be paid for bottling dutiable intoxicating liquors, and may provide for the control of the movement of intoxicating liquors;

- (m) the books to be kept by licensees, the entries to be made therein and the returns to be furnished by licensees;
- (n) the working days and hours of general attendance of officers and the rates of overtime fees to be paid by a licensee when officers are required to work beyond the ordinary hours prescribed and the conditions under which such overtime shall be permitted;
- (o) the offences which may be compounded;
- (p) the manner in which containers and packages of excisable goods shall be marked;
- (q) the manner in which spirits shall be denatured;
- (r) the method by which to secure and to collect the excise duty on excisable goods;
- (s) the procedures for storage, warehousing, removal and delivery of excisable goods prior to the payment of excise duty thereon, or in respect of which an excise duty has been remitted;
- (t) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

97. Power of Comptroller to prescribe forms – (1) For the purposes of this Act the Comptroller may prescribe any forms that are not otherwise specifically prescribed.

(2) The production of a document signed by the Comptroller purporting to be a prescribed form or an extract from a prescribed form or a copy of any such form or extract shall in all Courts and in all proceedings be sufficient evidence of the fact that the form was prescribed; and all Courts shall in all proceedings take judicial notice of the signature of the Comptroller either to the prescribed form or to any such extract or copy.

98. Penalties imposed by Regulations – Any regulations made by the Head of State under this Act may prescribe fines, not exceeding 5 penalty units, for the breach of the regulations.

99. General provision as to validity of orders and regulations – Without limiting the Acts Interpretation Act 1974, no order or regulation under this Act shall be invalid because it leaves a matter to the discretion of the Minister or of any other person, or because it authorises the Minister or any other person to give consent or to issue a licence, permit or other instrument on or subject to conditions to be imposed or approved by the Minister.

100. Repeals – The Tobacco Products Duty Act 1980 and the Beer Duty Act 1978 are repealed.

SCHEDULES

SCHEDULE 1 (Section 31)

EXEMPTIONS FROM EXCISE DUTY

Description

1. Official supplies of any description for diplomatic and consular officers; as approved by the Minister.

2. Any excisable goods made by an individual in his own home for his own or his family's use or consumption and which are not for sale or exchange for money or money's worth.

3. *Deleted by the Excise Tax (Domestic Administration) Amendment Act 1998 (No. 11)*

SCHEDULE 2 (Section 32)

FORM OF WARRANT OF DISTRESS

46 Excise Tax (Domestic Administration) Act 1984

I, Comptroller of Customs, by virtue of the powers vested in me by Section 32 of the Excise Tax (Domestic Administration) Act do hereby authorise you to collect and recover the sum of due for excise duty from,..... the manufacturer, having his factory at and for the recovery thereof I further authorise that you, with the aid (if necessary) of your assistant and calling to your assistance any Police Officer, which assistance they are hereby required to give, do forthwith levy by distress the said sum together with the costs and charges of and incidental to the taking and keeping of such distress, on the goods, chattels and other distrainable things of the said manufacturer wherever the same may be bound and on all machinery, plant, tools, ships, aircraft, vehicles, animals, goods and effects used within Samoa in the manufacture, sale or distribution of excisable goods which you may find in any premises or on any lands in the use of possession of the said manufacturer or of any person on his or her behalf or in trust for him or her. And for the purpose of levying such distress you are hereby authorised, if necessary, with such assistance as aforesaid to break open any building or place in the daytime.

GIVEN UNDER MY HAND at this day of..... 20 ...

Comptroller of Customs

REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 – 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) References to the male gender made gender neutral
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a” or “each” where appropriate
 - (ii) “shall be” and “has been” changed to “is” and “shall be deemed” changed to “is taken”

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- (iii) “shall have” changed to “has”
- (iv) “notwithstanding” changed to “despite”
- (v) “pursuant to” changed to “under”
- (vi) Numbers in words changed to figures
- (vii) “from time to time” (or “at any time”) removed
- (viii) “the generality of” removed
- (ix) “the provisions of” deleted
- (x) Sections 32C(1)& (3), 43(1), 49 and 64(1) revised and paragraphed.
- (xi) Definitions of “Comptroller” and “Officer” revised as a result of the Customs Act 2014.

The following amendments were made to this Act since the publication of the Consolidated and Revised Statutes of Samoa 2007:

By the Customs Act 2014 (No 20), commenced on 25 August 2014

:

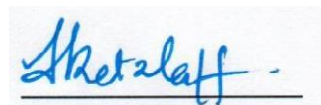
Section 7 deleted “a “manufacturing warehouse”, for which a licence has been issued under section 82 of the Customs Act 1977” and substitute with “a Customs controlled area, for which a licence for manufacturing has been issued under section 12 the Customs Act 2014”.

By the National Prosecution Act 2015 (No.38) which commences on 1 January 2016:

Section 95 omit “Attorney General” and substitute “Director of Public Prosecutions”

By the Constitution Amendment Act (No. 1) 2017, No 8:

Section 95 omit “Director of Public Prosecutions” and substitute “Attorney General”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry for Revenue.*
