

No. 4 of 2010.

*Excise Tax Act, 2010.*

Saint Christopher  
and Nevis

I assent,



CUTHBERT M SEBASTIAN  
*Governor-General*

28<sup>th</sup> October 2010.

## SAINT CHRISTOPHER AND NEVIS

### No. 4 2010

AN ACT to provide for the imposition and collection of excise tax on imported and locally manufactured goods, and to provide for related or incidental matters.

*[Published 28<sup>th</sup> October 2010 - Official Gazette No. 51 of 2010]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:

#### PART I—PRELIMINARY MATTERS

##### 1. Short title.

This Act may be cited as the Excise Tax Act, 2010.

##### 2. Application of Act.

This Act shall apply to goods which attract excise tax imported into, or manufactured in, Saint Christopher and Nevis only if

- (a) the goods are imported or manufactured on or after the coming into force of this Act; or
- (b) the goods were imported before the coming into force of this Act, but are entered for home use on or after the coming into force of this Act;
- (c) the goods were manufactured before the coming into force of this Act, but are sold by the registered manufacturer or removed from a warehouse on or after the coming into force of this Act.

##### 3. Interpretation.

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

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“applicant” means a person who makes an application pursuant to the provisions of section 10;

“approved form” means a form approved, in writing, by the Comptroller or the Comptroller of Customs;

“approved warehouse” means a place approved as a warehouse by the Comptroller pursuant to the provisions of section 12.(1);

“Comptroller” means the Comptroller of Inland Revenue;

“Comptroller of Customs” means the person for the time being performing the duties of Comptroller of Customs of the State and includes any Customs Officer;

“consideration”, in relation to a supply or importation of goods, includes

- (a) the total amount in money or kind paid or payable;
- (b) a deposit on a returnable container for the supply or importation of goods by any person, directly or indirectly; and
- (c) duties, levies, fees, and charges, other than tax payable under this Act paid or payable on, or by reason of, the supply or importation of goods;

reduced by any price discounts or rebates allowed and accounted for at the time of the supply or import of the goods, but does not include:

- (i) a cash payment made by any person as an unconditional gift to an association not for gain; or
- (ii) a deposit, other than a deposit on a returnable container, whether refundable or not, given in connection with a supply of goods unless the supplier applies the deposit as consideration for the supply or such deposit is forfeited;

“entered”, in relation to

- (a) an import or export of goods, has the meaning assigned to it under the Customs (Control and Management) Act, Cap. 20.04; and
- (b) a removal of goods manufactured in Saint Christopher and Nevis, means the removal of the goods for home use from an approved warehouse;

“entered for export” means entered for export in accordance with the requirements of the Customs (Control and Management) Act;

“entered for home use”, in relation to

- (a) goods which are imported into the Federation and do attract excise tax, means

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- (i) an entry of goods for home use under the customs laws; or
  - (ii) if no such entry is made, an importation of goods which are deemed, under this Act or the Customs laws, to have been entered for home use; and
- (b) goods which are manufactured in Saint Christopher and Nevis and do attract excise tax, the first removal, other than a removal referred to in section 12.(1)(b), of those goods from a warehouse;

“excise tax” means tax imposed under section 16, and any amount required to be brought to account as excise tax by virtue of the provisions of this Act;

“exempt goods” mean goods which are not liable to excise tax and which goods are specified in the Second Schedule to this Act or otherwise under this Act;

“export” means to take or cause to be taken out of Saint Christopher and Nevis or the territorial sea;

“fair market value” has the meaning assigned to it by section 4 of this Act;

“home use” means consumption, use, or application in Saint Christopher and Nevis;

“import” means to bring or cause to be brought into Saint Christopher and Nevis or the territorial sea;

“importer”, in relation to any goods at any time between their importation and the time when they are delivered out of customs charge, includes any owner or other person for the time being possessed of or beneficially interested in the goods;

“import duty” means a duty of customs chargeable under any law on goods on importation;

“manufacture” includes

- (a) making or producing goods that are subject to excise tax,;
- (b) all processes, intermediate or incomplete processes, undertaken in making or producing the goods;
- (c) filtering, diluting, or blending goods that are subject to excise tax with other goods, (including other goods that are subject to excise tax);
- (d) putting goods that are subject to excise tax, for the first time, into a container in which they may be presented for sale, or from which they may be dispensed; and
- (d) labelling or marking, for the first time, containers filled with goods that are subject to excise tax;

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“manufacturer” includes a person who manufactures goods that are subject to excise tax;

“Minister” means the Minister responsible for the subject of Finance;

“officer” means an officer who is authorised by the Comptroller or Comptroller of Customs to carry out the functions or duties of an officer under this Act;

“person” includes the Federal Government, an agency of the Federal Government, the Nevis Island Administration, an agency of the Nevis Island Administration, a trust, a company, and a partnership;

“premises” include

- (a) a place, whether or not that place is enclosed or built on;
- (b) a structure, vehicle, vessel, or an aircraft;

“registered manufacturer” means a person who is registered pursuant to the provisions of section 12;

“related persons” mean

- (a) a natural person and a relative of that natural person;
- (b) a trust and a person who is or may be a beneficiary in respect of that trust or whose relative is or may be a beneficiary;
- (c) a partnership or company limited by shares and a member thereof who, together with shares or other membership interests held by persons who are related to such member under another paragraph of this definition, owns 25% or more of the rights to income or capital of the partnership or company;
- (d) a shareholder in a company limited by shares if the shareholder, together with shares held by persons who are related to such shareholder under another paragraph of this definition
  - (i) controls 25% or more of the voting power in the company limited by shares; or
  - (ii) owns 25% or more of the rights to dividends or of the rights to capital; or
- (e) two companies, if a person, either alone or together with a person or persons who are related to such person under another paragraph of this definition
  - (i) controls 25% or more of the voting power in both companies; or
  - (ii) owns 25% or more of the rights to dividends or of the rights to capital in both companies; and

for purposes of paragraphs (c), (d), and (e) of this definition, a person shall be treated as owning, on a *pro rata* basis, shares or other membership interests which are owned or controlled by such person indirectly through one or more interposed persons;

“sale” means

- (a) an agreement;
- (b) barter transaction; or
- (c) any other transaction;

under which ownership of goods, or the right to dispose of the goods as owner, passes or is intended to pass from one person to another person for consideration;

“tax fraction”, in relation to goods that are subject to tax under this Act, means the fraction calculated in accordance with the formula  $R/(1+R)$  where “R” is the rate of excise tax applicable to the goods;

“tax period” has the meaning assigned to it by section 22;

“warehouse” means a place for the depositing, keeping, manufacturing, or securing of goods that are subject to tax under this Act.

(2) For the purposes of this Act, the classification and description of goods specified in the First Schedule shall be interpreted in accordance with the rules of interpretation set out in the Harmonised System.

(3) For the purposes of this Act, all goods that attract excise tax and are manufactured in Saint Christopher and Nevis by a registered manufacturer shall be deemed to be goods manufactured and entered for home use.

(4) For the purposes of this Act, all goods which attract excise tax found in a warehouse shall be deemed to have been manufactured in such warehouse.

#### **4. Definition of fair market value.**

(1) For the purposes of this Act, the fair market value of an importation of goods at a given date is the consideration in money which the importation would generally fetch if imported in similar circumstances at that date in Saint Christopher and Nevis, being an importation freely offered and made between persons who are not related persons.

(2) Where the fair market value of an importation of goods at a given date cannot be determined under subsection (1), the fair market value is the consideration in money which a similar importation would generally fetch if imported in similar circumstances at that date in Saint Christopher and Nevis, being an importation freely offered and made between persons who are not related persons.

(3) Where the fair market value of an importation of goods cannot be determined under subsection (1) or (2), the fair market value shall be determined in accordance with any

method approved by the Comptroller, which method shall provide a sufficiently objective approximation of the consideration in money which could be obtained for that importation had the importation been freely offered and made between persons who are not related persons.

(4) The fair market value of an importation shall be determined at the time of the importation as determined in this Act.

(5) In this section, “similar importation”, in relation to goods, means goods produced in the same country which, although not alike in all respects, have the characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable.

**5. Goods manufactured in Saint Christopher and Nevis deemed to be goods manufactured for home use etc.**

(1) Goods which are subject to tax under this Act and are manufactured in Saint Christopher and Nevis shall, for the purposes of this Act, be deemed to be goods manufactured and entered for home use.

(2) Goods which are subject to tax under this Act which are found in a warehouse that belongs to a registered manufacturer shall be deemed to be goods manufactured by such registered manufacturer.

**PART II – ADMINISTRATION**

**6. Duties of Comptroller.**

(1) Subject to this Act, the Comptroller shall be responsible for the general implementation and enforcement of the provisions of this Act.

(2) The Comptroller may, in relation to any matter or class of matter, delegate, to a taxation officer, or any other person who is employed for the purpose of assisting in carrying out the provisions of this Act, any duty, function, or power conferred upon the Comptroller by this Act, other than

- (a) the power of delegation conferred by this subsection; and
- (b) the power to sanction prosecution conferred by section 63.

(3) A delegation made pursuant to the provisions of subsection (2) may be revoked at any time by the Comptroller, and such delegation shall not, during the time it is in force, prevent the Comptroller himself or herself from exercising such duties, functions or powers.

(4) Subject to subsections (5) and (6), a decision made and a notice or communication issued or signed by the Comptroller or his or her delegatee may be withdrawn or amended at any time.

(5) Where the Comptroller, knowing all the material facts at the time, makes a decision that a person is required to or not required to register, and the person accepts the

Comptroller's decision, and subsequently the Comptroller withdraws his or her decision, then the Comptroller's earlier decision shall govern the liability or non-liability of the person in respect of the payment of tax on any transaction concluded or event which occurred before the withdrawal of the decision.

(6) Where the Comptroller, knowing all the material facts at the time, makes a decision as to the nature of the transaction concluded by a person, and the person accepts the Comptroller's decision, and subsequently the Comptroller withdraws his or her decision, then the Comptroller's decision shall govern the liability or non-liability of the person in respect of the payment of tax on any transaction concluded before the withdrawal of the decision.

#### **7. Secrecy.**

(1) Subject to the provisions of this section, a taxation officer or other person carrying out the provisions of this Act shall not

- (a) disclose to any other person any matter in respect of any other person, which matter may come to their knowledge during the exercise of their duties, functions and powers under the provisions of this Act; or
- (b) permit any person to have access to any records in the possession of the Comptroller, except in the course of the exercise of their duties, functions or powers under the provisions of this Act or by an order of a court.

(2) Nothing in this section shall prevent the Comptroller from disclosing

- (a) any documents or information to
  - (i) a person where the disclosure is necessary for the purposes of this Act or any other law in force in Saint Christopher and Nevis which the Comptroller or the Comptroller of Customs has the power, duty or function to administer;
  - (ii) a person authorized by any enactment to receive such information; or
  - (iii) the competent authority of the Government of another country with which Saint Christopher and Nevis has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under the agreement or any law in force in Saint Christopher and Nevis; or
- (b) information which does not identify a specific person to a person in the service of Saint Christopher and Nevis in a revenue or statistical department where such disclosure is necessary for the performance of the person's official duties.

(3) A person who receives any document or information pursuant to the provisions of subsection (2) shall keep the document or information secret until the purpose for which the disclosure was made is achieved.

(4) Documents or information obtained by the Comptroller in the performance of his or her duties under this Act may be used by the Comptroller for the purposes of any other law administered by the Minister, Comptroller or the Comptroller of Customs.

(5) If a person consents, in writing, information regarding that person may be disclosed to another person.

(6) The Comptroller may disclose information concerning a taxpayer's affairs to a person claiming to be the taxpayer or the taxpayer's authorized representative only after obtaining reasonable assurance of the authenticity of the claim.

(7) Nothing in this section shall prevent the Comptroller and the Comptroller of Customs from exchanging information in order to perform their duties under any enactment in force in Saint Christopher and Nevis that they administer.

(8) The obligation as to secrecy imposed by this section shall continue to apply in respect of any person even if that person ceases to have any official duty under this Act, or to be employed in carrying out the provisions of this Act.

(9) A person who contravenes this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding one year or both.

#### **8. Collection of tax on imported goods.**

(1) The Comptroller of Customs shall, on behalf of the Comptroller, be responsible for the collection of the tax imposed on imported goods by the provisions of this Act.

(2) Tax on imported goods shall be charged and payable under this Act, but, for the purposes of collecting and enforcing the payment of this tax, the Customs (Control and Management) Act, Cap. 20.04 shall apply with the necessary modifications or changes in the same manner as if the collection and enforcement of the payment of the tax were a duty of customs.

(3) The Comptroller of Customs may, by virtue of the provisions of subsection (4), exercise any power conferred on the Comptroller of Customs by any customs legislation as if the reference to duty in that legislation included a reference to tax charged on imported and exported goods under this Act.

(4) Unless a contrary intention appears, the provisions of the Customs (Control and Management) Act relating to the importation, transit, coastwise carriage, clearance of goods, and payment and recovery of duty apply, so far as relevant, to the tax charged under this Act on the imported goods, with such exceptions, modifications, and adaptations as the Minister may, by regulations made under this Act, prescribe.



**9. Import declaration and payment of tax on imported goods.**

## (1) The Comptroller of Customs

- (a) shall, on behalf of the Comptroller, collect, at the time of importation of any goods, any tax due under this Act on the imported goods;
- (b) shall, at the time of collection of the tax, obtain the name and the taxpayer's identification number, if any, of the importer, the import declaration, and the invoice values in respect of the imported goods; and
- (c) may make arrangements with the Postmaster General to perform, on behalf of the Comptroller of Customs, functions in respect of the collection of tax on imported goods that arrive through the postal services.

(2) Where tax is payable on any imported goods, the importer shall, upon the entry of the goods, furnish the Comptroller of Customs with an import declaration and pay the tax due on the imported goods in accordance with the arrangements referred to in section 8.(4).

## (3) An import declaration referred to in subsection (2) shall

- (a) be in the form prescribed by the Comptroller of Customs;
- (b) contain the information necessary to calculate the tax payable in respect of the imported goods; and
- (c) be furnished in the manner prescribed by the Comptroller of Customs.

**PART III – REGISTRATION OF TAX PAYERS****10 Criteria for registration.**

(1) A person who meets the threshold requirements provided in subsection (2) shall not, within Saint Christopher and Nevis, manufacture goods which are subject to tax under this Act unless

- (a) that person holds a registration certificate issued by the Comptroller in accordance with the provisions of this Act;
- (b) that person has entered into a security arrangement with the Comptroller pursuant to the provisions of this Act; and
- (c) the warehouse in which the person manufactures such goods have been approved as premises in which goods may be manufactured pursuant to the provisions of the relevant law.

(2) A person who carries on the business of manufacturing goods which are subject to tax under this Act shall apply to the Comptroller to be registered as a manufacturer for the purposes of this Act within fourteen calendar days of

- (a) the end of any period of twelve or fewer months where, during that period, the manufacturer's receipts from the sale of the goods exceeded \$20,000;
- (b) the beginning of any period of 365 calendar days where there are reasonable grounds to expect that the manufacturer's receipts during that period from the sale of the goods will exceed \$20,000; or
- (c) the end of any three months period during which the manufacturer's receipts from the sale of the goods exceeded \$5,000 and there are reasonable grounds to expect that the manufacturer's total receipts from the sale of the goods during that period and the next nine months will exceed \$15,000.

#### **11. Application for registration**

(1) A person who is required to be registered pursuant to the provisions of section 10 shall make an application to the Comptroller, in the prescribed manner, to be a registered manufacturer and to have the warehouse in which the person intends to manufacture and store the goods referred to in section 10 be declared an approved warehouse pursuant to the provisions of this Act.

(2) An application made pursuant to the provisions of subsection (1) shall be made within the period specified in section 10.(2), and shall contain such particulars as may be prescribed.

#### **12. Grant or refusal of application.**

(1) Where the Comptroller is satisfied that an applicant will carry on the business of manufacturing goods which are subject to tax under this Act in Saint Christopher and Nevis, and meet the prescribed requirements with respect to the establishment of a warehouse, the Comptroller shall, within twenty-one days of receipt of the application, approve the application, and subject to section 13, issue to the applicant a registration certificate to the effect that

- (a) the applicant is a registered manufacturer; and
- (b) the warehouse from which the applicant intends to manufacture and store the goods is an approved warehouse.

(2) Where the Comptroller is not satisfied that the applicant has met the prescribed requirements under the Act, the Comptroller shall, within twenty-one days of receipt of the application, notify the applicant, in writing, of the decision, the reasons for arriving at the decision, and the right of the applicant to appeal against the decision in accordance with the provisions of Part VIII of this Act.

(3) A registration certificate may contain such terms, conditions or restrictions as the Comptroller deems necessary, and shall be evidence that

- (a) the person named in it is a duly registered manufacturer for the purposes of this Act; and

(b) the warehouse named therein is an approved warehouse for the depositing, keeping, manufacturing, or securing of goods for the purposes of this Act.

(4) Where the Comptroller reasonably believes that a person who has not applied for registration under section 10 is required to do so, the Comptroller may register the person and issue a registration certificate, provided that the Comptroller has first notified the person and giving the person an opportunity to object.

### **13. Lodging of security arrangement.**

(1) The Comptroller shall not issue a registration certificate under section 12 unless the person to whom the registration certificate is to be issued enters into a security arrangement with the Comptroller.

(2) The security arrangement referred to under subsection (1) shall remain in effect so long as the person remains a registered manufacturer, and shall be such amount, and in such form, as may be determined by the Comptroller.

### **14. Cancellation of registration**

(1) The Comptroller may, by issuing notice in writing to a registered manufacturer, cancel the registration certificate of the registered manufacturer, if the manufacturer

- (a) fails to comply with the terms and conditions of his or her registration certificate;
- (b) fails to comply with the provisions of this Act; or
- (c) is convicted of an offence against this Act or the Customs (Control and Management) Act, Cap. 20.04.

(2) The Comptroller shall not cancel a registration certificate under subsection (1), unless the Comptroller has given the registered manufacturer an opportunity to be heard.

(3) Where a registered manufacturer ceases to manufacture and store goods which are subject to tax under this Act, the manufacturer shall, within fourteen days of such cessation, notify the Comptroller, in writing, of that fact, stating

- (a) the date on which the manufacturer has ceased to manufacture and store the goods; and
- (b) the date on which the manufacturer anticipates that all the goods will be entered for home use, or exported from the manufacturer's approved warehouse to a place outside Saint Christopher and Nevis.

(4) Where the Comptroller receives a notification under subsection (3), the Comptroller shall, by notice in writing, cancel the registration certificate of the registered manufacturer, and such cancellation shall take effect from the first day on which there are no remaining goods in the approved warehouse of the registered manufacturer.

(5) Where the registration certificate of a registered manufacturer is cancelled, the registered manufacturer shall immediately return the registration certificate and any certified copies thereof to the Comptroller.

(6) If, immediately after the cancellation of a registered manufacturer's registration certificate under subsection (5), there are goods which are subject to tax under this Act remaining in the approved warehouse of the registered manufacturer, those goods shall be deemed to have been entered for home use on the preceding day.

(7) The cancellation of a manufacturer's registration shall not affect any obligation or liability of the manufacturer under this Act in respect of anything done or omitted to be done by the manufacturer while the manufacturer was registered, including the obligations to pay excise tax and file returns.

**15. Duties of registered manufacturer.**

- (1) Subject to the provision of this Act, a registered manufacturer shall
  - (a) store all goods which are subject to tax under this Act on which excise tax has not been paid in the manufacturer's approved warehouse;
  - (b) enter goods which are subject to tax under this Act for home use only from the manufacturer's approved warehouse; and
  - (c) complete at the time of entry of goods which are subject to tax under this Act for home use, such records, forms or documents, in such manner and form, as the Comptroller shall require in relation to the entry.
- (2) A registered manufacturer shall inform the Comptroller
  - (a) when a person, other than the registered manufacturer, has succeeded the manufacturer in the manufacturing of goods which are subject to tax under this Act;
  - (b) of the date and details of any change in the name, address, place of business or constitution of the business carried on by the registered manufacturer in relation to goods which are subject to tax under this Act; or
  - (c) when there is an enlargement, or substantial variation in the nature or quantity of goods which are subject to tax under this Act manufactured by the registered manufacturer.

(3) A notice given pursuant to the provisions of subsection (2) shall be in writing in the form approved by the Comptroller, and shall be served on the Comptroller, no later than fourteen days prior to the occurrence of the events stipulated under that subsection.

**PART IV – IMPOSITION OF EXCISE TAX**

**16. Imposition of excise tax.**

(1) Subject to the provisions of this Act, a tax to be known as the excise tax shall be charged upon

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- (a) goods manufactured in Saint Christopher and Nevis by registered manufacturers; and
- (b) goods imported into Saint Christopher and Nevis;

as long as those goods are subject to excise tax in accordance with the provisions of this Act.

(2) Goods which are subject to excise tax are goods which are imported into, or manufactured in, Saint Christopher and Nevis and which are specified in the First Schedule to this Act.

(3) The excise tax imposed under the provisions of subsection (1)(a) shall become payable at the time when goods are entered for home use, and shall be paid to the Comptroller, at the time and in the manner specified in section 27, by the registered manufacturer from whose warehouse the goods are removed.

(4) The excise tax imposed under the provisions of subsection (1)(b) shall be paid to the Comptroller of Customs, at the time and in the manner specified in section 28, by the person who enters, or is required to enter, the goods for home use.

**17. Deemed entry of goods which are subject to tax.**

(1) If a registered manufacturer cannot, to the satisfaction of the Comptroller, account for a quantity of goods which are subject to tax under this Act manufactured by him or her during a tax period, such registered manufacturer shall be liable to pay excise tax under section 16 on such goods as if the goods had been entered for home use from the warehouse of the registered manufacturer during the tax period in which the non-accountability arose.

(2) A registered manufacturer shall notify the Comptroller of any discrepancy between the manufacturer's actual and recorded inventory within seven calendar days of becoming aware of the discrepancy.

**18. Assessment of excise tax.**

- (1) Where
  - (a) the third column of the First Schedule specifies a rate of excise tax as being payable by reference to a quantity measured by volume or weight or part thereof;
  - (b) goods are imported or removed from a warehouse in a container intended for sale with, or of a kind usually sold with, the goods in a retail sale; and
  - (c) the container is marked, labelled, or commonly sold as containing, or commonly reputed to contain, a specific quantity of such goods;

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

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(2) Where the First Schedule specifies a rate of excise tax as being payable by reference to the value of the goods, the value of the goods shall be,

- (a) where the goods are imported, the sum of
  - (i) the value of the goods determined under the Customs (Control and Management) Act, Cap. 20.04, for the purpose of assessing import duty on the goods at *ad valorem* rates, whether or not such import duty is payable on the goods; and
  - (ii) to the extent that they are not included in subparagraph (i), the amount of any taxes, duties, fees, or other charges payable on the entry of the goods into Saint Christopher and Nevis, (other than excise tax or value added tax); or
- (b) where the goods are manufactured in Saint Christopher and Nevis and are sold at the time they are entered for home use, the consideration paid or payable in relation to the sale, minus, if the value so calculated includes value added tax, the tax fraction of that value; or
- (c) where the goods are manufactured in Saint Christopher and Nevis and are not sold at the time they are entered for home use, the fair market value of the goods at the time they are entered for home use, minus, if the value so calculated includes value added tax, the tax fraction of that value.

**19. Relief for damaged or destroyed goods.**

Excise tax shall not be imposed on goods which are subject to tax under this Act where such goods have not been entered for home use from the manufacturer's warehouse, if the goods

- (a) are destroyed by fire or other natural causes; or
- (b) have deteriorated or been damaged while stored in the registered manufacturer's approved warehouse and have been securely disposed of in a manner satisfactory to the Comptroller.

**20. Exemption for goods exported before entry for home use.**

Excise tax shall not be imposed on goods which are subject to tax under this Act and are being exported if,

- (a) in the case of imported goods, they are entered for export without first being entered for home use; or
- (b) in the case of goods manufactured in the Federation, they are removed from a warehouse and immediately placed under the control of the Comptroller of Customs and entered for export.

**21. Exemption for goods which are temporarily imported.**

(1) The Comptroller of Customs may grant permission for the importation of goods which are subject to tax under this Act without payment of excise tax if

- (a) the Comptroller of Customs is satisfied that the goods
  - (i) are imported only for temporary use or a temporary purpose;
  - (ii) are the *bona fide* property, and are for the exclusive use, of a person temporarily in the Federation; and
 will be exported within three months from the granting of the permission; and
- (b) the person to whom the permission is granted deposits with the Comptroller of Customs an amount equal to the excise tax payable on the goods.

(2) Where goods imported pursuant to the provisions of subsection (1) are not exported within the period specified in subsection (1)(a), the Comptroller of Customs shall bring to account as excise tax the deposit made under subsection (1)(b).

(3) Notwithstanding subsections (1) and (2), the Comptroller of Customs may, if he or she considers it appropriate, allow a further period for the export of the goods.

(4) Where goods referred to in subsection (1) are exported within the time specified in subsection (1), or within a further period allowed under subsection (3), the Comptroller of Customs shall refund the deposit made under subsection (1)(b), in accordance with the established customs procedure, with respect to the payment of refunds.

## **PART V – TAX PERIOD, RETURNS AND ASSESSMENTS**

### **22. Tax period.**

The tax period applicable to a taxable person under this Act is the calendar month.

### **23. Returns**

(1) A registered manufacturer shall file an excise tax return for each tax period with the Comptroller within fifteen calendar days after the end of the tax period, whether or not tax is payable in respect of that period to which the return relates.

- (2) An excise tax return referred to in subsection (1) shall
  - (a) be in such form as may be prescribed by the Comptroller;
  - (b) contain such information as the form requires in relation to goods that are subject to tax under this Act entered for home use by the manufacturer during the tax period to which the return relates; and
  - (c) contain such other information as may be specified in the form.

### **24. Extension of time.**

(1) Upon application, made in writing by a registered manufacturer, the Comptroller may, where good cause is shown by the manufacturer, extend the period within which any return required under section 23 is to be filed.

(2) The granting of an extension of time under subsection (1) shall not alter the due date for the payment of tax under section 27.(1)

(3) A person who is dissatisfied with a decision of the Comptroller made pursuant to the provisions of subsection (1) may challenge that decision in accordance with the provisions of Part VIII of this Act.

## **25. Assessments.**

(1) Where

- (a) a person fails to file a return as required by section 23 or fails to furnish an import declaration as required by section 9;
- (b) the Comptroller is not satisfied with a return or import declaration furnished by a person;
- (c) the Comptroller has reason to believe that a person will become liable for the payment of an amount of tax but is unlikely to pay such amount;
- (d) a person, other than a person liable to pay tax, supplies goods and represents that tax is charged on the supply;
- (e) the Comptroller has determined the liability of any person in terms of section 88.(2);
- (f) the Comptroller may make an assessment of the amount of tax payable by the person or of the amount of tax represented by the person as payable in respect of the goods.

(2) An assessment referred to in subsection (1)(a), (c), (d), (e) may be made by the Comptroller at any time.

(3) An assessment referred to in subsection (1) (b),

- (a) where the default was due to fraud or wilful default committed by, or on behalf of, the person who furnished the return or import declaration, may be made by the Comptroller at any time; or
- (b) in any other case, may be made within six years after the date the return or import declaration was furnished.

(4) The Comptroller may, on the basis of the information available, estimate the tax payable by a person for the purposes of making an assessment under subsection (1).

(5) Where a person is not satisfied with a return filed by him or her under this Act, he or she may apply to the Comptroller to make an addition or alteration to that return.

(6) An application referred to in subsection (5) shall be in writing, and the applicant shall specify in detail the grounds upon which his or her application is made.

(7) An application referred to in subsection (5) shall be made within a period of three years after the date the return was filed by the applicant or, in the event an assessment is made by the Comptroller after the three-year period, may be made within sixty calendar days after the date on which notice of such assessment is served on the applicant.



(8) After considering an application made under subsection (5), the Comptroller may make an assessment of the amount that, in the Comptroller's opinion, is the amount of tax payable under this Act.

(9) Where an assessment is made under this section, the Comptroller shall serve a notice of the assessment on the person assessed, in which notice the Comptroller shall indicate

- (a) the tax payable;
- (b) the date the tax is due and payable; and
- (c) the time, place and manner of objecting to the assessment.

(10) The Comptroller may, within three years after service of the notice of assessment, or in the case of assessments described in subsection (3), within the deadline specified in that subsection, amend an assessment as the Comptroller considers necessary, in which case the Comptroller shall serve notice of the amended assessment on the person assessed.

(11) An amended assessment shall be treated in all respects as an assessment made under this Act.

(12) An amount assessed in accordance with the provisions of subsection (1)(d) or (e) shall be treated, for all purposes of this Act, as tax charged under this Act.

## **26. General provisions relating to assessments.**

(1) The original or a certified copy of a notice of assessment shall be receivable in any proceedings as conclusive evidence that the assessment has been duly made and, except in proceedings under Part VIII of this Act relating to the assessment, that the amount and all particulars of the assessment are correct.

(2) No assessment or other document purporting to be made, issued or executed under this Act shall be quashed or deemed to be void or voidable for want of form or by reason of mistake, defect or omission if it is in substance and effect, in conformity with the provisions of this Act and the person assessed or intended to be assessed or affected by the document is identified in it.

## **PART VI – PAYMENT AND RECOVERY OF EXCISE TAX**

### **27. Payment of excise tax by registered manufacturers.**

(1) Where excise tax is payable by a registered manufacturer under section 16 in relation to goods entered for home use from the manufacturer's approved warehouse during a tax period, the excise tax is due and payable by the due date for the return for the tax period.

(2) The liability to pay excise tax arises by operation of this section and shall not depend on the Comptroller making an assessment of the excise tax due, nor on the registered manufacturer making a return in accordance with section 23.

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(3) A registered manufacturer shall not enter goods for home use from the manufacturer's approved warehouse if the entry would result in the amount of excise tax payable by the manufacturer, but not yet paid, exceeding the amount of the security arrangement referred to in section 13 upon registration, unless

- (a) the Comptroller, on application, in writing, by the registered manufacturer, gives permission for the entry;
- (b) the registered manufacturer, subject to the approval of the Comptroller, increases the amount of the security arrangement referred to in section 13; or
- (c) in any other case, the registered manufacturer pays the excise tax payable on the goods before such goods are entered for home use.

(4) Permission granted under subsection (3)(a) may be continuous or one off.

(5) For the purposes of subsection (3), excise tax payable includes excise tax that has not been paid due to the fact that the time allowed for payment under subsection (1) has not elapsed.

(6) Where a manufacturer who is required to pay excise tax in accordance with this section makes one or more payments of excise tax payable for a tax period before the due date of the tax period, including where an amount is paid under subsection (3)(c), each such payment reduces the amount payable on the due date for the return for the tax period.

(7) Subject to section 43.(5), where an objection to, or a notice of appeal against an assessment is lodged, the due date of the tax payable under the assessment shall remain as specified under subsection (1).

(8) Upon an application, made in writing by a person liable for tax, the Comptroller may, where good cause is shown, extend the time for payment of tax by the person beyond the date on which it is due and payable under this section, or make such other arrangements as are appropriate to ensure the payment of the tax due, and any such extension shall not alter the due date for purposes of section 37.

(9) A person who fails to pay tax, being the whole or part of the remainder of any tax due or payable under this Act, by the due date shall be liable to a penalty equal to 10% of the amount of tax due.

(10) A person who is dissatisfied with a decision of the Comptroller made pursuant to the provisions of subsection (8) may challenge that decision in accordance with the provisions of Part VIII of this Act.

**28. Payment of excise tax by importers.**

(1) The excise tax payable by a person under section 16 in relation to goods which are imported into Saint Christopher and Nevis shall be paid to the Comptroller of Customs before the goods are entered for home use.

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

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- (a) a passenger who imports any baggage for which no entry is required under the Customs Tariff Act, Cap. 20.6 is deemed to have entered the baggage for home use at the time the baggage is delivered to the passenger in the Federation; and
  - (b) the addressee of goods imported by post for which no entry is required under the Customs Tariff Act is deemed to have entered the goods for home use at the time the goods are delivered to the addressee.
- (3) Where a person who imports goods is required to enter the goods for home use under the Customs Tariff Act but does not do so, excise tax shall be payable at the time when the goods are imported.
- (4) For the purposes of collecting and enforcing the payment of excise tax imposed under this Act on goods imported into the Federation, the Customs Tariff Act and any other enactment relating to the importation of goods shall apply as if excise tax were an import duty.

**29. Allocation of payments.**

Where, in addition to any amount of tax which is due and payable by any person under this Act, any amount of interest or penalty is payable, any payment made by the person in respect of such tax, interest, or penalty which is less than the total amount due shall be deemed to be made

- (a) first, in respect of such interest;
- (b) to the extent that the payment exceeds the amount of the interest, then in respect of penalty; and
- (c) to the extent that such payment exceeds the sum of the penalty and interest, then in respect of the tax.

**30. Recovery of tax as debt due.**

(1) Tax that is due and payable under this Act is a debt due to the Crown and payable to the Comptroller, and may be recovered in the manner provided by Part VI of the Tax Administration and Procedures Act, No.12/2003 where

- (a) the tax is shown on a return and remains unpaid; or
- (b) the tax is shown in a notice of assessment served on the taxpayer and the taxpayer has failed to pay it within the period specified in the notice.

(2) The provisions of subsection (1) shall not apply to any tax collected by the Comptroller of Customs, which is recovered under the procedures that relate to the recovery of customs duty.

(3) A portion of the tax due and payable to the Comptroller under this Act shall be paid into a Special Fund established in accordance with section 9 of the Finance Administration Act, No. 13/2007 to pay the refunds required to be paid under this Act.

**31. Recovery of tax from persons leaving Saint Christopher and Nevis.**

(1) Where the Comptroller has reasonable grounds to believe that a person may leave Saint Christopher and Nevis without paying all tax due under this Act, the Comptroller may obtain an order from a judicial officer, or issue a certificate in such form as the Comptroller may prescribe, directing the Chief Immigration officer to take the necessary steps to prevent the person from leaving Saint Christopher and Nevis until the person makes payment in full or that person makes an arrangement that is satisfactory to the Comptroller for the payment of the tax.

(2) The Comptroller shall serve a copy of the court order or certificate referred to in subsection (1) on the person named in the court order or certificate if it is practicable to do so.

**32. Preferential claim to assets.**

(1) From the date on which tax becomes due and payable under this Act and until the tax is paid, the Comptroller shall have a lien upon the assets of the person liable to pay the tax, and any asset of a related person, where, in respect to the asset of the related person, the Comptroller reasonably believes that the person liable to pay the tax legally owns the asset and transferred the asset to the related person in order to avoid the payment of tax.

(2) The lien described in subsection (1) shall not be valid against the interest of a person who is a purchaser from the taxpayer or a holder of a security interest in the property, if the person's ownership of or other interest in the property arises before the person has had actual knowledge of the lien, and before notice of the lien has been duly registered by the Registrar.

(3) Where a person is in default of paying tax, the Comptroller may, by notice in writing, apply to the Registrar of the Court to register a security interest in any fixed assets (including capital goods), which are owned by that person, to cover any unpaid tax in default, together with any expense incurred in recovery proceedings.

(4) Where the Comptroller makes an application under subsection (3), the Registrar shall register the notice of security without fee, as if the notice were an instrument of mortgage over, or charge on, as the case may be, such asset, and the registration shall operate while it subsists, subject to any prior mortgage, or charge on, the asset, in all respects as a legal mortgage over the asset or charge on the asset to secure the amount due.

(5) Where the Registrar registers a security interest referred to in subsection (3) he or she shall notify the owner of the property, within fifteen days of such registration, that the security interest has been registered.

(6) The Comptroller shall serve a copy of the notice referred to in subsection (3) to the person who is in default, and that person may pay the tax in default and have the notice removed.

**33. Seizure of goods and vehicles.**

(1) Where the Comptroller has reasonable grounds to believe that tax on a supply or importation of goods has not been or will not be paid, the Comptroller may seize the goods, and such goods shall be stored in such place as may be approved by the Comptroller for the storage of such goods.

(2) The Comptroller may seize any vehicle used in the removal or carriage of goods referred to under subsection (1) unless it is shown that such vehicle was so used without the consent or knowledge of the owner of that vehicle or other person lawfully in possession or charge of the vehicle or that the owner or person in possession had no reason to believe that the vehicle was used to remove or carry goods in respect of which the tax had not been paid.

(3) The Comptroller may sell the vehicle seized pursuant to the provisions of subsection (2) by public auction or deal with the vehicle in such other manner as the Comptroller may direct, subject to the conditions specified under subsection (4).

(4) Where goods or vehicles are seized pursuant to the provisions of subsection (1) or (2), as the case may be, the Comptroller shall serve on the owners of the goods or vehicles or the persons who had custody or control of the goods or vehicles immediately before seizure, a notice in writing, within fourteen days after the seizure,

- (a) identifying the goods or vehicle;
- (b) stating that the goods or vehicles have been seized under this section and the reason for the seizure; and
- (c) setting out the terms of subsections (7), (8), and (9).

(5) The Comptroller shall not be required to serve a notice under subsection (4) if, after making reasonable enquiries, the Comptroller does not have sufficient information to identify the person on whom the notice should be served, and in that event the Comptroller shall post a notice of the seizure in a conspicuous place in the premises from where the goods were seized.

(6) The Comptroller may serve a notice pursuant to the provisions of subsection (4) on any person claiming the goods, provided that the person has given the Comptroller sufficient information to enable such a notice to be served.

(7) Subject to the provisions of subsection (8), the Comptroller may authorize the delivery of goods seized pursuant to the provisions of subsection (1) to the person on whom a notice under subsection (4) has been served, where that person pays or gives security for the payment of tax due and payable or that will become due and payable in respect of the supply or importation of the goods.

- (8) The Comptroller shall detain goods seized under subsection (1),
- (a) in the case of perishable goods, only for such period as the Comptroller considers reasonable having regard to the condition of the goods; or
  - (b) in any other case, until the later of

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- (i) ten working days after the seizure of the goods; or
- (ii) ten working days after the due date for payment of the tax on the supply or importation of the goods.

(9) Where the detention period specified in subsection (8) expires, the Comptroller may sell the goods in the manner specified under section 34.(4) and apply the proceeds of sale as set out in section 34.(5).

(10) Before the Comptroller sells a vehicle seized pursuant to the provisions of this section he or she shall obtain an order from the High Court authorizing him or her to sell the vehicle.

(11) The Judge shall not grant an order pursuant to the provisions of subsection (10), unless the judge is satisfied that the seizure was done in compliance with the provisions of this Act.

(12) Notwithstanding the provisions of this section, the Comptroller may proceed under section 29 with respect to any balance owed if the proceeds of sale are not sufficient to meet the costs of the sale and tax due.

(13) For the purpose of this section, “vehicle” means the method of carriage or conveyance and includes any cart, wagon, or vessel and any trailer attached to such vehicle.

### **34. Distress proceedings.**

(1) The Comptroller may recover unpaid tax by distress proceedings against the personal property of the person liable to pay the tax, referred to as the “person liable”, by obtaining an order from the Magistrate’s Court, specifying the person who is liable, the location of the property, and the tax liability to which the proceedings relate.

(2) For the purposes of executing distress under subsection (1), the Comptroller may, at any time, enter any house or premises, and may require a police officer to be present while the distress is being executed.

(3) Property upon which distress is levied under this section, other than perishable goods, shall be kept for ten working days either at the premises where the distress was levied or at such other place as the Comptroller may consider appropriate, at the cost of the person liable.

(4) Where the person who is liable does not pay the tax due, together with the costs of the distress,

- (a) in the case of perishable goods, within such period as the Comptroller considers reasonable having regard to the condition of the goods; or
- (b) in any other case, after the ten working days period specified in subsection (3);

the property distrained upon may be sold by public auction, or in such other manner as may be provided in the regulations made under this Act.

(5) The proceeds of a disposal received pursuant to the provisions of subsection (4) shall be applied by the Comptroller, first, towards the cost of taking, keeping, and selling the property distrained upon, then towards the tax due and payable and the remainder of the proceeds, if any, shall be paid to the person who is liable.

(6) Nothing in this section precludes the Comptroller from proceeding under section 31 with respect to any balance owed if the proceeds of the distress are not sufficient to meet the costs thereof and the tax due.

(7) All costs incurred by the Comptroller in respect of a distress may be recovered by the Comptroller from the person who is liable as tax due under this Act.

(8) Distress may not be levied pursuant to the provisions of this section upon tools of trade.

### **35. Recovery of tax from third parties.**

(1) Where a person who is liable to pay tax under this Act, referred to as the “person liable”, fails to do so by the due date, the Comptroller may, by notice in writing, require any other person

- (a) owing or who may owe money to the Person liable;
- (b) holding or who may subsequently hold money for, or on account of, the person liable;
- (c) having authority from some other person to pay money to the person liable; or
- (d) having in possession the property of the taxable person notwithstanding any other law;

to be the agent of that taxable person and to pay the money or deliver the property to the Comptroller as provided in subsection(2).

(2) The agent referred to in subsection (1) shall pay the money or deliver the property to the Comptroller

- (a) within fifteen calendar days of the date of service of the notice; or
- (b) within fifteen calendar days of the date on which money becomes due or is held in any of the circumstances referred to in subsection (1), that is, if on the date of service of notice no money is due or held to which subsection (1) and this subsection applies.

(3) A copy of a notice issued pursuant to the provisions of subsection (1) shall be served by the Comptroller on the person liable.

(4) A person who makes a payment pursuant to a notice issued under subsection (1) shall be deemed to have acted under the authority of the person who is liable to pay the tax, and of all other persons concerned and shall be indemnified in respect of the payment.

(5) The provisions of this Act relating to the payment, collection and recovery of tax shall apply to any amount due under this section as if the amount were tax due under this Act.

(6) A person who fails to comply with a notice issued under the provisions of this section commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months, and, in addition, he or she shall be liable for the amount of the tax to which the notice applies.

### **36. Duties of receivers**

(1) In this section,

“receiver” means a person who, with respect to an asset in Saint Christopher and Nevis, is

- (a) a liquidator of a company;
- (b) a receiver appointed out of court or by a court;
- (c) a trustee for a bankrupt person;
- (d) a mortgagee in possession;
- (e) an executor of the estate of a deceased person; or
- (f) any other person conducting business on behalf of a person legally incapacitated.

(2) A receiver shall, in writing, notify the Comptroller within fourteen calendar days after being appointed to the position or taking possession of an asset of a person liable to tax in Saint Christopher and Nevis, whichever first occurs.

(3) The Comptroller may, in writing, notify a receiver of the amount which appears to the Comptroller to be sufficient to provide for any tax which is or will become payable by the person whose assets are in the possession of the receiver.

(4) A receiver

- (a) shall set aside, out of the proceeds of sale of an asset, the amount notified by the Comptroller under subsection (3), or such lesser amount as is subsequently agreed on by the Comptroller;
- (b) shall be liable to the extent of the amount set aside for the tax of the person who owned the asset; and
- (c) may pay any debt that has priority over the tax referred to in this section notwithstanding any provision of this section.

(5) A receiver shall be personally liable to the extent of any amount required to be set aside under subsection (4) for the tax referred to in subsection (3) if, and to the extent that, the receiver fails to comply with the requirements of this section.

## **PART VII – INTEREST, REFUNDS AND REBATES**

### **37. Interest on late payments.**

(1) A registered manufacturer who fails to pay part or all of the excise tax payable by the due date for payment under this Act shall be liable to pay interest on the



unpaid amount at the rate of 1.25 percent per month or part thereof , for each tax period or part of a tax period during which it remains unpaid.

(2) Interest payable under the provisions of subsection (1) shall be recoverable under this Act as if it were excise tax payable under this Act.

### **38. Refunds for overpayments.**

(1) If a person has paid excise tax, and the amount paid exceeds the amount that the person is required to pay under this Act, the person shall be entitled to a refund equal to the amount of the excess paid.

(2) An application for a refund under this section shall be made to the Comptroller within three years from the end of the month in which the goods are entered for home use.

### **39. Refunds of excise tax paid on raw materials.**

(1) A registered manufacturer who uses goods that are subject to tax under this Act as raw materials in the manufacture of other goods that are also subject to tax under this Act in the Federation shall be entitled to a refund of

- (a) the excise tax, if any, paid by the manufacturer under section 16. (1)(a) or (b) in respect of an entry of the raw materials for home use; or
- (b) any excise tax that the Comptroller is satisfied was paid, by a person from whom the registered manufacturer acquired the raw materials, in respect of an entry for home use of those raw materials.

(2) An application for a refund under this section shall be made to the Comptroller within twelve months from the date on which the goods were used as raw materials in the manufacture of other goods that are subject to tax under this Act.

### **40. Refund of excise tax paid on exports.**

(1) A person who imports into the Federation goods that are subject to tax under this Act shall, if such goods are in compliance with the conditions for payment of a drawback of duties under the Customs Tariff Act, be entitled to a refund of the excise tax paid by the person when the goods are entered for home use.

(2) A registered manufacturer or a licensed Duty Free Vendor shall, if the Comptroller is satisfied that the goods were exported from the Federation without first being used in the Federation, be entitled to a refund of the excise tax paid by a person when the goods were entered for home use.

(3) An application for a refund under this section shall be made within twelve months from the date on which the goods are exported or put on board the ship or aircraft in which they are exported.

**41. Refund procedures.**

(1) An application for a refund of excise tax under this Part shall be filed with the Comptroller, whether or not the excise tax to be refunded was paid to the Comptroller or Comptroller of Customs, and shall

- (a) be filed in the approved form and manner; and
- (b) contain the information specified in the form.

(2) If a person who is entitled to a refund under subsection (1) makes an application for the refund within the time stipulated under this Act, the Comptroller shall pay the refund, or the amount, if any, remaining after the refund has been applied in accordance with subsection (3), within two tax periods from the date on which the application is filed.

(3) If a refund is payable to a person under this Part, the Comptroller may apply part or all of the refund firstly in reduction of any excise tax or interest due and payable by the person under this Act, then against any other taxes or duties collected by the Comptroller or the Comptroller of Customs, including any repealed taxes payable by the person.

(4) For the purpose of subsection (3), the Comptroller shall not pay a refund without first consulting the Comptroller of Customs to determine whether the person applying for the refund has any outstanding liabilities for amounts referred to in that subsection.

(5) Where the Comptroller does not pay a refund within the time required under this section, interest is payable by the Comptroller at the rate of 1.25 percent per month or part thereof.

(6) If an amount is refunded to a person in error, the person shall repay the amount, together with interest at the rate of 1.25 percent per month or part thereof, starting from fourteen calendar days after the person is notified by the Comptroller, and both the amount and the interest shall be recoverable from the person as excise tax payable under this Act.

**42. Rebate of excise tax.**

(1) Subject to the provisions of subsection (2), the Minister may grant to a registered manufacturer a rebate of excise tax to be paid by the registered manufacturer on goods manufactured in Saint Christopher and Nevis and are entered for home use.

(2) The rebate granted to a registered manufacturer pursuant to the provisions of subsection (1) may

- (a) be for a period of eighteen months or for such other period as may be granted by the Minister;
- (b) be granted to facilitate
  - (i) investment sustainable plant expansion,
  - (ii) green investment; and
  - (iii) any other purpose to support sustainable economic as may be approved by the Minister.

**PART VIII – OBJECTIONS AND APPEALS****43. Objections.**

(1) Without prejudice to the other provisions of this Act, a decision made pursuant to the provisions of

- (a) section 17 to impose excise tax on goods referred to in that section;
- (b) section 12 not to grant an application for registration, or to impose terms, conditions, or restrictions on a registered manufacturer;
- (c) section 14 to cancel, or not cancel, a registration, including a decision as to the date of effect of a cancellation;
- (e) Part VI not to pay a refund, or a decision as to the amount of a refund payable;
- (f) section 13 with respect to the entering of a security arrangement;

Shall, among others, be appealable decisions in accordance with the provisions of this Act.

(2) A person who is dissatisfied with an appealable decision may lodge an objection to the decision with the Comptroller within thirty calendar days after the service of the notice of the decision.

(3) The Comptroller may, where he or she is satisfied that owing to absence from Saint Christopher and Nevis, sickness, or other reasonable cause, the person was prevented from lodging an objection within the time specified under subsection (2), and that there has been no unreasonable delay by the person in lodging the objection, accept an objection lodged after the time specified in subsection (2).

(4) An objection to an appealable decision shall be in writing and shall contain in detail the grounds upon which it is made and shall be accompanied by payment of all of the tax not in dispute.

(5) An objection that is lodged in time or that is accepted under subsection (3) shall suspend the taxpayer's obligation to pay the amount of tax in dispute until the notice of the Comptroller's decision on the objection is served on the taxpayer under subsection (7), or until an appeal is lodged under section 44.(4), but shall not suspend the running of interest on the balance payable.

(6) The Comptroller may, after considering the objection, allow the objection in whole or part and amend the assessment or the decision objected to accordingly, or disallow the objection.

(7) The Comptroller shall serve on the person who is objecting a notice in writing of the decision of the Comptroller on the person's objection.

(8) A person who is dissatisfied with a decision of the Comptroller given pursuant to the provisions of subsection (3) may challenge that decision in accordance with the provisions of this Part.

(9) For the purposes of subsections (4) and (5), if an assessment is based solely on a calculation error in a filed return, an objection to the assessment shall not suspend the taxpayer's obligation to pay any of the amounts assessed.

#### **44. Appeals to Appeal Commissioners.**

(1) In this section, "Appeal Commissioners" mean the Commissioners who are appointed under section 41.(1) of the Tax Administration and Procedures Act, No12/2003.

(2) A person who is dissatisfied with a decision of the Comptroller given pursuant to the provisions of section 43.(6) may, within thirty calendar days after being served with notice of the decision,

- (a) lodge a notice of appeal with the Appeal Commissioners; and
- (b) if lodged shall serve a copy of the notice of Appeal on the Comptroller.

(3) Upon an application made in writing by a person who is dissatisfied with a decision made by the Comptroller pursuant to the provisions of section 43.(6), the Appeal Commissioners may, where they are satisfied that owing to absence from Saint Christopher and Nevis, sickness, or other reasonable cause, the person was prevented from lodging a notice of appeal within the time specified under subsection (2) and there has been no unreasonable delay by the person in lodging the notice, accept a notice of appeal lodged after the time specified in subsection (2).

(4) Where the Comptroller does not, after ninety calendar days have passed since the lodging of the objection, make a decision on the objection, an appeal may be made under the provisions of subsection (2), at any time, as if the Comptroller had made a decision to disallow the objection.

(5) The Appeal Commissioners may, in an appeal made to them against a decision of the Comptroller to an objection on the decision, consider the objection if the Comptroller certifies that

- (a) the person assessed has paid the full amount of the tax due under the assessment; or
- (b) the Comptroller is satisfied that the person who is objecting is unable to pay the full amount of tax due and has given sufficient security for the amount of tax unpaid and any penalty and interest that may become payable.

(6) In an appeal to the Appeal Commissioners against a decision of the Comptroller on the objection, the person shall be limited to the grounds set out in the person's objection, unless the Appeal Commissioners grant the person leave to add new grounds.

- (7) In deciding an appeal, the Appeal Commissioners may make an order
  - (a) affirming, reducing, increasing, or otherwise varying the assessment under appeal; or

(b) remitting the assessment for reconsideration by the Comptroller in accordance with the directions of the Appeal Commissioners.

(8) A person who is dissatisfied with a decision of the Appeal Commissioners made pursuant to the provisions of subsection (3) may challenge the decision in accordance with the provisions of this Part.

(9) Sections 41, 42, 43, and 44 of the Tax Administration and Procedures Act shall apply to appeals provided for under this Act to the extent that the sections are not inconsistent with the provisions of this Act.

#### **45. Appeals to the High Court.**

(1) A party who is dissatisfied with a decision of the Appeal Commissioners may, within thirty calendar days after being notified of the decision, lodge a notice of appeal with the High Court, and the party making the appeal shall serve a copy of the notice of appeal on the other party to the proceeding before the Appeal Commissioners.

(2) Where the Appeal Commissioners do not, after one hundred and eighty calendar days have passed since the lodging of the notice of appeal, make a decision on the appeal, an appeal may be made under the provisions of subsection (1), at anytime, as if the Appeal Commissioners had made a decision to disallow the appeal.

(3) An appeal to the High Court made in accordance with the provisions of subsection (1) shall be made only on questions of law, including questions of mixed fact and law, and it shall be stated in the notice of appeal the questions of law that will be raised on the appeal.

(4) An appeal to the High Court made pursuant to the provisions of subsection (2) may be made on questions of fact or law.

(5) On an appeal made under this section the High Court may

- (a) confirm, increase or order the reduction of any assessment;
- (b) make such other order as it thinks fit; and
- (c) make such order as to costs as it thinks fit.

#### **46. Appeals to the Court of Appeal.**

(1) A party which is dissatisfied with a decision of the High Court may appeal to the Court of Appeal, and the Court of Appeal may

- (a) confirm, increase or order the reduction of any assessment;
- (b) make such other order as it thinks fit; and
- (c) make such order as to costs as it thinks fit.

(2) An appeal to the Court of Appeal may be made only on questions of law including questions of mixed fact and law, and it shall be stated in the notice of appeal the questions of law that will be raised on the appeal.

**47. Burden of proof.**

The burden of proving that an assessment is excessive or that a decision of the Comptroller is wrong shall be on the person who is objecting to the assessment or decision.

**PART IX - REPRESENTATIVES AND SPECIAL  
CASES OF PERSONS LIABLE TO PAY EXCISE TAX****48. Persons acting in a representative capacity.**

(1) In this section, “representative,” in relation to a person who is liable to pay excise tax, means

- (a) the financial controller or the designated officer, in the case of a company (other than a company in liquidation);
- (b) any member of the committee of management, in the case of unincorporated association or body;
- (c) any person who is responsible for accounting for the receipt and payment of money or funds on behalf of the company, in any other case;
- (d) the liquidator, in the case of a company in liquidation;
- (e) any person responsible for accounting for the receipt and payment of money under the provisions of any law or for the receipt and payment of public funds or of funds voted by Parliament, in the case of the Federal Government or the Nevis Island Legislature, in the case of the Nevis Island Administration;
- (f) any partner, in the case of a partnership;
- (g) any trustee, in the case of a trust; or
- (h) any person who is controlling the non-resident’s affairs in Saint Christopher and Nevis.

(2) Every representative of a person who is liable to pay excise tax shall be responsible for performing any duties, including the payment of tax, imposed by this Act on that person.

(3) Every representative shall be personally liable for the payment of any tax payable in his or her representative capacity where, while the amount remains unpaid, the representative

- (a) alienates, charges, or disposes of any money received or accrued in respect of which the tax is payable; or
- (b) disposes of or parts with any funds or money belonging to the taxable person which is in the possession of the representative or which comes to the representative after the tax is payable if such tax could legally have been paid from or out of such funds or money.

(4) Nothing in this section shall be construed as relieving a person who is liable to pay excise tax from performing any duties imposed by this Act on him or her which the representative of the person has failed to perform.

**49. Power to appoint representatives.**

(1) The Comptroller may, if he or she considers it necessary to do so, declare a person to be a representative of a person who is liable to pay excise for the purposes of section 48.

(2) A person who is dissatisfied with a decision made by the Comptroller pursuant to the provisions of subsection (1) may challenge the decision in accordance with the provisions of Part VIII of this Act.

**50. Directors of Corporations.**

(1) Where a corporation fails to pay an amount of tax required to be paid by this Act, every person who was a director or similar officer of the corporation at the time the corporation was required to pay the amount of tax shall be jointly and severally liable, together with the corporation, to pay the tax and any interest thereon and penalties relating thereto.

(2) A director of a corporation shall not be liable for the failure by the corporation to pay the tax where the director proves that he or she exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

(3) A director of a corporation shall not be assessed for an amount payable by him or her under this section more than five years after the filing of the tax return, or in the case where an assessment had been made under section 25.(1) not more than five years after the date of assessment relating to that amount.

(4) A director who satisfies a claim under this section shall be entitled to a contribution from the other directors who were also liable for the claim.

**51. Officers of unincorporated bodies.**

(1) In this section,

“officer of an unincorporated body” means

- (a) in the case of a partnership, a partner of the partnership;
- (b) in the case of a joint venture, a participant in the joint venture;
- (c) in the case of a trust, a trustee of the trust; and
- (d) in the case of any unincorporated body, other than a body referred to in paragraph (a), (b) or (c),
  - (i) a person who holds office as chairperson, president, treasurer or secretary of the body or any similar office,
  - (ii) where there is no such officer of the body, a member of any committee that has management of the affairs of the body, or

- (iii) where there is no such officer as referred to in subparagraph (i), or committee referred to in subparagraph (ii), a member of the body;

“unincorporated body” includes unincorporated association.

(2) Where any liability or obligation is imposed by or under this Act or the regulations on an unincorporated body, the body and each of the persons who are officers of the body at the time the liability or obligation is imposed shall be jointly and severally liable and responsible to satisfy the liability or obligation.

(3) A supply of goods or services made or received in the course or furtherance of a taxable activity carried on by an unincorporated body shall be regarded as being made or received by the body and not by any member or officer thereof, and any such activity engaged in by a person in his or her capacity as a member or officer of the body shall be deemed to be an activity of the body and not an activity of the person.

(4) For the purposes of this Act, the existence of an unincorporated body and any taxable activity of an unincorporated body shall be deemed not to be affected by any change in the members or officers thereof.

(5) Any document which is served on an unincorporated body pursuant to the provisions of this Act or the regulations made under this Act shall be deemed to have also been served on the officers thereof.

(6) An offence committed by an unincorporated body under this Act shall be taken to have been committed by the officers of the unincorporated body.

## **52. Partnerships or unincorporated associations.**

Where

- (a) a partnership, or unincorporated association or body is dissolved, referred to as the “dissolved entity”, in consequence of
  - (i) the retirement or withdrawal of one or more, but not all of its partners or members; or
  - (ii) the admission of a new partner or member;
- (b) a new partnership, or unincorporated association or body comes into existence, referred to as the “new entity”, consisting of the remaining members and one or more new members; and
- (c) the new entity continues to carry on the business of the dissolved entity as a going concern;

the dissolved entity and the new entity shall, for the purposes of this Act, be deemed to be one and the same, unless the Comptroller, having regard to the circumstances of the case, otherwise directs.

## **53. Death or insolvency of persons liable to pay excise tax.**

Where, after the death of a person who is liable to pay excise tax or the sequestration of a taxable person’s estate, any manufacturing activity or other activity



relating to the importation of goods that are subject to tax under this Act previously carried on by that person is carried on by or on behalf of the executor, administrator or trustee of the person's estate or anything is done in connection with the termination of such activity, the estate of that person, as represented by the executor, administrator or trustee, shall be deemed to be the person who is liable to pay excise tax in respect of such activity for the purposes of this Act.

**54. Mortgagee in possession.**

Where a mortgagee is in possession of land or other property previously mortgaged by a mortgagor who is a person liable to pay excise tax, and the mortgagee carries on any manufacturing activity or other activity relating to the importation of goods that are subject to tax under this Act in relation to the land or other property, the mortgagee shall be deemed, from the date the mortgagee took possession of that land or property until such time as the mortgagee ceases to be in possession of the land or property, to be the person liable to excise tax carrying on such activity.

**55. Trustee.**

A person who is a trustee in more than one capacity shall, for the purposes of this Act, be treated as a separate person in relation to each of those capacities.

**56. Branches**

Where a manufacturing activity or other activity relating to the importation of goods that are subject to tax under this Act is conducted by a person who is liable to pay excise tax in approved branches or divisions, that person shall be deemed to be a single person conducting the activity for purposes of this Act and no separate registration of branches or divisions shall be allowed.

**PART X - RECORDS AND INVESTIGATIONS**

**57. Meaning of records.**

In this Part, "records" mean accounting records, accounts, books, computer-stored information, or any other relevant documents.

**58. Record-keeping.**

(1) A taxable person or any other person who is liable for tax under this Act shall maintain, in English, in Saint Christopher and Nevis

- (a) customs documentation relating to imports and exports by the person;
- (b) accounting records relating to the manufacturing activities and any other related business activities carried on in Saint Christopher and Nevis;
- (c) accounting records relating to manufacturing activities and any other related business activities carried on outside of Saint Christopher and Nevis but effectively connected to the person's business activities in Saint Christopher and Nevis; and

(d) any other records as may be prescribed under regulations made under this Act.

(2) Records required to be maintained pursuant to the provisions of subsection (1) shall be retained for a period of six years after the end of the tax period to which they relate.

(3) A taxpayer may, in writing, apply to the Comptroller for permission to dispose of records required to be maintained under this Act prior to the expiration of the period up to which records are required to be kept, and the Comptroller may grant permission, in writing, if he or she is satisfied that the records may not be required for any tax purposes.

(4) A person who contravenes any provision of this section commits an offence, and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

#### **59. Records not in English.**

Where a record is not otherwise required to be in the English language by virtue of section 58, the Comptroller may, by notice in writing, require the person keeping the record to provide, at that person's expense, a translation into the English language by a translator approved by the Comptroller for that purpose.

#### **60. Notice to obtain information or evidence.**

(1) The Comptroller may, by notice in writing, require any person, whether or not the person is liable to pay excise tax under this Act, to furnish at such time and place as may be specified in the notice, for examination by the Comptroller or for retention for a reasonable period, any accounts, books of account, statement of supplies and purchases, computers or other documents concerning that person or any other person whom the Comptroller considers necessary for the administration and enforcement of this Act.

(2) The Comptroller may, by notice in writing, require any person, whether or not the person is liable to pay excise tax under this Act, to attend at the time and place designated in the notice for the purpose of being examined on oath before the Comptroller or any taxation officer authorized by the Comptroller for this purpose concerning the assessable or chargeable tax or any transaction or matters appearing to the Comptroller to be relevant thereto for that person or any other person, and for that purpose the Comptroller or the authorized officer may require the person examined to produce any record or computer in the control of the person.

(3) The Comptroller may, by notice in writing, require any person, whether or not the person is liable to pay excise tax under this Act, to provide access to the premises where any business is carried on by that person or where records or books of account are kept in relation to that business in order to

- (a) examine the records or books of account and any other document that relate to the activities of the business;
- (b) inspect any raw materials, trading stock or other assets;

- (c) inspect the process of that person, including the method adopted in recording the supplies, or observe and examine any process relating to the generation of records including computer or electronically generated records; and

require the owner of the business, or any employee or agent of the business, to give the Comptroller such reasonable assistance in connection with the examination or inspection as may be necessary and to answer orally or in writing any questions relating thereto.

(4) Where the notice requires the production of a record or computer, it shall be sufficient if such record or computer is described in the notice with reasonable certainty.

(5) Where, during the course of any examination or inspection, it appears to the Comptroller or a taxation officer authorized by the Comptroller that there may not have been a correct disclosure of liability to tax, he or she may take possession of any books of account or other documents for further examination, and may, after examination, retain or make copies of or take extracts from the books or documents for any of the purposes of this Act.

(6) Without prejudice to the generality of subsection (1), (2) and (3), the Comptroller may require

- (a) a bank or other financial institution to furnish the Comptroller with details of any banking accounts or other assets which may be held on behalf of any person, or to furnish a copy of bank statements or statements of assets of any such banking account or other assets;
- (b) a bank or other financial institution to permit the Comptroller or any taxation officer authorized by the Comptroller to inspect the records of the bank or other financial institution with respect to the banking account of any person;
- (c) the attendance of an officer of a bank or other financial institution before the Comptroller to give evidence respecting bank accounts or other assets which may be held by the bank or other financial institution on behalf of any person;

(7) A person who fails to comply with a notice given to him or her pursuant to the provisions of subsections (1), (2), (3), or (6) commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

#### **61. Liability to cost**

A person who is liable to pay excise tax shall bear the cost of an examination carried out pursuant to the provisions of section 60 that is determined by the Comptroller to be excessive because of the inadequacy of the taxable person's records or the difficulty in obtaining records or access to the records or premises.

**62. Access to records, computers and goods.**

(1) Where the Comptroller has reasonable grounds to believe that an offence in connection with the tax is being or is about to be committed on any premises, or that evidence of the commission of such an offence is to be found on the premises, he or she shall apply to the Magistrate for a warrant to allow a taxation officer

- (a) without prior notice and at any time, to enter any premises or place where records are kept on such premises and search for any records;
- (b) in carrying out a search referred to in paragraph (a) and in any manner, to open or cause to be opened or removed and opened any article in which the taxation officer suspects that any records are being kept;
- (c) to seize any records which, in the taxation officer's opinion, may afford evidence that may be material in determining the liability of any person for tax payable under this Act;
- (d) to retain any records seized under paragraph (c) for as long as they may be required for determining a person's tax liability under this Act or for any proceedings under this Act;
- (e) to examine and make extracts from, and copies of, any records and require from any person access to records, computers, or goods or an explanation of any entry in a record or computer;
- (f) to observe and examine any process relating to the generation of records including computer or electronically generated records;
- (g) where a hard copy or computer disk of computer or electronically stored information is not provided, to seize and retain the computer or other device in which the information is stored for as long as it is reasonable to copy the information required.

(2) A taxation officer shall not exercise a power referred to in subsection (1) without a warrant, and he or she shall, upon being requested by the occupier of the premises or place, produce the warrant before exercising the power.

(3) A person who is the owner, manager, or any other person lawfully on the premises referred to in subsection (1) in respect of which a warrant is issued for the purposes of subsection (1) shall provide all reasonable facilities and assistance for the effective implementation of the provisions of subsection (1).

(4) A person whose records or computers have been removed and retained pursuant to the provisions of subsection (1) may examine such records and computers and make copies or extracts from them during regular office hours under such supervision as the Comptroller may determine.

(5) A taxation officer who is exercising the power referred in subsection (1) may request the assistance of a customs officer or police officer as the taxation officer may consider reasonably necessary and any such customs officer or police officer shall render such assistance as may be required by the taxation officer.

(6) A person referred to in subsection (3) who refuses to comply with the provisions of that subsection commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

## **PART XI - OFFENCES AND PENALTIES**

### **Criminal proceedings**

#### **63. Sanction for prosecution.**

(1) Subject to the powers conferred on the Director of Public Prosecutions by the Constitution and any other law, no criminal proceedings in respect of any offence under this Act shall be commenced except with the sanction of the Comptroller.

(2) Criminal proceedings under this Act shall be commenced in the name of Saint Christopher and Nevis.

#### **64. Time limit for proceedings to be taken.**

Criminal proceedings instituted pursuant to the provisions of this Part may only be commenced,

- (a) where the offence alleged involves the doing of any act, within three years after the discovery of the act;
- (b) where the offence alleged involves the failure to do any act, within three years after the Comptroller has become aware of such failure;
- (c) where the offence alleged involves the non-disclosure or incorrect disclosure by any person of information relating to that person's liability to tax for a tax period, within three years after his or her correct liability to tax has become final for that tax period.

#### **65. Tax evasion.**

(1) A person shall not willfully evade, or attempt to evade the assessment, payment, or collection of tax.

(2) Any person who willfully evades, or attempts to evade the assessment, payment, or collection of tax commits an offence and shall be liable, on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding five years or both.

#### **66. Impeding tax administration.**

(1) A person shall not willfully impede or attempt to impede the Comptroller in his or her administration of this Act.

(2) Any person who willfully impedes or attempts to impede the Comptroller in his or her administration of this Act commits an offence and shall be liable, on summary conviction, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

(3) For the purposes of this section, a person impedes the administration of this Act if the person

- (a) fails to comply with a lawful request by a taxation officer to examine documents, records, or data within the control of the person;
- (b) fails to comply with a lawful request by the Comptroller to have the person appear before a taxation officer authorized by the Comptroller;
- (c) interferes with the lawful right of a taxation officer to enter onto a business premises or a dwelling unit; or
- (d) otherwise impedes the determination, assessment, or collection of any tax.

**67. Offences by taxation officers.**

(1) A taxation officer shall not, in carrying out the provisions of this Act,

- (a) directly or indirectly ask for, or take in connection with any of the tax officer's duties, payment or reward, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which the tax officer is lawfully entitled to receive; or
- (b) enter into or acquiesces in any agreement to do, abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the tax officer's duty.

(2) A taxation officer who contravenes the provisions of subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding two years, or both, and the Court may, in addition to imposing a fine, order the convicted taxation officer to pay to the Comptroller any amount of tax that has not been paid as a result of the taxation officer's wrongdoing and which cannot be recovered from the person liable for the tax.

**68. Offences by companies.**

(1) Where a company commits an offence under this Act, every person who, at the time of the commission of the offence, was a director or other similar officer of the company, or was acting or purporting to act in such capacity, shall be deemed to have committed the offence.

(2) The provisions of subsection (1) shall not apply where the offence was committed without that person's consent or knowledge, and if the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

**69. Offences by Aiders and abettors.**

A person who aids and abets the commission of an offence under this Act commits that offence and shall be liable to the same penalties as the person who commits the offence.

**70. Manufacturing goods outside approved warehouses.**

(1) A person who is a registered manufacturer or is required to be registered shall not manufacture goods that are subject to tax under this Act in Saint Christopher and Nevis at any other premises other than at the approved warehouse.

(2) A person who is a registered manufacturer or is required to be registered shall not store goods that are subject to tax under this Act on which excise tax has not been paid at any place other than in an approved warehouse.

(3) A person shall not remove goods that are subject to tax under this Act on which excise tax has not been paid from an approved warehouse.

(4) A person who contravenes the provision of subsection (1), (2), or (3) commits an offence, and shall, on summary conviction, be liable to the penalty set out in section 72.

**71. Failure to enter into security arrangement.**

(1) A person who manufactures goods that are subject to tax under this Act in Saint Christopher and Nevis, or who enters such goods for home-use, without having entered into a security arrangement in accordance with the provisions of this Act, commits an offence, and shall, on summary conviction, be liable to a fine not exceeding one hundred thousand dollars, or a term of imprisonment not exceeding two years.

**72. General penalty.**

A person who commits an offence under this Act in respect of which no penalty is prescribed shall, on summary conviction, be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or both.

**73. Compounding of offences.**

(1) Where a person commits an offence under this Part, other than an offence committed under section 7 or 67 of this Act, the Comptroller may, at any time prior to the commencement of the hearing by any court of the proceedings relating to the offence, compound such offence and order the person to pay such sum of money as may be specified by the Comptroller, not exceeding the maximum amount of the fine prescribed for the offence.

(2) The Comptroller may compound an offence under this section only if the person concerned requests the Comptroller, in writing, to deal with the offence in that manner.

(3) Where the Comptroller compounds an offence under this section, the order referred to in subsection (1)

- (a) shall be in writing and shall have attached to it the written request described in subsection (2);
- (b) shall contain the following information:
  - (i) the offence committed;

- (ii) the sum of money to be paid; and
- (iii) the due date for the payment;
- (c) shall be served on the person who committed the offence; and
- (d) shall be final and not subject to appeal.

(4) The powers of the Comptroller under this section shall be subject to the powers conferred on the Director of Public Prosecutions by the Constitution, and the Comptroller shall give the Director of Public Prosecutions a copy of the order specified in subsection (3) before it is served on the taxpayer.

(5) The amount ordered to be paid pursuant to the provisions of subsection (1) shall be recoverable as if it was a tax due and payable.

### **Civil Penalties**

#### **74. General provisions.**

(1) No penalty shall be payable where, in respect of the same act or omission, the person has been convicted of an offence in criminal proceedings instituted under this Act or where an offence has been compounded under the provisions of section 73.

(2) Where a civil penalty is paid in accordance with the provisions of this Part and the Comptroller decides to institute criminal proceedings under this Part in respect of the same act or omission, then the Comptroller shall refund the amount of the civil penalty paid, and that civil penalty shall not be payable unless the criminal proceedings are withdrawn.

(3) Where a person who is liable to pay a civil penalty shows, in writing, good cause why he or she should not pay the civil penalty, the Comptroller may mitigate in whole or in part any civil penalty payable, and a person who is dissatisfied with a decision of the Comptroller made pursuant to the provisions of this subsection may challenge that decision in accordance with the provisions of Part VIII of this Act.

(4) Civil penalties shall be assessed and collected following the same procedure used for tax as if the amount of penalty is tax due under this Act, and the penalties specified in subsection (5) shall be assessed together with the tax to which they relate.

(5) Where the amount of civil penalty is, or may be, calculated by reference to the tax payable for a tax period, the time limit for assessing the penalty shall be the same as the limit for assessing the tax to which the penalty relates.

(6) In the case of civil penalties specified under this Part, other than those specified in subsection (5), the time limit for assessing a civil penalty under this Part shall be determined in accordance with the provisions of section 64.

#### **75. Failure to register.**

A person who fails to apply for registration as required by sections 10 and 11 of this Act shall be liable to pay a civil penalty equal to double the amount of tax payable from the time the person is required to apply for registration until the person files an application for registration with the Comptroller.



**76. Failure to file return.**

A person who fails to file a return within the time required under this Act shall be liable to pay a civil penalty of one hundred dollars per month, or part thereof, for the period during which the return remains unfiled.

**77. Failure to complete documents.**

(1) A person shall not enter for home use goods that are subject to tax under this Act without completing such records, forms or documents as may be required by the Comptroller.

(2) A person who contravenes the provisions of subsection (1) commits an offence, and shall, on summary conviction, be liable to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding six months.

**78. Failure to comply with notice for recovery of tax.**

A person who fails to comply with a notice issued pursuant to the provisions of section 35 shall be liable to pay a civil penalty not exceeding twenty-five percent of the amount sought to be recovered from the person.

**79. Failure to keep records.**

A person who fails to maintain proper records as required by section 58 shall be liable to pay a civil penalty of fifty dollars per day in respect of each day or portion thereof during which the failure continues

**80. Failure to provide facilities.**

A person who fails to provide a taxation officer with reasonable facilities and assistance as required by section 62.(3) shall be liable to pay a civil penalty not exceeding one thousand, five hundred dollars.

**81. Failure to comply with notice under section 60.**

A person who fails, within the specified time, to comply with a notice issued under section 60 shall be liable to pay a civil penalty not exceeding ten thousand dollars.

**82. Penalty for making false or misleading statements.**

(1) Where a person knowingly or recklessly makes a statement to a taxation officer which is false or misleading in a material particular or omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular, and the tax properly payable by the person exceeds the tax that would be payable if the person were assessed on the basis that the statement is true, the person shall be liable to pay to the Comptroller a civil penalty equal to the greater of twenty thousand dollars.

(2) In a case where the amount of tax payable by the person would be reduced if it were determined on the basis of the false or misleading information provided in the statement, the person shall be liable to pay a civil penalty equal to the amount by which that tax would have been so reduced.

(3) In a case where the amount of a refund that the person applied for would be increased if it were determined on the basis of the false or misleading information provided in the statement, the person shall be liable to pay a civil penalty equal to the amount by which that amount would have been so increased.

(4) A reference in this section to a statement made to a taxation officer is a reference to a statement made orally, in writing, or in any other form to the officer acting in the performance of the officer's duties under this Act, and without prejudice to the generality of the foregoing such a statement includes a statement made

- (a) in an application, certificate, declaration, notification, return, objection, or other document made, prepared, given, filed, lodged, or furnished under this Act;
- (b) in any information required to be furnished under this Act;
- (c) in a document furnished to a taxation officer otherwise than pursuant to the provisions of this Act;
- (d) in an answer to a question asked of a person by a taxation officer; or
- (e) to another person with the knowledge or reasonable expectation that the statement would be conveyed to a taxation officer.

(5) It is a defence in any civil proceedings instituted pursuant to the provisions of subsection (1) that the person did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading.

### **83. Temporary closure of business premises.**

(1) Where a registered manufacturer repeatedly fails to file excise tax returns as required by section 23 or fails to pay excise tax on or before the due date, the Comptroller may, after obtaining an order from court, forcibly close one or more business premises of the manufacturer for a period of between three and thirty days.

(2) The Comptroller shall not execute a court order granted for the purposes of subsection (1) before the expiry of seven calendar days after the date on which the Comptroller gives the person notice in writing, which shall include at least the following information:

- (a) a statement that the Comptroller intends to close the specified premises of the manufacturer under this section;
- (b) the months in relation to which the person has failed to file excise returns or pay excise tax;
- (c) if known to the Comptroller, the amounts payable by the person; and
- (d) a demand for the lodgement of all outstanding returns and payment of all outstanding amounts within seven days.

(3) For the purposes of executing an order granted under the provisions of subsection (1), the Comptroller may, at any time, enter any premises described in the order, and may bar access to the premises with locks, fencing, boarding, or other appropriate methods,

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(4) The Comptroller may, if the Comptroller thinks it appropriate, require a police officer to be present while the order is being executed.

(5) The Comptroller shall affix a notice in the following words in a conspicuous place on the front of the premises that have been closed under an order issued for the purposes of this section:

“CLOSED TEMPORARILY FOR NOT COMPLYING WITH EXCISE TAX OBLIGATIONS”.

(6) For the purposes of this section, a repeated failure means a failure that is committed within one year of receipt by the person of a written warning that a failure of such kind has been committed more than once within the year preceding the warning, and that repetition of the same may result in closure of the business premises under this section.

**84. Publication of names of defaulters.**

Notwithstanding anything in any other law in force in Saint Christopher and Nevis, where a person

- (a) fails to file returns in accordance with section 23;
- (b) being liable to pay the tax, fails to pay the tax on three occasions;
- (c) violates any other rule made under this Act which is designated as a serious delinquency by regulations made under this Act;
- (d) is convicted of an offence under this Act;

the Comptroller may publish, in a newspaper circulating in Saint Christopher and Nevis, the name of the person or the name of the business of that person or both.

**PART XII – MISCELLANEOUS PROVISIONS**

**85. Inclusion of taxpayer’s identification number in returns etc.**

A taxpayer shall include his or her taxpayer’s identification number issued to him or her by the Comptroller in any return, notice, or other document prescribed or used for the purposes of this Act.

**86. Forms, notices and authentication of documents.**

(1) Forms, notices, returns, and other documents prescribed or published by the Comptroller may be in such form as the Comptroller may determine for the efficient administration of this Act, and shall be valid whether or not published in the Gazette.

(2) The Comptroller shall make the documents referred to in subsection (1) available to the public at the offices of the Inland Revenue Department and any other locations, or by any other means, as the Comptroller may determine.

(3) A notice or other document issued, served, or given by the Comptroller under this Act shall be sufficiently authenticated if the name or title of the Comptroller or the taxation officer authorized by the Comptroller is printed, stamped, or written on the document, and if the document is signed by the Comptroller or the taxation officer authorized by the Comptroller, and for this purpose, the signature may be a computer or electronically generated signature.

**87. Service of notice**

(1) Unless otherwise provided in this Act, a notice required by this Act to be in writing shall be served on the recipient of the notice.

(2) A notice specified in subsection (1) shall be considered sufficiently served on the recipient if it is

- (a) personally served on that person;
- (b) personally served on the representative of that person in accordance with the provisions of section 47;
- (c) left at the person's usual or last known place of abode, office, or place of business in Saint Christopher and Nevis; or
- (d) sent by post to such place of abode, office or place of business, or to the person's usual or last known address in Saint Christopher and Nevis.

**88. Schemes for obtaining tax benefits.**

(1) In this section,

“scheme” includes any agreement, arrangement, promise, or undertaking, whether express or implied and whether or not legally enforceable, and any plan, proposal, or course of action; and

“tax benefit” includes

- (a) a reduction in the liability of a person to pay excise tax;
- (b) an increase in the entitlement of a person to a deduction or refund;
- (c) a postponement of liability for the payment of excise tax;
- (d) an acceleration of entitlement to a deduction for excise tax; or
- (e) any other avoidance or benefit from the delay in payment of tax or acceleration of entitlement to a deduction for tax.

(2) Notwithstanding anything in this Act, if the Comptroller is satisfied that a scheme has been entered into or carried out where

- (a) a person obtains a tax benefit in connection with the scheme in a manner that constitutes a misuse of the provisions of this Act; and
- (b) having regard to the substance of the scheme, it would be concluded that the person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person to obtain the tax benefit;

the Comptroller may determine the liability of the person who has obtained the tax benefit as if the scheme had not been entered into or carried out, or in such manner as in the circumstances the Comptroller considers appropriate for the prevention or reduction of the tax benefit.

**89. Currency conversion.**

- (1) For the purposes of this Act, all amounts of money are to be expressed in Eastern Caribbean Dollars, (EC\$ or XCD\$).
- (2) Where an amount is expressed in a currency other than Eastern Caribbean Dollar, (EC\$, XCD\$),
  - (a) in the case of imports, the amount shall be converted at the exchange rate as determined for the purposes of the Customs (Control and Management) Act;
  - (b) in all other cases, the amount shall be converted at the exchange rate applying between the currency and the Eastern Caribbean Dollar (EC\$) at the time the amount is taken into account under this Act.

**90. Remission of tax.**

- (1) Where the Comptroller takes all steps which are permissible under this Act in order to recover tax and the Comptroller is unable to recover the tax, penalty and interest due and payable under this Act by a person for a specified period, the Comptroller shall advise the Minister accordingly.
- (2) The Minister may, upon being advised by the Comptroller in accordance with the provisions of subsection (1), refer the matter back to the Comptroller requiring him or her to retake the steps referred to in subsection (1) or may, subject to the provisions of subsection (4), order the extinguishment of the liability as a debt due to the Crown.
- (3) An order made pursuant to the provisions of subsection (2) shall be subject to the approval of the Cabinet.
- (4) If the Comptroller determines that a person who is subject to an order made pursuant to the provisions of subsection (2) has assets which may be attached for the purpose of recovering the unpaid tax, penalty and interest specified in the order, then, with the approval of the Cabinet, the order may be revoked and the liability reinstated.

**91. Regulations.**

- (1) The Minister may generally make regulations for the better carrying into effect the provisions of this Act, and for any matter which under this Act is to be prescribed by regulations.
- (2) Without prejudice to the generality of the provisions of subsection (1), the Minister, in particular, make regulations to provide for
  - (a) provisions of a saving or transitional nature consequent to the coming into force of this Act;
  - (b) the form of returns to be made, the particulars to be included in the returns, and the persons by whom, and the time when or within which, such returns are to be made.

**92. Orders to amend Schedules.**

The Minister may, by Order, amend the First Schedule and Second Schedule to this Act, except that such an Order shall be subject to affirmative resolution of the National Assembly.

**93. Repeal.**

The Excise Duty Act, No. 3A/2006 is hereby repealed.

**PART XIII – TRANSITIONAL PROVISIONS****94. Transitional requirement for registration.**

(1) A person who is required to be registered pursuant to the provisions of section 10 who, prior to the coming into force of this Act, is manufacturing goods that are subject to tax under this Act, and who continues to do so after the coming into force of this Act, shall, within one month after the coming into force of this Act, make an application under section 10 to be a registered manufacturer, and to have the premises at which he or she is manufacturing the goods as well as the warehouse where such goods are stored to be approved for those purposes.

(2) A manufacturer to whom subsection (1) applies does not commit an offence under Part XI if the action, event or activity to which the offence relates occurred before the person is required by section 10 to apply for registration, or during the period between the date on which the application is made and the date on which the Comptroller:

- (a) issues the person with a registration certificate and approves the person's manufacturing premises and warehouse; or
- (b) notifies the person that the application has been refused.

(3) The provisions of subsection (2) shall not relieve the manufacturer of the obligation to pay excise tax under this Act.

(4) A manufacturer to whom subsection (1) applies shall be liable to pay excise tax on goods that are subject to tax and manufactured in Saint Christopher and Nevis if such goods are entered for home use on or after the coming into force of this Act irrespective of whether the goods were manufactured before the date of coming into force of this Act.

**FIRST SCHEDULE****(Section 16.(2))**

ITEM	DESCRIPTION	RATE OF TAX
2202	<b>Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading 20.09.</b>	
2202.10.00	Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured:	

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2202.10.10	Aerated beverages	5%
2202.10.90	Other	5%
2202.90.00	Other:	
2202.90.10	Beverages containing cocoa	
2202.90.20	Malt Beverages	
2202.90.90	Other	
<b>2203</b>	<b>Beer made from Malt</b>	
2203.00.10	Beer	15%
2203.00.20	Stout	15%
2203.00.90	Other	15%
<b>2204</b>	<b>Wine of fresh grapes including fortified wines</b>	
2204.10.00	Sparkling wine	25%
2204.20.00	Other wine; grape must with fermentation prevented or arrested by the addition of alcohol:	
2204.21.00	In containers holding 2litres or less	25%
2204.29.00	Other:	
2204.29.10	Grape must with fermentation prevented or arrested by the addition of alcohol	25%
2204.29.90	Other	25%
2204.30.00	Other grape must	25%
<b>2205</b>	<b>Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances</b>	
2205.10.00	In containers holding 2 Litres or less	25%
2205.90.00	Other	
<b>2208.00</b>	<b>Udenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs and other spirituous beverages</b>	
2208.20.00	Spirits obtained by distilling grape wine or grape marc:	
2208.20.10	Brandy, in bottles of a strength not exceeding 46%	25%
2208.20.90	Other	25%
2208.30.00	Whiskies:	
2208.30.10	In bottles of a strength not exceeding 46%	25%
2208.30.90	Other	25%
2208.40.00	Rum and other spirits obtained by distilling fermented sugarcane products:	
2208.40.10	In bottles of a strength not exceeding 46%	25%
2208.40.90	Other	25%
2208.50.00	Gin and Geneva:	
2208.50.10	In bottles of a strength not exceeding 46%	25%
2208.50.90	Other	25%
2208.60.00	Vodka	25%
2208.70.00	Liqueurs and cordials	25%
<b>24.02</b>	<b>Cigars, cheroots, cigarillos and cigarettes, of tobacco or tobacco substitutes</b>	
2402.10.00	Cigars, cheroots and cigarillos, containing tobacco	20%

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2402.20.00	Cigarettes containing tobacco	20%
2402.90.00	Other	20%
<b>24.03</b>	<b>Other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences</b>	<b>20 %</b>
<b>87.11</b>	<b>Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars.</b>	<b>8 %</b>
<b>93.01</b>	<b>Military weapons, other than revolvers, pistols and the arms of heading 9307.00</b>	<b>6 %</b>
<b>93.02</b>	<b>Revolvers and pistols, other than those of heading 93.03 or 9304</b>	<b>6 %</b>
<b>93.03</b>	<b>Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shotguns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt human killers, line-throwing guns).</b>	<b>6 %</b>
<b>9304.00.00</b>	<b>Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading 9307.00.00.</b>	<b>6 %</b>
<b>2710.10.00</b>	<b>Motor Spirit (Gasoline) and other light oils and preparations</b>	<b>\$2.25/g</b>
2710.19.10	Kerosene type jet fuel	\$0.28/g
2710.19.20	Illuminating kerosene	\$0.28/g
2710.19.30	Vaporizing oil or white spirit	\$0.28/g
2710.19.40	Diesel oil	15%
2710.19.50	Gas oils (other than diesel oil)	15%
2710.19.60	Bunker ‘C’ grade fuel oil	15%
2710.19.70	Partly refined petroleum, including topped crudes	15%
<b>27.11</b>	<b>Petroleum gases and other gaseous hydrocarbons (including LPG).</b>	<b>0.03/lb</b>

**SECOND SCHEDULE****(Section 3.(1))****Exempt Goods**

The following goods shall not be subject to excise tax, and the importation or removal of such goods is exempt from excise tax:

- (a) Alcohol and spirits described under Customs Tariff Heading 2207;
- (b) Aromatic bitters described under Customs Tariff Heading 2208.90.10 and 2208.90.20;
- (c) Lubricating oils and greases described under the Customs Tariff Heading 2710.90;



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- (d) Passenger allowance of 1.5 litres of spirits or wine or proportionate mixes and 250 grams of manufactured tobacco or 200 cigarettes or 100 cigarillos or 50 cigars;
- (e) Imports classified under Customs Tariff Heading **93.01, 93.02, 93.03 and 93.04** by a Department approved by the Ministry of National Security.

CURTIS A MARTIN  
*Speaker*

Passed by the National Assembly this 26<sup>th</sup> day of October 2010.

JOSÉ LLOYD  
Clerk of the National Assembly