

GUYANA

ACT No. 11 of 2005

EXCISE TAX ACT 2005

I assent,

Bharrat Jagdeo,
President,
18th July, 2005.

ARRANGEMENT OF SECTIONS

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AN ACT to provide for the imposition and collection of Excise Tax.

A.D. 2005

Enacted by the Parliament of Guyana.

Short title and commencement.

1. (1) This Act may be cited as the Excise Tax Act 2005.

(2) This Act shall come into operation on such date as the Minister may by order appoint and different dates may be prescribed for different provisions of this Act.

Interpretation.

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

“Commissioner” means the Commissioner-General of the Guyana Revenue Authority;

“consideration”, in relation to a supply or import of goods, means the total amount in money or kind paid or payable (including a deposit on a returnable container) for the supply or import by any person, directly or indirectly, including any duties, levies, fees, and charges (other than VAT) paid or payable on, or by reason of, the supply or import;

“days” means official working days for the Guyana Revenue Authority, excluding all public holidays;

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“duty”, “entered”, “export”, “import” and “importer” have the meanings assigned to them by the Customs Act;

“manufacture”, in relation to goods, means to manufacture or produce and includes the application of any process in the course of manufacturing or producing the goods;

“registered manufacturer” means a person meeting the requirements for registration under this Act;

“supply” means a sale of goods or a grant of the use or right to use any goods;

“tax” means excise tax imposed under this Act;

“taxable goods” means goods specified by regulations made by the Minister, which regulations shall be subject to an affirmative resolution of the National Assembly.

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“warehouse” and “warehoused” shall have the same meaning as in the Customs Act.

3. (1) Except as otherwise provided, Excise Tax shall be paid in accordance with this Act in relation to -

Imposition and payment of tax.

- (a) taxable goods imported and not warehoused;
- (b) taxable goods imported and warehoused and removed from the warehouse;
- (c) taxable goods manufactured in Guyana and removed from the warehouse;
- (d) taxable goods manufactured and sold in Guyana,

at the rates specified by regulations made by the Minister, which regulations shall be subject to an affirmative resolution of the National Assembly:

Provided that no Excise Tax shall be paid on goods which are exported.

(2) A manufacturer of taxable goods who cannot account, to the satisfaction of the Commissioner, for any quantity of such goods manufactured or warehoused by him is deemed to have removed those goods from a warehouse for consumption in Guyana during the month in which the deficiency arose.

4. (1) Where tax is payable on taxable goods by reference to their value, the tax is calculated on an amount, referred to as the “chargeable value” equal to -

Value and quantity.

- (a) if the goods are imported, the total of -
 - (i) the value of the goods as it would be determined under the Customs Act for the purpose of assessing *ad valorem* duty of customs on the goods, whether *ad valorem* duty of customs is payable on the goods or not; and
 - (ii) the amount of any taxes or duties (other than tax payable under this Act or the Value-Added Tax Act 2005), fees, or other charges that are payable upon the entry of the goods into Guyana; and
- (b) if the goods are manufactured in Guyana, the amount of consideration in money, after deducting therefrom any amount of VAT payable.

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(2) Where tax is payable on taxable goods by reference to a specific quantity measured by volume or weight, if the goods are imported, sold in Guyana or removed from a warehouse in a container intended for sale with or of a kind usually sold with the goods in a sale by retail and the container is marked, labeled, or commonly sold as containing, or commonly reputed to contain, a specific quantity of such goods, for the purpose of determining the tax payable in respect of the goods, the container is deemed to contain not less than that specific quantity.

Payment of tax by
manufacturer.

5. (1) In relation to goods referred to in section 3(1)(c) and (d), payment of tax to the Commissioner shall be made not later than fifteen days after the end of the month during which the goods were so sold or removed; in relation to goods referred to in section 3(1)(a) and (b), payment of tax to the Commissioner shall be made on importation or removal from the warehouse.

(2) No taxable goods may be removed from a warehouse unless the person who intends to remove the goods has -

- (a) paid the tax payable on the goods; or
- (b) entered into –
 - (i) a bond with security equal to triple the amount of tax that would be payable on the goods if the goods were removed from the warehouse for consumption in Guyana; or
 - (ii) a general bond, to continue in force for twelve months, with security in an amount approved by the Commissioner.

(3) Where a person who intends to remove taxable goods from a warehouse has entered into a general bond referred to in subsection (2)(b)(ii) but the total of-

- (a) the tax on the goods; and
- (b) the tax payable by the person on all other goods removed from a warehouse that remains unpaid,

exceeds the amount of security under such general bond, the person is required to pay the tax on the goods that he intends to remove from the warehouse before they are so removed.

(4) A registered manufacturer who defaults in paying any tax payable by him by the day prescribed by subsection (1) or (3) is required to pay, in addition to the amount of tax in default, interest at the rate prescribed under paragraph 2 of Schedule IV of the Value-Added Tax Act 2005 for each month or part of a month during which the tax remains unpaid.

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Payment of tax
by importer.

6. Where tax is imposed by this Act on the importation of goods into Guyana, the importer is required to pay the tax to the Commissioner before the goods are cleared for use within Guyana.

7. (1) Every registered manufacturer is required to file with the Commissioner, not later than fifteen days after the end of each month, in the prescribed manner an accurate excise tax return for the month in the prescribed form containing the prescribed information, regardless of whether any tax is due.

Excise tax
returns.

(2) A person who ceases being a registered manufacturer is required to file with the Commissioner, not later than fifteen days after the date of cessation, in the prescribed manner an accurate return for the month in the prescribed form containing the prescribed information.

(3) The Commissioner may require a registered manufacturer to furnish such information relating to a return as the Commissioner considers necessary.

8. (1) The Commissioner may grant permission for the temporary importation of taxable goods without payment of tax upon being satisfied that –

Temporary
importation.

- (a) the goods are imported for temporary use or for a temporary purpose only;
- (b) the goods will be exported within three months from the grant of the permission; and
- (c) the person to whom the permission has been granted will deposit with the Commissioner an amount equal to the tax payable on the goods or, at the discretion of the Commissioner, give security for payment of the tax.

(2) Where goods imported under subsection (1) are not exported within the period specified in subsection (1)(b), any deposit made with the Commissioner shall be brought into account by the Commissioner as excise tax or, if security has been given, the importer shall pay to the Commissioner the full amount of tax payable on the goods imported.

(3) Notwithstanding subsections (1) and (2), the Commissioner may, where he considers it necessary, allow such further period as he thinks fit for the export of the goods –

- (a) if he is satisfied that the goods are the *bona fide* property, and are for the exclusive use, of a person temporarily in Guyana; and
- (b) if the importer of the goods gives such security in addition to that given pursuant to subsection (1)(c) as the Commissioner requires.

(4) Where goods referred to in subsections (1) and (2) are exported within the time specified in subsection (1) or the further period allowed pursuant to subsection (3), the Commissioner shall refund the deposit referred to in subsection (1)(c) and cancel any security given.

Relief for raw materials.

9. (1) Where the Commissioner is satisfied, upon a certificate by a registered manufacturer in the prescribed form, that taxable goods, whether imported into Guyana or manufactured in Guyana, are intended to be used by the registered manufacturer as raw materials for the manufacture as raw materials for the manufacture of other taxable goods, the Commissioner shall in respect of such goods used as raw materials, instead of requiring the payment of tax in full, require that the manufacturer deposit such security as the Commissioner thinks fit.

(2) Where money was given as security under subsection (1) and the Commissioner is subsequently satisfied that the goods were used as raw materials for the manufacture in Guyana of other taxable goods, the Commissioner shall remit the tax payable in respect of the raw materials and apply such money against any tax that becomes payable on the sale of the other taxable goods.

Refunds.

10. (1) Subject to this section, where a person has paid an amount as or on account of tax that exceeds the amount that was payable by him under this Act, the Commissioner is required, within ninety days of the date the application was filed, to pay a refund to that person equal to the amount of the excess if that person applies for a refund within three years after the amount was paid.

(2) Subject to this section, where a person who has imported taxable goods subsequently exports those goods or puts them on board a ship or aircraft for use as stores and the goods are in compliance with the conditions for payment of a drawback of duties under the Customs Act, the Commissioner is required, within ninety days of the date the application was filed, to pay an amount to the person equal to the tax paid on the goods if the person applies for a refund within three years after he so exported the goods or put them on board the ship or aircraft.

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(3) An application under this section shall be made in the form, shall contain the information, and shall be filed in the manner prescribed by the Commissioner.

(4) Where a refund or other payment is payable to a person under this section, the Commissioner may apply it in reduction of any tax, levy, interest, or penalty payable by the person in terms of this Act, other taxes or duties collected by the Commissioner, and any unpaid amounts under the repealed Consumption Tax Act.

Cap. 80:02

(5) If the Commissioner refunds an amount to a person in error, the person is required to repay the amount, together with interest from the 10th day after the person was notified by the Commissioner of the error, and the amount may be recovered from the person as tax.

Relief under Customs Act. Cap. 82:01.

11. (1) Part V of the Customs Act applies, with such modifications as the circumstances require, for the purposes of this Act in respect of goods produced in Guyana for export.

(2) Section 18 of the Customs Act applies, with such modifications as the circumstances require, for the purposes of this Act with respect to the re-importation of taxable goods.

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12. (1) Where a person exempt from tax under section 8(1)(b) in relation to importation of a motor vehicle is in breach of any of the conditions for exemption from customs duty, the exemption ceases to apply and tax is due and payable from the date on which the breach occurs and must be calculated by reference to the chargeable value of the motor vehicle at the date of importation.

Goods diverted from exempt use.

(2) Where a person is exempt from tax under section 8(1)(c) or other enactment, and the exemption is conditional upon the goods to which the exemption relates –

- (a) being used exclusively by that person; or
- (b) not being sold or transferred within a specified period of time,

then on breach of that condition, the exemption ceases to apply and tax becomes due and payable from the date on which the breach occurs and must be calculated by reference to the chargeable value of the goods at the date of importation.

(3) Where at the time of importation a motor vehicle is not taxable, but is subsequently converted into a vehicle that does not fall within the exemption, the exemption ceases to apply and tax on the vehicle becomes due and payable as at the date of the conversion (as determined by the Commissioner) and shall be calculated by reference to the chargeable value of the vehicle, determined in accordance with section 4(1)(b), at the date of conversion.

13. (1) Any person who carries on the business of importing or manufacturing taxable goods for consumption in Guyana is required to apply to the Commissioner in the prescribed form to be registered for the purposes of this Act.

Registration.

(2) An application under subsection (1) is required to be made by the date prescribed by section 1(2) or within one month after the commencement of the business, whichever is that.

(3) Where the Commissioner registers a person for the purposes of this Act, the Commissioner is required to issue a certificate, in this Act referred to as a “registration certificate” to the person.

(4) A registration certificate shall be in such form and shall contain such information as the Commissioner may determine.

(5) Where a person whom the Commissioner considers ought to be registered under this Act, fails to apply for registration within the time specified in subsection (2), the Commissioner is required, after first notifying the person and giving him an opportunity to object, to register that person and issue a registration certificate accordingly.

(6) A person on whom a notice has been served under subsection (5) may object to the registration, conforming to procedures set out in Part X of the Value-Added Tax Act 2005, which shall apply to the objection with such modifications as the circumstances require.

Administration
and enforcement.

14. (1) The Commissioner shall be responsible for the due administration of this Act.

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(2) Where tax is imposed by this Act on the importation of goods into Guyana, for the purposes of collecting and enforcing the payment of the tax and, generally, for the purposes of administering and enforcing the provisions of this Act, the Customs Act and any other enactment relating to the importation of goods shall apply as if the tax were a duty.

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(3) Where tax is imposed by this Act on goods manufactured in Guyana, the tax administration provisions, Parts VIII – XV of the Value-Added Tax Act 2005 apply, with such modifications as the circumstances require, for the purposes of this Act, as if the tax were Value-Added Tax.

Subsidiary
legislation.

15. The Minister may by subsidiary legislation provide for such matters that are to be prescribed under this Act, including those matters specified in sections 2 and 3.

Passed by the National Assembly on the 18th July, 2005.

S. E. Isaacs,
Clerk of the National Assembly.

(BILL No. 4/2005).