

## CUSTOMS ACT, 2018

No. 33



of 2018

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**An Act to provide for imposition of customs duty, the prohibition and control of the importation, export or manufacture of certain goods; and for its matters incidental thereto.**

*Date of Assent:* 21/08/18

*Date of Commencement:* ON PUBLICATION

ENACTED by the Parliament of Botswana.

Part I — *Preliminary*

1. This Act may be cited as the Customs Act, 2018.
2. In this Act, unless the context otherwise provides —  
 “advance binding ruling” means a written decision provided by Commissioner General to an applicant prior to importation of goods covered by the applicant that sets forth the treatment that shall be provided to the goods at the time of importation, based upon the facts presented by the applicant;

Short title  
 Interpretation

**A.570**

Cap. 42:14

“ATA or CPD carnet” means an internationally accepted document that may in terms of the Convention on Temporary Admission be —

- (a) used in Botswana as a customs declaration for clearance of goods, excluding means of transport, identified in the document for the temporary admission procedure;
- (b) covered by a guarantee for duties and taxes that may be payable on goods;

“Botswana” means the Republic of Botswana, including its territorial waters and air space;

“clearance” means the accomplishment of the customs formalities necessary to allow goods to be placed under a customs procedure;

“Common Customs Area” has the same meaning assigned to it under the Botswana Trade Commission Act;

“duties and taxes” means customs duties and other duties and taxes or various charges collected on or in connection with the importation of goods, with the exception of the fees and charges which are limited to the approximate cost of the service rendered or those which are collected by Revenue Service on behalf of another entity;

“goods” means —

- (a) merchandise, articles, products, supplies, commodities, substances, documents;
- (b) paper money and coin of a country that is designated as legal tender and customarily used and accepted as a medium of exchange in the country of issuance;
- (c) a bearer negotiable instrument intended to enable the person to whom it is issued to obtain paper money or coin or a right to credit or balance at a bank or with another person; or
- (d) any other thing capable of being transported;

“goods in free circulation” means goods which can be disposed of without customs restrictions;

“office of departure” means a customs office at which a customs transit operation commences;

“office of destination” means a customs office at which a customs transit operation is terminated;

“outright export” means a customs procedure applicable to goods in free circulation that leave Botswana and that are intended to remain definitively outside Botswana;

“postal service” has the same meaning assigned to it under the Botswana Postal Services Act;

“Revenue Service” has the same meaning assigned to it under the Botswana Unified Revenue Service Act;

Cap. 72:01

“SACU” means the Southern African Customs Union;

“stores” means goods taken on board an aircraft or cross-border train, whether in Botswana or elsewhere, exclusively for the purpose of meeting the reasonable needs for the next journey of the aircraft or train, including stopovers, and includes goods intended to be used —

- (a) as provision for passengers and crew on board an aircraft or train during the journey;
- (b) for the operation of the aircraft or train during the journey;
- (c) for the maintenance of the aircraft or train during the journey; or
- (d) as items for sale on board an aircraft or train to passengers and crew;

“transport-unit” means —

- (a) a container having an internal volume of one-cubic metre or more, including demountable bodies;
- (b) road vehicles, including trailers and semi-trailers;
- (c) railway coaches or wagons;
- (d) lighters, barges and other vessels; and
- (e) an aircraft; and

“WTO” means the World Trade Organisation.

**3.** This Act shall apply to goods imported into, transiting through or exported from Botswana.

Territorial application

**4.** (1) This Act shall apply to all goods imported into Botswana from a SACU member state and to all goods destined for export from Botswana to a SACU member state, subject to any rules as may be prescribed.

Application of this Act in relation to SACU member states

(2) Unless otherwise provided in the SACU Agreement, no import duty shall be payable on goods in free circulation in a SACU member state if the goods imported into Botswana are —

- (a) cleared for use in Botswana or for a customs procedure; or
- (b) for tax purposes, regarded as cleared for use in Botswana.

## PART II — *Powers and Duties of Commissioner General*

**5.** The Commissioner General shall —

- (a) administer and enforce this Act;
- (b) establish and maintain administrative, financial, technological, electronic and communicative systems and procedures necessary for the implementation and enforcement of this Act;
- (c) coordinate and consult with other Government agencies to establish the most effective methods of working together and sharing information in order to simplify and facilitate the requirements of national legislation;

Powers and duties of Commissioner General

- (d) conclude Memoranda of Understanding with other Government agencies, trade entities or other institutions to enhance the enforcement of customs and other relevant legislation;
  - (e) co-operate with other customs administrations and seek to conclude mutual administrative assistance agreements to enhance customs controls and simplify customs requirements; and
  - (f) determine the conditions and category of customs officers who shall have the power to carry out an arrest for the purpose of implementation and enforcement of this Act.
- 6.** The Commissioner General shall —
- (a) provide customs officers with identity cards, which they are required to exhibit in the exercise of their duties under this Act and upon request;
  - (b) determine the official uniform of customs officers; and
  - (c) designate those customs officers who shall wear the uniform.
- 7.** (1) The Revenue Service shall have a code of conduct for customs officers and employees.
- (2) A customs officer or employee of the Revenue Service shall while employed by the Revenue Service not serve as —
- (a) a director or employee of a company registered or licensed in terms of this Act; or
  - (b) a consultant to a company registered or licensed in terms of this Act.
- (3) A customs officer or employee of the Revenue Service shall have no direct or indirect proprietary or financial interest in a company registered or licensed in terms of this Act.
- (4) A customs officer or employee of the Revenue Service shall not —
- (a) own or operate, in whole or in part, any place used as a customs warehouse or customs controlled area; or
  - (b) enter into any contract or agreement for the lease or use of any place with a view to its subsequent use as a customs warehouse or customs controlled area.
- 8.** A customs officer may carry out all the customs controls it deems necessary on goods, including means of transport, and on persons that enter or leave Botswana, regardless of whether the goods or means of transport is liable to duties and taxes.
- 9.** Customs controls referred to in this Act include —
- (a) conducting audit based controls;
  - (b) examination of goods;
  - (c) verifying information, declarations, reports, applications, documents or communications;
  - (d) searching means of transport;
  - (e) inspecting baggage and other goods carried by a person;
  - (f) search of a person;
  - (g) carrying out official investigations; or
  - (h) any other similar activities for the purpose of enforcing this Act.

Identification  
of customs  
officers

Ethics

Customs  
controls

Types of  
customs  
controls

- 10.** Customs controls, other than random checks, shall be based on risk management techniques, which include risk analysis and risk criteria. Use of risk management
- 11.** (1) A customs officer may inspect any data and documents relating to the operations of the import, export, movement or storage of goods — Audit-based customs controls
- (a) after releasing the goods in order to ascertain the accuracy of the particulars contained in the customs declaration; or
- (b) prior to commercial operations involving such goods.
- (2) A customs officer may examine goods and take samples where it is possible for them to do so.
- (3) Customs controls may be carried out at the premises of —
- (a) the holder of the goods or his or her representative;
- (b) any other person directly or indirectly involved in operations at the premises in a business capacity; or
- (c) any other person in possession of the goods, data or documents for business purposes.
- 12.** A customs officer may carry out an inspection of goods, means of transport and persons for the purposes of application and enforcement of this Act with respect to the goods. Right to inspect goods, means of transport, etc.
- 13.** (1) Notwithstanding the generality of section 12, a customs officer may at any time, stop or interview a person and request the person to produce goods, information, accounts, documents or records in his or her possession with respect to the goods. Right to stop and interview
- (2) A customs officer may take any action, including the use of force, as may be deemed necessary, to stop a person who refuses to stop.
- (3) A customs officer may require a person to appear before him or her at a time and place determined by the officer and may question the person, either alone or in the presence of another person, as the officer may deem fit, with respect to any matter dealt with in this Act.
- (4) For the purpose of the prevention, investigation and repression of offences under this Act, a customs officer may verify the identity of persons entering or leaving Botswana or who are within a Customs controlled area.
- 14.** (1) A customs officer may stop and board any means of transport in Botswana to search the means of transport or any person found thereon and remain on the means of transport in pursuance of his or her duties under this Act. Right to stop and search means of transport
- (2) If a means of transport, or a place, hatch, safe, chest, box, package or container thereon is locked and is not opened upon demand, a customs officer may open the means of transport, place, hatch, safe, chest, box, package or container by any means necessary in the circumstances.
- (3) A customs officer shall have the power to —
- (a) mark goods before offloading the goods;
- (b) lock up, seal, mark or otherwise secure goods on board a means of transport, including any apparatus; and

Right of access  
to areas,  
premises and  
facilities

- (c) demand from the person in charge of the means of transport the production of information, accounts, documents or records with respect to the goods.
- (4) A person in charge of a means of transport shall not —
  - (a) wilfully open, break, obliterate or alter a lock, seal or mark placed upon goods on board by a customs officer; or
  - (b) remove goods which have been locked, sealed, marked or otherwise secured, unless the person proves, to the satisfaction of a customs officer that it was necessary for him or her to have done the act in question.
- (5) A customs officer may erect a roadblock in order to carry out customs controls, in compliance with this Act.
- (6) A customs officer may use all appropriate devices to immobilise a means of transport when the persons in charge of the means of transport does not stop on the order of the customs officer.

**15.** (1) A customs officer may —

- (a) at any time and without previous notification, have unlimited access to any area, premises or facility;
- (b) search any area, premises or facility as he or she deems necessary;
- (c) require a person at an area, premises or facility to produce information, accounts, documents, records or goods which relate to any matter dealt with under this Act;
- (d) examine any information, accounts, documents, records, or goods in any area, premises or facility;
- (e) require from a person referred to under paragraph (c) an explanation of an entry in the information, accounts, documents or records; and
- (f) in the presence of and after due notification to the person in any area, premises or facility, take samples of goods or make copies of the information, accounts, documents or records with respect to the goods.

(2) A person or an employee of the person whose business occupies or uses an area, premises or facility shall furnish such assistance as may be required by the customs officer for entering the area, premises or facility and for the exercise of customs powers.

(3) A customs officer may lock up, seal, mark, fasten or otherwise secure an area, premises, or facility, and any goods or means of transport found in an area, premises or facility, if he or she has reason to believe that a breach of this Act has been or is likely to be committed.

Request for  
information

**16.** (1) A customs officer may request to be furnished with information, accounts, documents and records relating to goods that are the subject of customs formalities by —

- (a) a declarant of goods;
- (b) an importer or exporter of the goods;
- (c) a person who —

- (i) is liable for duties and taxes that are payable on the goods, or
- (ii) has paid duties and taxes on goods;
- (d) the owner of the goods that are imported or exported; or
- (e) any other person involved in an activity regulated under this Act.

(2) Any person who —

- (a) knowingly submits false or fraudulent information; or
  - (b) forges any information, accounts or documents,
- for purposes of evading of duties or taxes, commits an offence and shall be liable to a fine not exceeding P 1 000 000 or to imprisonment for a term not exceeding five years, or to both or to treble the value of the goods in respect of the offence, whichever is greater and the goods and the container in respect of which the offence is committed shall be liable to forfeiture.

**17.** (1) A customs officer may search a person only in exceptional circumstances where the customs officer has reasonable grounds to suspect that the person is concealing goods, information, documents or records in respect of which a breach of this Act is being or is likely to be committed.

Search of  
persons

(2) A customs officer may, subject to subsection (1) and to the extent necessary in the circumstances, conduct —

- (a) a search of any goods a person may have in his or her possession;
  - (b) a frisk search of the person; or
  - (c) an external bodily search of the person, which may include the use of mechanical or electrical imaging or electronic equipment which can produce an indication that such person is concealing a prohibited substance or any goods in his or her body.
- (3) A child may be searched in terms of subsection (2) —
- (a) in the presence of that child's parent or guardian; or
  - (b) if the child is travelling without a parent or guardian, person who is responsible for such child during travel.

(4) A personal search under this section shall be carried out by a customs officer of the same gender as the person being searched, except in the case of a concern for immediate threat to the customs officer or public safety.

(5) A person being subjected to an external bodily search may request the presence of another person during the search.

(6) A customs officer may take such action on a person who refuses to be searched, including the use of force to the extent necessary in the circumstances to search the person.

**18.** (1) When a customs officer has, after conducting an external bodily search, reasonable grounds to suspect that a person is internally concealing goods or if the person admits to internally concealing such goods, the officer may detain the person and arrange for an internal bodily search to be conducted.

Internal bodily  
search

(2) An internal bodily search under subsection (1) shall be performed at a place equipped for such bodily search and under the supervision of a registered medical practitioner.

(3) Any removal of goods or contraband from a person under this section shall be conducted —

- (a) by a registered medical practitioner at a place equipped for the carrying out of such medical procedures; and
- (b) with the written consent of the person to be subjected to such removal.

Reporting of personal searches

**19.** The results of any search under this Act shall be recorded in an official report indicating —

- (a) the actions carried out;
- (b) the persons present;
- (c) the results of the search; and
- (d) if applicable, the results of an examination provided by the registered medical practitioner.

Right to detain or seize goods, etc.

**20.** (1) A customs officer may detain any goods, means of transport, information, accounts, documents, records, at any place for the purpose of establishing compliance with this Act.

(2) If any goods, means of transport, information, accounts, documents, records, or currency are liable to forfeiture, a customs officer may seize such goods, means of transport, information, accounts, documents, records or currency.

Duty to comply with demands of customs officer

**21.** (1) A person shall comply with any requirement of a customs officer in the exercise of his or her duties, unless the person can show good cause that is deemed valid by the customs officer.

(2) A person shall not obstruct a customs officer in the exercise of his or her duties.

(3) Any person who hinders or obstructs a customs officer in the execution of his or her duties under this Act commits an offence and shall be liable to a fine not exceeding P 200 000 or to imprisonment for a term not exceeding one year, or to both.

No right to compensation

**22.** A person shall not be entitled to compensation for any loss or damage arising out of a *bona fide* action of a customs officer under this Part.

Disclosure of confidential information

**23.** (1) A customs officer, an employee of the Revenue Service, a person contracted by the Revenue Service to work otherwise than as an employee, a person designated to carry out the provisions of this Act or a person, upon termination of employment, shall not disclose, exchange or allow access to any information relating to any person, firm or business acquired in the performance of their duties, unless authorised or required to do so —

- (a) for the purposes of this Act;
- (b) in connection with legal proceedings;
- (c) by the consent, in writing, of the person that will be affected by the disclosure; or
- (d) by a law enforcement agency of Botswana or any other Government agency as provided for in a memorandum of understanding.

(2) Notwithstanding subsection (1), the Commissioner General may, in accordance with an international convention or agreement in respect of customs cooperation to which Botswana is a party, disclose or exchange, or authorise a customs officer to disclose or exchange information relating to a person or business acquired by the customs officer in the performance of his or her duties under this Act.

(3) Any person, including a third party, to whom such information is disclosed or exchanged shall use the information only for the purpose for which it was disclosed or exchanged.

**24.** (1) Where, in respect of the same goods, controls other than customs controls, are to be performed by competent Government agencies other than the Revenue Service, the Revenue Service shall, in close cooperation with those other agencies, endeavour to have those controls, wherever possible, performed at the same time and place as customs controls, with the Revenue Service having the coordinating role in achieving this.

Cooperation  
between  
Government  
agencies

(2) In the framework of customs controls, the Revenue Service and other competent Government agencies may, in order to facilitate the processing of goods moved between Botswana and other territories, and to minimise risk and combat fraud, exchange with other customs administrations and competent agencies data received in the context of the movement or storage of goods, and the results of any control.

**25.** (1) For the purposes of —

- (a) ascertaining the commission of an offence under this Act with regard to the import, export, transit or possession of narcotic drugs and psychotropic substances, contraband and other prohibited items;
  - (b) identifying the perpetrators, sponsors and accomplices of the offences under paragraph (a) as well as those who participated in any way; and
  - (c) seizing goods subject to a customs offence,
- a customs officer may, after determining whether or not to inform an officer of the Botswana Police Service, monitor the delivery of the items under the conditions determined by the Commissioner General.

Authority to  
participate in  
controlled  
deliveries

(2) Subject to subsection (1), a customs officer shall not be held criminally liable if he or she —

- (a) acquires, possesses, transports or delivers narcotic drugs and psychotropic substances, contraband or other prohibited items; or
  - (b) makes available the means that enable a person who is in possession of these items to commit a customs offence, as well as means of transport, storage and communication.
- (3) Subsections (1) and (2) shall also apply to —
- (a) substances that are used for the illicit manufacture of narcotic drugs and psychotropic substances as well as equipment used for their manufacture; and
  - (b) the production of other contraband and prohibited items.

(4) A customs officer who carries out the actions referred to in subsections (1) and (2) shall not be criminally liable in relation to the funds that are the proceeds of the offences, provided that he or she reports such funds to the Commissioner General.

PART III — *General Provisions*

*A – Right to representation*

Representation before Revenue Service

**26.** (1) A person may represent himself or herself before the Revenue Service or designate an agent to act on his or her behalf.

(2) A person and his or her agent shall have the same rights before the Revenue Service, and shall be treated equally in the accomplishment of customs formalities.

(3) An agent shall —

(a) be established in Botswana; and

(b) meet the relevant requirements and obligations required under this Act.

*B – Information of general nature*

Information to be made readily available

**27.** The Revenue Service shall ensure that all information of general application pertaining to customs is readily available to any interested person on the Revenue Service website and by any other manner as may be determined by the Commissioner General.

*C – Decisions relative to application of customs legislation*

Revocation or modification of decision

**28.** (1) A decision favourable to a person concerned may be revoked by the Revenue Service if it was taken on the basis of incorrect or incomplete information and where —

(a) the person knew or should reasonably have known that the information submitted was inaccurate or incomplete; and

(b) the decision would not have been taken on the basis of accurate and complete information.

(2) A decision favourable to a person concerned may be revoked by the Revenue Service where —

(a) its recipient does not conform to an obligation, if any, imposed upon him or her as a result of the decision; or

(b) the Revenue Service discovers that the decision was made in error.

*D – Advance binding rulings*

Advance binding ruling

**29.** (1) The Revenue Service shall, upon an application by an importer, exporter or any interested person, issue an advance binding ruling regarding -

(a) the tariff classification of goods;

(b) the origin of goods in accordance with applicable rules of origin;

(c) a customs valuation;

- (d) whether goods are subject to a duty exemption;
  - (e) drawback, quotas or fees; or
  - (f) any other matter as may be prescribed.
- (2) Notwithstanding subsection (1), an advance binding ruling shall not be issued where –
- (a) the request concerns a completed transaction; or
  - (b) the transaction is pending before courts.
- 30.** An advance binding ruling shall bind the Revenue Service with the recipient of the ruling for the respective determination of the particular goods or matter stated in the ruling. Binding effect of ruling
- 31.** An advance binding ruling shall not be issued by the Revenue Service where the request – Exception to issuance of advance binding ruling
- (a) concerns a current or completed customs transaction;
  - (b) presents questions or transactions that are hypothetical in nature;
  - (c) presents a question that is pending before a court; or
  - (d) is the subject of an appeal.
- 32.** (1) An advance binding ruling shall be valid for a period of three years from the date of its issue. Validity period
- (2) An advance binding ruling shall cease to be valid when –
- (a) in a case of a tariff ruling following a modification of the Tariff Nomenclature –
    - (i) it is no longer in conformity with this Act,
    - (ii) it becomes incompatible with the interpretation of the Tariff Nomenclature, or
    - (iii) it is revoked or modified; or
  - (b) in a case concerning origin following a decision by Commissioner General, or an agreement concluded –
    - (i) it is not in conformity with the legal measures so established,
    - (ii) it becomes incompatible on an international level with the Agreement on Rules of Origin of the WTO or with the explanatory notes or opinions on origin adopted for the interpretation of that Agreement; or
    - (iii) it is revoked.
- (3) A recipient of an advance binding ruling that ceases to be valid may continue to benefit from the ruling for a period of three months after the date of publication or notification, in the case where the recipient has concluded, on the basis of the advance binding ruling and before the adoption of the measures in question, firm and definitive contracts relative to the purchase or the sale of goods to which the ruling relates.

#### *E – Record keeping*

- 33.** (1) A person carrying business in Botswana shall keep records, documents and accounts relating to the business in such form and manner as may be prescribed. Record keeping
- (2) The information under subsection (1) shall be kept for a period of five years.

Request for information, accounts, records, etc.

(3) The Commissioner General may, subject to such conditions as he or she may determine, allow a person referred to in subsection (1) to retain, in lieu of any information, accounts, documents and records —

- (a) an electronic version of the information, accounts, documents and records; or
- (b) an authenticated copy of the information, accounts, documents and records.

**34.** (1) The Commissioner General shall, with respect to goods, request to be furnished with information, accounts, documents and records within a period as may be determined by the Commissioner General by —

- (a) a declarant of the goods;
- (b) an importer or exporter of the goods;
- (c) the owner of the goods;
- (d) a person liable to pay duties and taxes;
- (e) any other person as may be determined by the Revenue Service; or
- (f) the transporter of the goods.

(2) The Commissioner General may, subject to any conditions he or she may specify, allow a person to produce, in lieu of information, accounts, documents and records required to be furnished in terms of subsection (1), an electronic version or an authenticated copy thereof, and the electronic version or copy shall have all the effects of the original information, accounts, documents and records concerned.

(3) Any person who fails to comply with subsection (1) commits an offence and shall be liable to a fine not exceeding P 1 000 000 or treble the value of the goods in respect of such offence, whichever is greater, and the goods and the container in respect of which the offence is committed shall be liable to forfeiture.

*F – Prohibitions and restrictions*

Prohibited goods

**35.** (1) Goods shall be prohibited where their import or export is against —

- (a) public order;
- (b) public security;
- (c) public morality;
- (d) public health;
- (e) the protection of national treasures;
- (f) the protection of intellectual property;
- (g) the protection of consumers;
- (h) combating money laundering, financing of an act of terrorism; and
- (i) any other interest as may be prescribed.

(2) Goods shall be restricted where their import or export is conditional upon compliance with specific conditions or formalities restricting the import or export of the goods, other than the obligation to present the goods to Revenue Service and lodge a customs declaration.

(3) Except as otherwise provided for in this Act, goods that are prohibited shall not be cleared for any customs procedure.

(4) For the purposes of this section “NBC” has the same meaning assigned to it under the Financial Intelligence Act.

**36.** The Minister may, by Notice published in the *Gazette*, specify goods that are prohibited or subject to restrictions in accordance with any other applicable legislation.

Cap. 08:07  
Additional cases  
of prohibited  
or restricted  
goods

**37.** A customs officer may, in accordance with this Part or any other legislation in force, while the goods are under customs control —

Actions by  
customs officer

- (a) detain any restricted goods subject to their compliance with the applicable conditions or formalities; or
- (b) seize any prohibited goods.

#### *G – Marking of goods*

**38.** (1) Any foreign product, whether natural or manufactured, shall not be imported into or transit Botswana if it bears either on itself or on packing, cases, packages, envelopes, bands or labels, a mark of manufacture or trade, a name, a sign or any indication likely to make the ultimate purchaser believe —

Marking to  
indicate origin

- (a) that they have been manufactured in Botswana; or
- (b) that they originate from Botswana.

(2) Any foreign product, whether natural or manufactured, acquired in a place with the same name as a place in Botswana, shall bear —

- (a) the name of the country of origin or manufacture, along with the name of such place; and
- (b) the word “Imported” in visible characters.

(3) Any foreign product that does not meet the requirements specified in subsections (1) and (2) shall be prohibited from importation, exportation, entry into a customs warehouse, transit and free circulation within Botswana.

**39.** Any foreign product, whether natural or manufactured, shall comply with obligations imposed by this Act regarding labelling of the product, and any such goods that do not comply shall be prohibited from importation, exportation, entry into a customs warehouse, transit, and free circulation within Botswana.

Other marking  
requirements

#### *H – Prohibitions relative to protection of intellectual property rights*

**40.** (1) A holder of an intellectual property right who has valid reasons to suspect that the importation or exportation of goods with counterfeit or pirate marks, which his or her right, is envisaged or infringes in progress, may apply to the Revenue Service for the suspension of release of the goods.

Application for  
suspension of  
release of  
goods

- (2) An applicant under subsection (1) shall —
  - (a) submit an application to the Revenue Service;
  - (b) provide adequate evidence to satisfy the Revenue Service that there appears to be an infringement of the right holder’s intellectual property right; and

- (c) supply a sufficiently detailed description of the goods in question to facilitate the determination of the alleged infringement.
- 41.** (1) The Revenue Service shall determine whether there are reasonable grounds to suspect that the goods to be imported or exported infringe the right holder's intellectual property rights.
- (2) If, upon inspection of the goods that are the subject of an application under section 40, the Revenue Service is satisfied that there may be an infringement of a right holder's intellectual property, it shall —
- (a) suspend the release of such goods;
  - (b) notify the intellectual property right holder of the suspension; and
  - (c) notify the applicant of the reasons for the suspension.
- 42.** The Revenue Service shall require the intellectual property right holder, at the time of presenting the application for suspension of release of suspected goods under section 40, to —
- (a) indemnify the Revenue Service against any liability that may arise from actions, proceedings, claims or demands that may be made or taken against the Commissioner General in providing the required assistance; and
  - (b) provide a guarantee sufficient to pay any costs or expenses incurred by, and any charges due to, the Commissioner General in providing the required assistance.
- 43.** (1) The Revenue Service shall, of its own initiative, suspend the release of goods for which it has evidence that an intellectual property right may be infringed.
- (2) If, in accordance with subsection (1), the Revenue Service suspends the release of suspected infringing goods, the Revenue Service shall notify —
- (a) the applicant;
  - (b) the right holder; and
  - (c) the Companies and Intellectual Property Authority established under the Companies and Intellectual Property Authority Act .
- 44.** (1) A holder of an intellectual property right may institute proceedings leading to a decision on the merits of the claim before the courts.
- (2) If, within 14 days after the holder of an intellectual property right was notified of the suspension, the Revenue Service is not informed by the holder of the intellectual property right that proceedings have been instituted leading to a decision on the merits of the case, the Revenue Service may —
- (a) for reasons deemed valid by Revenue Service extend the period of suspension of release of the goods; or
  - (b) release the goods, provided that all other conditions for importation or exportation have been met.
- (3) Notwithstanding subsection (2), in the case of perishable goods that cannot be stored for a long period, the period of suspension of release shall be no longer than three days.

Suspension of release of suspected goods by Revenue Service

Provision of guarantee for suspension

Revenue Service right to act

Cap. 42:13  
Duration of suspension

(4) The time limit referred to in subsection (2) may be extended by the Revenue Service in appropriate cases for an additional 14 days.

(5) In the event of a suspension ordered by a court, the time limit referred to in subsections (2), (3) and (4) shall be determined by that court.

(6) If proceedings leading to a decision on the merits of the case have been initiated, the declarant may request a review, including a right to be heard, with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.

**45.** Without prejudice to the protection of confidential information, the Revenue Service may allow the holder of an intellectual property right and the declarant to inspect the goods for the purpose of determining the merits of their respective claims.

Right to inspect

**46.** Where the proceedings instituted by a holder of the intellectual property right have determined that the goods in question are infringing goods, the Revenue Service shall, at the right holder's request, inform the right holder of the names and addresses of the importer, the exporter, the consignee, and the consignor of the quantity of the goods.

Provision of information

**47.** (1) Notwithstanding the other rights of action open to a holder of an intellectual property right and subject to the declarant's right to appeal, once a determination has been made by the Companies and Intellectual Property Authority that the goods are infringing goods, the Revenue Service shall dispose of the goods in accordance with this Act.

Disposal of infringing goods

(2) The Revenue Service shall not allow the re-exportation of goods in the same state with counterfeit trademarks or their placement under another customs procedure, other than in exceptional circumstances.

**48.** The Revenue Service shall not be liable for any action taken or not taken in good faith in regard to suspension of the release of suspected infringing goods.

Liability

**49.** The provisions of this Part shall not apply to small quantities of goods of a non-commercial nature contained in a traveller's personal baggage or sent in small consignments.

*De minimis* imports

*I – External trade, foreign exchange and external financial relationships*

**50.** (1) An importer, exporter and a cross-border traveller shall conform to legislation governing external trade, foreign exchange and external financial relationships.

Application of external trade

(2) A customs officer shall report breaches of the legislation referred to in subsection (1) discovered in the performance of their duties to the competent authority.

*J – Transitional application*

**51.** A person required to submit to the Revenue Service, a notice, report, manifest, declaration, or other document or information, shall bear the burden of proving that the information contained therein is true and correct.

Burden of proof in relation to information provided

## Exceptions

**52.** (1) Upon request by a person concerned, and for reasons deemed valid by the Revenue Service, the Revenue Service shall allow customs formalities to be accomplished outside the customs hours of operation or away from customs offices and other places designated by the Revenue Service.

(2) Where a service rendered by the Revenue Service outside the customs hours of operation or away from customs offices incurs expenses to the Revenue Service, the Commissioner General may require that the expenses be borne by the person who requests the service.

(3) Any service charges incurred by the Revenue Service under this section shall be limited to the approximate cost of the services rendered.

PART — IV *Places of entry and exit**A – Scope of customs activity*Designation of  
places of entry  
and exit

**53.** (1) The Minister shall designate by Regulation places of entry and exit from Botswana —

- (a) through which means of transport shall enter or depart;
- (b) through which goods may be imported or exported;
- (c) where goods may be presented for transit;
- (d) where persons, on foot or otherwise, may enter or leave Botswana; and
- (e) where goods may be cleared for customs purposes.

(2) The Commissioner General shall designate by Notice published in the *Gazette* —

- (a) customs offices at designated places of entry or exit, including customs airports, for —
  - (i) the landing or embarkation of persons, and
  - (ii) the landing, loading or examination of goods, including baggage;
- (b) customs warehouses;
- (c) container terminals where containers may be landed for —
  - (i) transit,
  - (ii) delivery to a container depot,
  - (iii) delivery to importers after the goods in the container have been cleared by Revenue Service, or
  - (iv) where containers may be stored pending exportation;
- (d) container or cargo depots —
  - (i) where goods, prior to their declaration to the Revenue Service, may be removed from a means of transport,
  - (ii) for the storage or examination of containers or the goods in the containers,
  - (iii) for the delivery to importers of goods after they have been cleared by the Revenue Service; or
  - (iv) for the loading of goods into containers or means of transport for export;

- (e) transit sheds into which goods intended for transshipment may be removed from the importing means of transport pending their transfer to the exporting means of transport;
- (f) temporary stores where goods may be placed pending the lodgement of a customs declaration;
- (g) roads or routes over which imported goods or goods intended for export or transit may be carried, as well as places or the means of carriage of such goods, as may be deemed necessary for customs control purposes and for such limited periods as may be designated;
- (h) any other places deemed necessary for the purposes of applying this Act; and
- (i) the hours of operation of any designated place.

(3) Notwithstanding the provisions of this section, where the Minister has designated places of entry to or exit from Botswana, he or she may in writing permit any person to enter or exit Botswana, subject to such conditions as he or she may impose, at a place other than a designated place of entry.

**54.** (1) The Minister may enter into an agreement with the Government of an adjoining State to provide for —

- (a) joint, one-stop or juxtaposed places of entry or exit for Botswana and that adjoining State;
- (b) a place of entry or exit for Botswana alone at a location in that adjoining State; or
- (c) a place of entry or exit for that adjoining State alone at a location in Botswana.

(2) In accordance with an agreement under subsection (1), the Minister may designate a joint, one-stop or juxtaposed place, or a place in the adjoining State, as a place of entry or exit for Botswana in terms of subsection (1).

(3) In accordance with an agreement under subsection (1), the Commissioner General may —

- (a) determine the purposes for which that place may be used as a place of entry or exit for Botswana;
- (b) determine the days and hours of operation during which it may be so used; and
- (c) prescribe procedures and conditions to be complied with and the information to be exchanged for the implementation of the agreement.

(4) In accordance with an agreement under subsection (1), the Minister may designate a joint, one-stop or juxtaposed place, or a place in Botswana, as a place of entry or exit for the adjoining State —

- (a) by allowing the place to be used by the adjoining State as a place of entry or exit —
  - (i) through which trains or vehicles may pass from or to that State,
  - (ii) through which goods may pass from or to that State,
  - (iii) where goods may be declared and processed for that State's customs purposes, and
  - (iv) through which persons may pass from or to that State; and
- (b) by allowing customs officers of that State at the place to process, for customs purposes goods, and persons.

Places of entry or exit in terms of international agreements

Customs  
controlled  
areas

*B – Customs controlled areas*

**55.** (1) For the purposes of this Act, the following places, areas, premises or facilities shall be customs controlled areas —

- (a) customs offices;
- (b) air cargo depots;
- (c) air passenger terminals;
- (d) rail container terminals;
- (e) rail passenger terminals;
- (f) container terminals;
- (g) container and cargo depots;
- (h) transit sheds;
- (i) international postal clearance centres;
- (j) customs warehouses;
- (k) temporary stores;
- (l) duty free shops;
- (m) special economic zones;
- (n) inward processing premises;
- (o) home use processing premises;
- (p) cross-border pipelines;
- (q) cross-border transmission lines;
- (r) cross-border cable-cars;
- (s) cross-border conveyor belts;
- (t) State warehouses; and
- (u) any other places, areas, premises or facilities as may be specified by Notice published in the *Gazette*.

(2) The Commissioner General may, by Notice published in the *Gazette*, designate the whole area comprising a place of entry or exit, or any place thereof, as a customs controlled area.

(3) The Revenue Service shall, after consultation with any person or authority administering any activity in a customs controlled area, determine the manner in which the customs controlled area is to be —

- (a) secured; and
- (b) signposted, so as to give a person present in the area a clear indication that it is a customs controlled area.

(4) An operator of a customs controlled area shall provide space and facilities at the customs controlled area free of charge for customs officers to exercise their functions in relation to goods and persons at or in that customs controlled area.

*C – Organisation and operation of customs offices and customs patrols*

Operation of  
customs offices

**56.** (1) When determining the setting up and closure of a customs office, its operation and competences, as well as hours of operation, the Commissioner General shall take into account in particular the requirements of the trade in question.

(2) A customs office shall be placed under the authority of an Officer-in-Charge designated by the Commissioner General.

**57.** A customs office shall be clearly marked in a prominent place with a sign that identifies it as a customs office. Customs office signs

**58.** (1) The Commissioner General may establish customs patrol teams which shall consist of non-uniformed personnel who receive special training and are assigned special duties by the Commissioner General. Custom patrol teams

(2) A Customs patrol team shall assist the activities of customs offices in relation to —

- (a) border surveillance; and
- (b) the prevention and investigation of fraud, smuggling and other contraventions of this Act.

#### PART V — *Arrival and departure of means of transport, goods, etc.*

##### *A – Advance information*

**59.** (1) A person in charge of a means of transport for commercial use that is due to arrive in Botswana from a place outside Botswana shall provide — Advance notice and manifest

- (a) an advance notice of the scheduled arrival in Botswana at a customs controlled area of the means of transport, passengers and crew on board and the place of arrival; and
- (b) an advance manifest if the means of transport is carrying goods.

(2) An owner or operator of a means of transport for commercial use or an agent of the owner or operator may provide the information referred to in subsection (1) on behalf of the person in charge of the means of transport for commercial use.

**60.** (1) A carrier operating a vessel carrying containerised goods that are destined to Botswana shall, prior to loading such goods at a foreign port, provide an advance manifest to the Revenue Service of such goods that will be on board the vessel when it enters Botswana at a customs controlled area. Containerised cargo destined to Botswana to be discharged at port outside Botswana

(2) A carrier under subsection (1) shall lodge the advance manifest within the prescribed time limit.

##### *B – Transport by land*

**61.** A means of transport shall enter Botswana at a designated place of entry. Designated places of entry

**62.** (1) A person in charge of a vehicle or vessel, whether or not carrying goods or passengers, shall report immediately to a customs officer or other assigned officer at the designated place of entry where he or she crossed the border into Botswana. Report of arrival by land or inland waterway

(2) A person in charge of a vehicle or vessel shall provide a declaration to the Revenue Service concerning —

- (a) the vehicle or vessel;
- (b) any goods carried;
- (c) any passengers and crew on board; and
- (d) the destination of such passengers crew and goods.

**A.588**

Report of  
arrival by rail

**63.** An operator of a cross-border train that has entered Botswana shall immediately report to the Revenue Service the arrival of the train at each railway station after it has entered Botswana where —  
(a) passengers or crew will disembark;  
(b) goods will be unloaded; or  
(c) a railway carriage will be detached.

Arrival on foot  
or otherwise

**64.** (1) A person arriving in Botswana overland, on foot or otherwise, shall, whether or not he or she has any goods in his or her possession, report immediately to a customs officer or other assigned officer at the designated place of entry where he or she crossed the border.  
(2) If the person under subsection (1) has any goods in his or her possession, such person shall provide a declaration regarding the goods to the Revenue Service.

Arrival of goods  
by cross-border  
pipeline,  
transmission  
line, conveyor  
belt or cable  
car

**65.** (1) An operator of a cross-border pipeline, transmission line, conveyor belt or cable car shall report to the Revenue Service goods arriving in Botswana by any of these means.  
(2) The Minister shall prescribe the conditions for importation of goods by any of the means under subsection (1).

Arrival by air

*C – Transport by air*

**66.** (1) A person operating an aircraft arriving in Botswana shall make his or her first landing at a designated customs airport, unless the Commissioner General has granted the person special permission to land elsewhere.  
(2) A person operating an aircraft arriving in Botswana from a place outside Botswana, whether or not carrying goods or passengers, shall immediately report the aircraft's arrival to customs after landing at a designated customs airport.  
(3) A person operating an aircraft shall upon arrival at a customs airport provide a declaration concerning —  
(a) the aircraft;  
(b) its itinerary;  
(c) the goods on board;  
(d) any passengers and crew on board;  
(e) the destination of such passengers crew and goods; and  
(f) any stores on board.

Obligations on  
arrival

*D – General provisions prior to arrival and upon arrival*

**67.** A person in charge of a means of transport that arrives in Botswana shall —  
(a) ensure that any goods or persons on board shall not be unloaded or disembarked from the means of transport before being taken to a designated customs office, unless permission for such unloading or disembarkation has been granted by the Revenue Service;

- (b) present or lodge with the Revenue Service the final manifest and such other information or documents as may be prescribed;
- (c) answer all questions relating to the means of transport, the goods carried, the passengers crew and the itinerary as may be put to him or her by the customs officer or other assigned officer; and
- (d) comply with any direction of Revenue Service as to the movement of such means of transport within the place of entry.
- 68.** If a means of transport arrives at a customs office outside the hours of operation, a person in charge of the means of transport shall —
- (a) take the appropriate measures to prevent any goods on board from entering unauthorised circulation in Botswana; and
- (b) not in any manner dispose of goods on board until they have been presented to the Revenue Service.
- 69.** (1) The Revenue Service shall immediately register a manifest lodged in accordance with section 76.
- (2) A carrier shall be liable for any goods that are found on board a means of transport, or that have been unloaded from the means of transport, and have not been recorded in the manifest.
- (3) A carrier shall not present to the Revenue Service multiple closed packages joined together in any manner as a single unit in the manifest.
- (4) Where a carrier presents to the Revenue Service a manifest and other documents in a foreign language, the Revenue Service shall only require a translation in cases where the information contained therein cannot be understood.
- (5) The Revenue Service may permit commercial, port or transport information systems to be used for the lodging of a manifest provided such systems contain the necessary particulars and such particulars are available within a specific time limit before the goods are brought into Botswana.
- (6) Subject to conditions it may specify, the Revenue Service may authorise, in lieu of the lodgement of a manifest, the lodgement of a notification and access to the particulars of a manifest in a computer system.
- 70.** (1) In the case where a person in charge of a means of transport is forced by circumstances beyond his or her control, the person may enter Botswana at a place other than a designated place of entry or land at a place other than a designated customs airport.
- (2) In a case under subsection (1), a person in charge of a means of transport or any other person acting on that person's behalf shall, without delay —
- (a) report to a customs office nearest to the place where he or she crossed the border or was forced to land and inform the customs officer of the precise location of the means of transport and any goods; or
- (b) notify the customs officer at the designated customs office or airport at which he or she next arrives.

Obligations on arrival outside hours of operation

Manifest

Force majeure

**A.590**

(3) A person in charge of a means of transport under this section shall take the appropriate measures to prevent any goods on board from entering unauthorised circulation in Botswana.

(4) A customs officer shall determine the measures to be taken in order to permit customs supervision of a means of transport and any goods and to ensure, where appropriate, that the means of transport and goods are subsequently conveyed to a customs office or other place designated or approved by Revenue Service.

*E – Unloading and removal of imported goods*

Permission to  
unload goods

**71.** (1) Goods shall only be unloaded from a means of transport —

(a) upon the request of the person in charge of the means of transport or his or her representative with the permission of the customs office; and

(b) in a location that the Revenue Service designates or approves.

(2) At the request of the person in charge of a means of transport, and for reasons deemed valid by Revenue Service, goods may be unloaded at a place other than the one approved for unloading:

Provided that such approval shall not be required in the case of imminent danger that necessitates the immediate unloading of the goods, in whole or in part, and the customs office shall be informed of this without delay.

(3) Notwithstanding subsection (1), the Revenue Service may, in order to ensure control over the goods as well as the means of transport, demand the unloading and unpacking of goods at any time.

(4) All goods imported into Botswana shall, if unloaded before the lodgement of a customs declaration, be placed in a container terminal, container or cargo depot, transit shed or State warehouse, or at any other place approved by the Commissioner General.

(5) An operator of the area, premises or facility where goods are unloaded in accordance with subsection (4) shall be liable for any duties and taxes on the goods until they have been declared to the Revenue Service.

(6) Goods under subsection (4) shall not be removed from the place of unloading, or from any place to which they have been allowed by the Commissioner General to be removed after unloading, without the permission of the Revenue Service.

Unloading  
operations

**72.** (1) The unloading of goods shall be carried out during the hours of operation of the customs office.

(2) Notwithstanding subsection (1), upon request of the person in charge of a means of transport or his or her representative, and for reasons deemed valid by the Revenue Service, the Revenue Service may permit the unloading of goods outside of the normal hours of operation.

Outturn reports

**73.** (1) An operator of an air cargo depot, rail container terminal, or container or cargo depot shall deliver to the customs office an outturn report of all goods landed at that depot or terminal.

- (2) An outturn report referred to in subsection (1) shall specify —
- (a) any goods included in a manifest that have not been unloaded or, if there are no such goods, a statement to that effect; and
  - (b) any goods not included in a manifest that have been unloaded or, if there are no such goods, a statement to that effect.
- (3) An outturn report shall be submitted in regard to goods unloaded from the means of transport at the depot or terminal within the prescribed time limit.
- (4) A person submitting the outturn report shall, if requested by a customs officer, produce for inspection copies of the relevant tallies taken at the time of unloading.

**74.** A means of transport having on board goods declared as destined for another place of unloading in Botswana or for a foreign country may, after the arrival of the means of transport at a customs controlled area, proceed to the place of destination with such goods without unloading at the first place of arrival and without the payment of duties and taxes on those goods, subject to the provision of a guarantee in accordance with this Act.

Goods remaining on board

*F – Temporary storage of goods*

**75.** (1) Goods that arrive at a customs controlled area pending the lodgement of a customs declaration shall be placed under temporary storage in the customs controlled area or in any other area designated for that purpose.

Temporary storage

(2) The Commissioner General shall, for the purposes of subsection (1) approve the establishment of temporary stores, as well as their location, construction, management and operation.

**76.** (1) Goods in temporary storage shall be subject to a lodgement with the Revenue Service of the manifest or other commercial document acceptable to the Revenue Service for those goods by —

Admission of goods to temporary stores

- (a) the carrier or his or her representative;
- (b) the owner, consignee or consignor of the goods; or
- (c) an operator of the temporary store.

(2) An operator of a temporary store or a Customs Controlled Area where goods are placed under temporary storage shall remain liable to customs for the goods.

(3) Pending the completion of customs formalities, goods for export may be placed in a temporary store.

**77.** (1) Goods shall be stored in temporary storage for three days.

(2) The time limit for temporary storage shall commence on the date of lodgement of the manifest or other commercial document for temporary storage.

Duration of temporary storage

(3) Notwithstanding subsection (1), when circumstances so warrant, Revenue Service may set a shorter period or authorise an extension of the period for temporary storage.

(4) When, at the expiration of the time limit under this section, a customs declaration has not been lodged to place the goods under a customs procedure, a temporary store operator shall take the goods to a customs warehouse or other place designated by Revenue Service, where they shall be placed in storage.

**78.** (1) Upon request by any person under section 76, the Revenue Service may allow temporary storage of goods to undergo normal operations for purposes of —

- (a) preserving the state of the goods; and
- (b) facilitating the removal of the goods from temporary storage and transportation.

(2) Notwithstanding subsection (1), the Revenue Service may subject the operation under subsection (1) to such conditions as it may deem necessary.

**79.** (1) Goods that are deteriorated, spoiled or damaged by accident or force majeure before leaving a temporary store may be cleared by the Revenue Service as if they had been imported in their deteriorated, spoiled or damaged state:

Provided that it is established to the satisfaction of Revenue Service, that the goods meet the conditions and formalities applicable to the clearance of such goods.

(2) Subsection (1) shall not apply to stolen goods.

**80.** The responsibilities and obligations of a temporary store operator with respect to goods placed in the temporary store shall be covered by a guarantee for an amount that shall be determined by the Commissioner General.

*G – Departure*

**81.** (1) Goods leaving Botswana shall be subject to exit formalities that shall, as appropriate, include the following —

- (a) the refund of import duties and taxes that have been paid;
- (b) the application of prohibitions; and
- (c) restrictions applicable to the export of goods.

(2) An exporter shall, when requested by the Revenue Service, provide a guarantee that the goods —

- (a) will be transported, exported and discharged at the declared destination within such time as the Revenue Service may determine;
- (b) in the case of goods for use as stores, will be so used; and
- (c) will be otherwise accounted for to the satisfaction of the Revenue Service.

**82.** A means of transport shall only depart Botswana at a designated place of exit.

**83.** (1) A person operating a vehicle or vessel carrying commercial goods to a destination outside Botswana shall give advance notice to the Revenue Service of the scheduled departure from Botswana of the vehicle or vessel and of all cargo and crew on board before that vehicle or vessel reaches the customs office where such vehicle or vessel will leave Botswana.

Authorised operations in temporary storage

Goods deteriorated, spoiled or damaged in temporary storage

Responsibilities of temporary store operator

Exit formalities

Departure at designated place of exit

Advance notice of scheduled departure from Botswana

(2) A person operating a commercial bus to a destination outside Botswana shall give advance notice to the Revenue Service of the scheduled departure from Botswana of the bus and of all travellers and crew on board the bus.

(3) An operator of a cross-border train scheduled for a destination outside Botswana, who is operating the train on Botswana's side of the border, shall provide —

- (a) advance notice to the Revenue Service of the scheduled departure of the train and crew to a destination outside Botswana; and
- (b) such updates as may be prescribed of any advance traveller departure notice and any advance cargo departure notice as the train progresses on its voyage to the border.

**84.** (1) A person in charge of a vehicle or vessel due to leave Botswana, whether or not carrying goods or passengers, shall report to the Revenue Service upon arrival at the customs office where the vehicle or vessel will leave Botswana.

Report of  
departure of  
vehicle or  
vessel

(2) A person in charge of a vehicle or vessel under subsection (1) shall provide a declaration to the Revenue Service concerning —

- (a) the vehicle or vessel;
- (b) any goods on board;
- (c) any passengers and crew on board; and
- (d) the destination of such goods.

**85.** An operator of a cross-border train scheduled for a destination place outside Botswana shall —

Report of  
departure by  
rail

- (a) report to the Revenue Service upon arrival at the customs office where the train will leave Botswana; and
- (b) provide a declaration to the Revenue Service concerning any passengers, crew or cargo on board bound for a destination outside Botswana.

**86.** (1) An operator of a cross-border pipeline, transmission line, conveyor belt or cable car shall report to the Revenue Service any goods departing Botswana by such means.

Goods exported  
by cross-border  
pipeline,  
transmission  
line, etc.

(2) The Minister shall prescribe the conditions under which goods may be exported by the means referred to under subsection (1).

#### *H – Transport by air*

**87.** (1) A person operating an aircraft bound to a place outside Botswana shall only depart from a designated customs airport, unless the Commissioner General has granted the person special permission to depart from another designated place.

Aircraft  
departing  
Botswana

(2) A passenger or goods shall only be loaded on board an aircraft at a customs airport or other place designated by the Commissioner General.

**88.** (1) A person operating an aircraft bound to a place outside Botswana shall give advance notice to the Revenue Service —

Advance notice  
of departure by  
air

- (a) of the scheduled departure of the aircraft and crew from a customs airport;

- (b) if the aircraft is to transport passengers out of Botswana who are scheduled to board the aircraft at that airport of such passengers; and
- (c) if the aircraft is to transport cargo to a destination outside Botswana, of all cargo scheduled to be on board the aircraft when it crosses the border out of Botswana.

(2) An advance departure notice referred to in subsection (1) shall be submitted —

- (a) within the prescribed timeframe before the scheduled departure of the aircraft from a customs airport, whether to another customs airport or to a destination outside Botswana; and
- (b) either separately, simultaneously or as a combined notice.

(3) Subsection (2) shall not apply in respect of goods transhipped onto the aircraft at that airport.

(4) A transhipment clearance declaration or document regarded to as a transhipment clearance declaration shall be regarded to be the advance cargo departure notice for such transhipped goods.

(5) This section shall apply to a commercial aircraft operated by a carrier.

Permission to depart

**89.** (1) A person operating an aircraft bound from Botswana to a place outside Botswana shall not depart from a customs airport or any other place without first obtaining from the Revenue Service permission for the intended flight to depart.

(2) A person operating an aircraft or an authorised agent shall, before permission to depart is granted —

- (a) lodge a notice of intended departure with the Revenue Service at the customs airport or the customs office nearest to the place of departure;
- (b) provide additional information or documents relating to the aircraft, the goods on board, passengers, crew, stores, itinerary and any other relevant matter as may be necessary; and
- (c) comply with all requirements in this Act or other relevant legislation concerning the aircraft and its itinerary.

(3) A person operating an aircraft shall not, after departure, call or land at any place in Botswana other than a designated customs airport or other designated place unless forced to do so by circumstances beyond his or her control.

(4) If an aircraft that has been granted permission to depart does not depart within the time limit prescribed, or within such further time limit as the Commissioner General may allow, the permission shall lapse and a new permission shall be obtained before the aircraft may depart.

(5) A person operating an aircraft shall not be granted permission to depart unless he or she has lodged an advance departure notice with the Revenue Service.

Loading goods for departure

**90.** (1) Goods and stores shall only be loaded on board an aircraft for export or use as stores on a flight to a place outside Botswana —

- (a) at an air passenger terminal or other customs controlled area;

- (b) after an advance notice of departure has been lodged for the goods; and
- (c) with the permission of the Revenue Service.
- (2) Upon request by a person concerned and for reasons deemed valid by the Revenue Service, the Revenue Service may, subject to such conditions and restrictions as the Revenue Service may specify, permit goods and stores to be loaded on board an aircraft at a place other than a customs controlled area.
- 91.** A person leaving Botswana on board an aircraft bound to any place outside Botswana may not board that aircraft at any place other than at an air passenger terminal or a customs controlled area. Departure by air
- 92.** A person operating an aircraft departing Botswana shall immediately notify the Revenue Service if any goods released by the Revenue Service for exit under an advance notice of departure were not loaded on the aircraft. Notification of goods not loaded
- 93.** A person operating an aircraft shall not unload goods on board an aircraft for export or use as stores on a flight to a place outside Botswana without the permission of the Revenue Service. Permission to re-land goods
- 94.** (1) A departure of an aircraft to a destination outside Botswana shall be reported in an aircraft departure report to the Revenue Service — Departure reports
- (a) by the port authority managing the airport; and
- (b) if —
- (i) the aircraft is operated by a commercial carrier, unless the Revenue Service permits otherwise, or
- (ii) the aircraft is not operated by a commercial carrier, by the operator of the aircraft, unless the Revenue Service permits otherwise.
- (2) An aircraft departure report referred to in subsection (1) shall be submitted within a prescribed timeframe after the departure.
- I – General Provisions*
- 95.** (1) If any information, data or document required in terms of this Part is found to be incomplete or incorrect, the Commissioner General may, upon request by the person who has submitted the information, data or document and upon satisfaction that there was no fraudulent intent, permit the person to amend the information, data or document. Incomplete information
- (2) Notwithstanding subsection (1), an amendment of any information, data or document shall not be permitted after any of the following events —
- (a) the person who submitted the information, data or document has been informed by a customs officer that the goods will be examined;
- (b) the Revenue Service has established that the particulars in question are incorrect; or
- (c) the time limit for submission of any information, data or document has expired.

PART VI — *Customs clearance operations**A – Customs declaration*Obligation to  
declare goods

**96.** (1) A person entering or leaving Botswana shall declare goods in his or her possession to the Revenue Service.

(2) Goods declared under subsection (1) may be declared —

- (a) electronically;
- (b) in paper format where so authorised;
- (c) orally; or
- (d) by an act.

(3) All goods imported or exported for —

- (a) home use;
- (b) re-importation in the same state;
- (c) outright export;
- (d) customs warehouse;
- (e) transit;
- (f) transshipment;
- (g) temporary admission;
- (h) inward processing;
- (i) processing for home use;
- (j) drawback;
- (k) outward processing;
- (l) special procedures for —
  - (i) travelers,
  - (ii) duty free shops,
  - (iii) postal traffic,
  - (iv) stores,
  - (v) relief consignments, and
  - (vi) means of transport for commercial use;
- (m) special economic zones; or
- (n) relief from duties and taxes,

shall be declared to the Revenue Service and placed under a customs procedure.

(4) A declarant shall be free to choose a customs procedure under which he or she wishes to place the goods under the conditions for that procedure, irrespective of their nature or quantity, or their country of origin, consignment or destination.

(5) All goods intended to be placed under a customs procedure shall be covered by a customs declaration appropriate for that particular procedure.

(6) An exemption from duties and taxes shall not relieve the obligation to declare goods in accordance with subsection (1).

(7) Notwithstanding subsection (1), the following goods shall be exempt from the requirement for a customs declaration —

- (a) means of transport for commercial use and reusable transport equipment which are registered abroad and will return abroad;
- (b) goods on board an aircraft or a cross-border train when the goods remain on board the aircraft or train until the aircraft or train leaves Botswana; and

(c) any other category of goods as may be prescribed.

(8) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding P 1 000 000 or to imprisonment for a term not exceeding ten years, or to treble the value of the goods in respect of such offence, whichever is greater and the goods and the container in respect of which the offence is committed shall be liable to forfeiture.

*B – Persons authorised to lodge customs declaration*

**97.** (1) A customs declaration may be lodged by a person with a right to dispose his or her goods or through a licensed customs clearing agent.

Lodgement of  
customs  
declaration

(2) Where acceptance of a customs declaration by the Revenue Service imposes particular obligations on a specific person, the declaration shall be made by the person or by his or her customs clearing agent.

(3) When a customs clearing agent acts on behalf of a person, the customs clearing agent shall indicate this in the customs declaration, and the represented person shall be taken as the declarant.

(4) A customs clearing agent shall be deemed to be acting in his or her own name if he or she —

(a) fails to state that he or she is acting as a customs clearing agent in accordance with subsection (3); or

(b) states that he or she is acting as a customs clearing agent without being empowered to do so.

(5) A declarant shall be established in Botswana, except for a person who —

(a) lodges a declaration for transit or temporary admission; and

(b) declares goods occasionally, if the Revenue Service deems necessary.

**98.** A person shall not act as a customs clearing agent unless he or she is licensed as a customs clearing agent by the Revenue Service in such manner as may be prescribed.

Customs clearing  
agent

**99.** (1) A declarant shall be responsible to the Revenue Service for the accuracy of the particulars given in a customs declaration and the payment of the relevant duties and taxes.

Liability and  
rights of  
declarant

(2) Where a declarant is not in possession of the necessary information to complete a customs declaration, a customs officer may be allowed —

(a) to inspect the goods before lodging the declaration; or

(b) to draw samples from the goods.

(3) An inspection carried out under subsection (2) shall not exempt a declarant from the obligation to lodge a customs declaration.

(4) A declarant shall not alter the presentation of any goods that have been inspected by a customs officer.

Method of lodgement	<p><i>C – Form and content of customs declaration</i></p> <p><b>100.</b> A customs declaration shall be lodged electronically, unless the declarant is authorised by the Commissioner General to submit a document in paper format.</p>
Form and content of customs declaration	<p><b>101.</b> (1) A customs declaration shall contain all the particulars necessary for the customs procedure for which the goods are declared are lodged —</p> <ul style="list-style-type: none"> <li>(a) electronically, shall be electronically signed by the declarant or authenticated by other acceptable means; or</li> <li>(b) manually, shall be signed by the declarant or his or her authorised representative.</li> </ul> <p>(2) The Revenue Service shall consider each line item as an independent declaration when multiple line items are listed on the same customs declaration.</p> <p>(3) A declarant shall not present multiple closed packages joined together in any manner as a single unit as a customs declaration.</p> <p>(4) The Minister shall prescribe, in accordance with applicable international requirements, the format and content of the information required for a customs declaration under this section.</p>
Documents supporting customs declaration	<p><b>102.</b> (1) Supporting documents required for application of the provisions governing the customs procedure for which the goods are declared shall —</p> <ul style="list-style-type: none"> <li>(a) contain the information required in terms of this Act or any other relevant legislation; and</li> <li>(b) be made available by the declarant to the Revenue Service at the time the declaration is lodged.</li> </ul> <p>(2) Subject to the requirements of the particular customs procedure, a customs declaration may be supported by —</p> <ul style="list-style-type: none"> <li>(a) an invoice issued in respect of the goods by the person who — <ul style="list-style-type: none"> <li>(i) exports the goods to or from Botswana, or</li> <li>(ii) supplied the goods that are exported to or from Botswana;</li> </ul> </li> <li>(b) a transport document that has been issued in respect of the goods; and</li> <li>(c) any other document as may be required in terms of customs legislation for the clearance of the goods.</li> </ul> <p>(3) Notwithstanding subsection (1)(b), the Revenue Service may allow the supporting documents to be made available after release of the goods upon request by the declarant and for reasons deemed valid by the Revenue Service.</p> <p>(4) When a customs declaration is lodged electronically, the Revenue Service may accept, instead of the lodging of the supporting documents, access to the relevant data in the economic operator’s automated system.</p>
Provisional or incomplete declaration	<p><b>103.</b> (1) The Revenue Service may authorise a declarant to lodge a provisional or incomplete customs declaration, provided that the provisional or incomplete customs declaration includes the information considered necessary by the Revenue Service.</p>

(2) The Minister shall prescribe the conditions under which a provisional or incomplete declaration shall be allowed, and the particulars which the declaration shall contain.

**104.** (1) A person who lodges a provisional or incomplete customs declaration shall furnish a supplementary declaration containing further particulars necessary to complete the customs declaration for the customs procedure concerned.

Supplementary  
declaration

(2) A supplementary declaration shall be lodged within a prescribed time limit from the date of registration by the Revenue Service of the provisional or incomplete customs declaration.

(3) A supplementary declaration and the provisional or incomplete declaration shall be deemed to constitute a single, indivisible instrument taking effect on the date on which the provisional or incomplete declaration is registered by the Revenue Service.

*D: Lodgment, acceptance and registration of customs declaration*

**105.** The Commissioner General may impose a processing fee for processing a customs declaration and such fees shall not exceed the cost incurred by Revenue Service for the processing rendered.

Processing fee

**106.** (1) A customs declaration shall be lodged within three working days after the goods arrive at the customs office.

Time of  
lodgement of  
customs  
declaration

(2) A customs declaration at exportation shall be lodged —

(a) if the goods are to be exported by air or rail, not later than one hour before the goods are delivered to —

(i) an air cargo depot to be loaded for export by air, or

(ii) a container terminal where the goods will be loaded on board the cross-border railway carriage in which the goods are to be exported;

(b) if the goods are to be exported by road on board a truck, at any time after the goods have been loaded on board the truck, but not later than the time the truck reaches the land border-post where the goods are to be exported; or

(c) if the goods are to be exported through a cross-border pipeline, or by means of a cross-border cable car or conveyor belt, or through a cross-border transmission line, within such period as may be determined by the Commissioner General.

(3) The Revenue Service may authorise an extension of the time limit referred to in subsection (1) for up to seven working days.

(4) A customs declaration that is lodged electronically may be transmitted at any time.

(5) A customs declaration in paper format shall be lodged with any designated customs office during the hours of operation of the customs office.

(6) Notwithstanding subsection (5), at the request of the person concerned and for reasons deemed necessary, a customs declaration may be lodged outside of the designated hours of operation of the customs office, subject to payment of a service charge as may be determined by the Revenue Service.

**A.600**

Lodgement  
prior to arrival  
of goods

**107.** (1) A customs declaration may be lodged prior to arrival of the goods at the customs office.

(2) The Commissioner General shall determine the methods of application of subsection (1), in particular the conditions and time limits according to which a customs declaration may be lodged prior to the arrival of the goods at the customs office.

(3) Where a customs declaration is received before the goods arrive at a place of entry into Botswana, the Revenue Service may proceed with checking and registration of the declaration, but shall not release or clear the goods before the arrival of the goods in Botswana.

Acceptance  
and registration  
of customs  
declaration

**108.** (1) A customs declaration shall be deemed acceptable if —

- (a) the declaration is in the form and format prescribed for the specific type of customs declaration;
- (b) the complete information required for the specific type of customs declaration is furnished or a provisional or incomplete declaration includes the information considered necessary by the Revenue Service;
- (c) the declaration is signed by or on behalf of the person lodging the declaration; and
- (d) the declaration is lodged by a person entitled to lodge the declaration.

(2) The Revenue Service shall not accept a customs declaration if it does not conform to the provisions of subsection (1).

(3) Notwithstanding subsection (2), the Revenue Service may accept a customs declaration that does not include the necessary supporting documents, unless the missing documents are required for the application of prohibitions or restrictions relating to the goods in question.

(4) Where the Revenue Service considers a customs declaration not to be acceptable, it shall inform the declarant of the reason for the non-acceptance in writing within 14 days.

(5) The Revenue Service shall immediately register a customs declaration that is acceptable and acknowledge the registration to the declarant electronically, in writing or verbally.

Date of  
registration

**109.** (1) The date of the registration of a customs declaration by the Revenue Service shall, except where otherwise provided, be the date to be used for the application of the provisions governing the customs procedure for which the goods are declared.

(2) For the purposes of this Act, a customs declaration lodged prior to the arrival of the goods shall take effect, with all the consequences attached to the registration, on the date of arrival of the goods and with the stipulation that the customs declaration meets the necessary requirements.

Amendment of  
customs  
declaration

**110.** (1) A declarant shall be authorised to amend a customs declaration which has been lodged if —

- (a) upon importation, the customs office has not —
  - (i) informed the declarant of its intention to verify the customs declaration,

- (ii) examined the goods,
  - (iii) identified inaccuracies in any statements in the customs declaration, or
  - (iv) authorised the release of the goods; or
- (b) upon exportation, prior to the goods having left the customs office or such other place designated by the Revenue Service, the request relates to information, the accuracy of which the customs office is able to verify even in the absence of the goods.
- (2) Upon request by a declarant and for reasons deemed valid by the Revenue Service, an Officer-in-Charge of a customs office may, subject to the conditions determined by the Commissioner General, authorise the amendment of a customs declaration after the Revenue Service has begun to verify the declaration.

- 111.** A declarant may request the withdrawal of a customs declaration —
- (a) upon importation —
    - (i) if the declarant produces evidence that the goods were declared under a particular customs procedure by error and requests the application of another customs procedure, or
    - (ii) if such declaration is no longer required, if the request is made to the customs office prior to the release of the goods and that the reasons are deemed valid by the Revenue Service; or
  - (b) upon exportation, if the declarant produces evidence that the goods did not leave Botswana.

Withdrawal of  
customs  
declaration

*E – Verification and examination of customs declaration*

**112.** (1) The Revenue Service may, for the purpose of verifying the accuracy of the particulars contained in a customs declaration it has registered —

- (a) examine the declaration and all of the supporting documents;
- (b) require the declarant to present other documents that may be required;
- (c) examine the goods; or
- (d) if necessary, take samples for analysis for detailed examination of the goods.

(2) A customs office shall inform the declarant, by any means, of its decision to conduct an examination of goods.

**113.** (1) An examination of goods under subsection (2) shall be conducted at the customs offices during its hours of operation.

(2) Notwithstanding section 111(2), upon request by a declarant and for reasons deemed valid by the Revenue Service, the customs office may permit the examination of goods in other locations or outside the hours of operation upon payment of a fee as may be determined by the Revenue Service.

**114.** (1) If, during an examination of goods, the Revenue Service deems it necessary to take a sample of the goods for an analysis or detailed examination, the quantity of the goods taken shall be limited to that required for the analysis or detailed examination.

Verification of  
customs  
declaration

Examination of  
goods

Sampling of  
goods by  
Revenue Service

**A.602**

Partial examination	<p>(2) The expenses of analysis or detailed examination referred to under subsection (1) shall be borne by —</p> <ul style="list-style-type: none"><li>(a) the Revenue Service, where the results of the analysis or technical control confirm the information in the customs declaration; or</li><li>(b) the declarant, where the results of the analysis or detailed examination contradict the information in the customs declaration.</li></ul> <p><b>115.</b> (1) Where part of the goods covered by a customs declaration is examined, or samples of the goods are taken, the results of the partial examination, or of the analysis or examination of the samples, shall be taken to apply to all the goods covered by the same declaration.</p> <p>(2) A declarant may request a further examination or sampling of goods if he or she considers that the results of the partial examination, or of the analysis or examination of the samples taken, are not valid as regards the remainder of the goods declared.</p> <p>(3) A request under subsection (2) shall be granted, if the goods have not been released or that, if they have been released, the declarant proves that they have not been altered in any way.</p> <p>(4) The Commissioner General shall adopt measures specifying the procedure to be followed in the event of divergent results of examination of the goods.</p>
Presence of declarant	<p><b>116.</b> (1) When examining goods or opening a package or container, a customs officer may —</p> <ul style="list-style-type: none"><li>(a) on request by the declarant or the declarant's representative, allow the declarant or representative to be present during the examination or opening of the package or container; or</li><li>(b) require the declarant or the declarant's representative to be present during the examination or opening of the package or container.</li></ul> <p>(2) Subsection (1) shall not prevent a customs officer from examining goods or opening a package or container in the absence of a declarant or the declarant's representative if —</p> <ul style="list-style-type: none"><li>(a) the declarant or his or her representative fails to arrive at the appointed time for the examination;</li><li>(b) the declarant or his or her representative has failed to claim the goods; or</li><li>(c) disclosure of the examination or opening of the package or container may obstruct the investigation of an offence involving a contravention of this Act.</li></ul>
Time of examination	<p><b>117.</b> When the Revenue Service determines that declared goods shall be examined, the examination shall take place as soon as possible after the customs declaration has been registered.</p>
Priority examination	<p><b>118.</b> When scheduling an examination of goods, priority shall be given to the examination of live animals and perishable goods and to other goods that the Revenue Service accepts are urgently required.</p>
Coordinated examination	<p><b>119.</b> If goods are to be examined by other competent authorities and the Revenue Service also schedules an examination, the Revenue Service shall ensure that the examination is coordinated and, wherever possible, carried out at the same time.</p>

**120.** (1) A customs office or, where appropriate, a person authorised to do so by the Revenue Service, may take the measures necessary to place a mark, seal or identification on goods or a means of transport in order to ensure compliance with the provisions governing the customs procedure for which those goods or the means of transport have been declared.

Identification  
measures

(2) A means of identification affixed to goods or a means of transport shall be removed or destroyed by customs officers or by other persons authorised to do so by the Revenue Service, unless as a result of unforeseeable circumstances or force majeure, the removal or destruction of the goods is essential to ensure the protection of the goods or the means of transport.

**121.** (1) Whenever goods liable to different rates of duties and taxes are so packed or comingled that the quantity or value of each class or description of goods cannot readily be ascertained on examination by a customs officer, then the whole of the contents of the container or lot in which the goods are so packed or comingled shall be subject to the highest rate of duty applicable to any part thereof.

Assessment of  
comingled  
goods

(2) Notwithstanding subsection (1), a declarant may, at his or her own risk and expense, segregate the goods in such a manner that the classification, quantity and value of each class or description of goods may be properly ascertained and assessed accordingly by the Revenue Service.

**122.** (1) Duties and taxes and other customs measures shall be applied in accordance with the results of —

Application of  
results of  
verification of  
declaration

- (a) the verification of the customs declaration;
- (b) the examination of goods; or
- (c) a final decision in an administrative or compromise settlement or judicial proceedings.

(2) Where a customs office does not carry out a verification of a customs declaration or an examination of the goods, the duties and taxes and other customs measures shall be applied according to the statements in the customs declaration.

**123.** (1) An applicable tariff rate for duties and taxes shall be that in force on the date of the registration of a customs declaration and at the official daily exchange rate published by the Bank of Botswana.

Application of  
tariff and rate  
of exchange

(2) Notwithstanding subsection (1), in the case of goods declared for home use for which clearance has not yet been granted, if there has been a reduction in the rate of duties and taxes, a declarant may ask for the application of the new tariff rate more favourable to that which was in force at the date of registration of a customs declaration.

**124.** (1) Duties and taxes shall be assessed by the Revenue Service.

Notification of  
amount of  
duties and  
taxes

(2) The Revenue Service shall immediately notify a declarant of the amount of duties and taxes assessed.

General principles governing release of goods

*F – Release of goods*

**125.** (1) Goods shall be released to a declarant after the Revenue Service has examined them or decided not to examine them, if —

- (a) no infringement was detected;
- (b) all certificates, authorisations or other required documents relating to the requested customs procedure have been acquired; and
- (c) placing the goods under a customs procedure incurs a customs debt, the duties and taxes in relation to which have been guaranteed or paid.

(2) Notwithstanding subsection (1), where the Revenue Service considers that the examination of goods requires an analysis of samples, specific technical documentation or an expert opinion, the release of the goods may be granted prior to receipt of the results of the examination subject to the provision of a guarantee and that the goods are not the subject of any prohibition or restriction.

(3) In the event of identification of a customs offence, the release may be granted without waiting for the settlement of the offence procedure: Provided that —

- (i) a declarant pays the duties and taxes and provides a guarantee covering any additional duties and taxes and possible penalties, and
- (ii) the goods are not —
  - (aa) prohibited or restricted,
  - (bb) subject to forfeiture, or
  - (cc) required to be presented as evidence at a later stage of the proceedings.

(4) Upon release, the goods shall be removed by a declarant, unless a particular time limit for their removal has been allowed by Revenue Service.

Conditional release before clearance

**126.** (1) A guarantee provided by a declarant shall be satisfactory to the Commissioner General, and the amount shall be adequate to cover the payment of the duties and taxes due.

(2) When Revenue Service conditionally releases goods prior to the payment of duties and taxes, the due date for the payment of the duties and taxes by a declarant shall be 10 days after the date the release has been granted by Revenue Service.

(3) In case a declarant pays the duties and taxes after the period referred to in subsection (2), interest for late payment shall become due and the declarant may be liable to a penalty for late payment as may be determined by Revenue Service.

When goods are deemed cleared

**127.** Goods shall be deemed cleared by Revenue Service when all the formalities for the requested customs procedure have been accomplished.

Release notification

**128.** (1) When goods are released or cleared, Revenue Service shall notify a declarant and the operator of a customs controlled area or other customs approved location of the goods by the transmission of an electronic message indicating that the goods have been released or cleared.

(2) The Revenue Service may, instead of electronically transmitting a release notification, issue to a person referred to in subsection (1) a printed version of the notification.

- (3) A release notification under this section shall indicate whether —
- (a) the release is conditional and, if so, the conditions; or
  - (b) the goods have been cleared and for which customs procedure.

**129.** (1) An operator of a customs controlled area or other customs approved location shall not deliver goods to a person unless —

- (a) the goods are under the physical control of the operator; or
- (b) the operator has received a release notification from Revenue Service.

(2) A person shall not accept delivery of goods from an operator of a customs controlled area unless he or she is authorised by a release notification.

(3) If an operator of a customs controlled area or other Revenue Service approved location delivers goods without having received a release notification Revenue Service shall —

- (a) at the expense of the operator, return the goods to the operator or deliver them to another place as the customs office may determine; or
- (b) hold the operator liable for any duties and taxes payable on the goods.

**130.** If within five days after the date of the release notification a declarant has not removed the goods from customs supervision, such goods shall be placed in a State warehouse at the expense of the declarant.

#### *G – Clearance for export*

**131.** (1) After completion of customs formalities under this Act, goods cleared for export by —

- (a) air shall immediately be loaded on board the aircraft by a declarant; and
- (b) land or inland waterway shall immediately be sent abroad by the most direct route by a declarant.

(2) Notwithstanding subsection (1), goods may be placed in a customs controlled area while waiting to be loaded on board or sent abroad.

**132.** (1) Goods shall be deemed abandoned to the State when —

- (a) the owner of goods that are not in free circulation, or another person authorised to act on behalf of the owner, abandons the goods; or
- (b) the owner of the goods or a declarant cannot be identified to perform the customs formalities.

(2) The Revenue Service shall, at the risk and expense of the owner or the person holding the goods, require them to remove the goods to a State warehouse or other location designated by Revenue Service.

Delivery of  
released goods

Removal of  
goods after  
release or  
clearance

Clearance for  
export

Abandonment  
of goods

(3) If after 30 days from the date that the goods are placed under customs control, no person has come forward to Revenue Service to claim abandoned goods under this section, Revenue Service shall —

- (a) forfeit the goods to the state; or
- (b) dispose of the goods.

PART VII — *Customs procedures*

A — *General provisions*

General provisions

**133.** Except where otherwise provided, goods coming into or leaving Botswana may at any time, subject to the prescribed conditions, be placed under any customs procedure regardless of their nature, their quantity, their origin or their use.

Requirement for customs declaration

**134.** Goods placed under a customs procedure under section 132 shall be the subject of a customs declaration.

Use of an alternative to customs declaration

**135.** The Commissioner General may determine —

- (a) goods that may be declared in an alternative manner to the standard customs declaration:

Provided that the alternative provides the necessary particulars relating to the goods to be cleared for the requested procedure; or

- (b) procedures for which an alternative declaration may apply:

Provided that the acceptance of the alternative declaration shall be noted by Revenue Service on the document that is used.

Home use procedure

**136.** (1) Clearance of imported goods for home use procedure shall be granted upon —

- (a) payment of import duties and taxes;
- (b) payment, as appropriate, of other charges or fees, as may be determined;
- (c) compliance with legal measures of an economic nature and any prohibitions and restrictions; and
- (d) completion of other formalities specified for the importation of the goods.

(2) Imported goods cleared for home use may be disposed of without customs restrictions, and shall obtain the customs status of goods in free circulation.

Clearance at zero rate or reduced duties and taxes

**137.** (1) Where imported goods are cleared for home use at a reduced or zero rate of duties and taxes they shall remain under customs supervision unless —

- (a) the conditions fixed for the granting of the reduced or zero rate of duties and taxes cease to apply;
- (b) the goods are exported or destroyed; or
- (c) the use of the goods for purposes other than those prescribed for the application of the reduced or zero rate of duties and taxes is allowed in return for payment of the duties and taxes due.

(2) Where goods referred to in subsection (1) have deteriorated or are destroyed as a result of an accident or force majeure and any waste or scrap resulting from such goods is allowed for purposes other than those prescribed for the application of the reduced or zero rate of duties and taxes, duties and taxes shall be applicable to the waste or scrap in that state.

**138.** Imported goods cleared for home use shall lose their status as goods in free circulation where the import duties and taxes relating to the goods are refunded or remitted —

Loss of home use status

- (a) by placement under another customs procedure; or
- (b) in respect of goods that are refused as defective goods or which fail to comply with a contract and are exported or destroyed under customs supervision.

*B – Home use of goods*

**139.** Goods declared for re-importation in the same state shall qualify for the customs procedure where —

Goods that qualify for re-importation

- (a) the goods were exported without notification of intended return;
- (b) a part of the exported goods is re-imported;
- (c) during their stay abroad they have undergone operations necessary for their preservation or maintenance, provided that their value at the time of exportation has not been enhanced by such operations;
- (d) the goods have already been placed under another customs procedure;
- (e) the goods were used, damaged or deteriorated during their stay abroad;
- (f) the goods are re-imported by a person other than the person who exported them;
- (g) the goods are re-imported in separate consignments; or
- (h) the goods are re-imported at a customs office other than the customs office where they were exported:

Provided that it is proven to the satisfaction of Revenue Service that the goods were in free circulation in Botswana at the time of their export.

**140.** Goods may be cleared as re-imported in the same state if they can be identified as the same goods originally exported from Botswana or the importer furnishes proof that the goods are the same goods originally exported.

Identification of goods re-imported in the same state

**141.** A customs declaration for re-importation in the same state shall not be required for the re-importation of packaging, containers, pallets and means of transport for commercial use that are currently used for the international transport of goods.

Customs declaration for goods re-imported in the same state

**142.** (1) The time limit for the re-importation of goods in the same state shall be 12 months from the date of exportation of the goods from Botswana.

Time limit for re-importation

Goods exported  
with notification  
of intended  
return

(2) The Commissioner General may extend the time limit referred to in subsection (1) upon request by a person concerned and for reasons deemed valid by Revenue Service.

**143.** (1) At the request of the person concerned, Revenue Service shall allow exportation with notification of intended return to be converted to outright exportation, subject to compliance with the relevant conditions and formalities.

(2) The Commissioner General shall determine the requirements relating to the identification of goods exported with notification of intended re-importation.

*C – Outright export*

Customs  
declaration for  
outright export

**144.** (1) A customs declaration for goods destined for outright export shall be lodged with Revenue Service before the goods are to be taken out of Botswana.

(2) Subsection (1) shall not apply to —

(a) accompanied or unaccompanied baggage of a person leaving Botswana other than those items that shall be cleared for outright export or for export under a customs procedure applicable to the items;

(b) accompanied and unaccompanied baggage of aircraft transit passengers leaving Botswana, provided the baggage —

(i) is leaving Botswana on board the same aircraft that brought it into Botswana, or

(ii) was transferred under customs supervision from the aircraft in which the baggage entered Botswana to another aircraft in which the baggage is to leave Botswana;

(c) goods that were on board a means of transport for commercial use when the means of transport entered Botswana and which —

(i) is not used on board the means of transport for commercial use while the means of transport is in Botswana, and

(ii) remain on board the means of transport for commercial use until the means of transport leaves Botswana;

(d) goods in a single consignment of a customs value not exceeding a prescribed amount, subject to subsection (3);

(e) goods, including trade samples, which have no commercial value;

(f) international postal articles of the following kinds posted in Botswana and exported through the Botswana Postal Services —

(i) letters, postcards, greeting cards, telegrams and other similar communications containing personal messages only,

(ii) printed papers, and

(iii) literature for the blind;

(g) human remains; or

(h) any other category of goods as may be prescribed.

(3) If goods are destined for outright export in more than one consignment for delivery to the same addressee in the same calendar year, the exclusion referred to in subsection (2) (d) shall apply only to the extent that the combined customs value of the goods contained in those consignments does not exceed a prescribed amount.

- (4) The Revenue Service may —
  - (a) inspect or detain goods declared as qualifying for an excluded category referred to in subsection (2); or
  - (b) require proof that the goods do qualify for the excluded category.

**145.** (1) The Commissioner General may prescribe special processes and requirements for the release and clearance for outright export of —

- (a) electricity to be exported through cross-border transmission lines; and
- (b) other goods to be exported through cross-border pipelines or by means of cross-border cable cars or conveyor belts.

(2) The Commissioner General may exempt electricity or other goods under this section from a provision of this Act that is not consistent with such special processes and requirements, including any provision relating to the clearance of goods.

**146.** (1) A person clearing any goods for export under the outright export procedure shall, if the goods are not exported within a prescribed time limit, notify Revenue Service of —

- (a) the failure to export the goods; and
  - (b) the reasons for the failure.
- (2) The Revenue Service may, whether a notification has been given or not —
- (a) secure the goods or require the goods to be secured in such manner as Revenue Service may determine pending the export of the goods; or
  - (b) withdraw the release given for the goods.

Clearance of goods exported through cross-border transmission lines, etc.

Failure to export goods cleared for outright export

*D – Customs warehouses*

- 147.** There shall be two classes of customs warehouses —
- (a) a public customs warehouse that shall be made available to any person for the storage of goods that are not in free circulation; and
  - (b) a private customs warehouse that shall be used exclusively by a warehouse operator for the storage of goods owned by the operator or in which such operator has a material interest.

**148.** A person wishing to operate a customs warehouse shall make an application to the Commissioner General, in such form as may be prescribed, to be so registered and issued with a customs warehouse licence.

**149.** (1) Storage of goods in a public customs warehouse established under section 154 shall be allowed for all kinds of goods liable to duties and taxes or to prohibitions or restrictions other than those imposed on grounds of —

- (a) public morality, public security, public safety, public hygiene or public health;
  - (b) protection of human and animal life;
  - (c) phytosanitary and environmental considerations;
  - (d) protection of national treasures;
  - (e) protection of intellectual property; and
  - (f) protection of consumers,
- irrespective of quantity, country of origin, country of export or country of destination.

Classes of customs warehouses

Licensing of customs warehouse

Admissibility of goods to customs warehouse

## A.610

(2) Goods which constitute a hazard, which are likely to affect other goods or which require special installations shall be accepted by customs warehouses specially designed to receive them.

(3) Goods may be placed in a customs warehouse on the condition that they will be subsequently exported in the following cases —

- (a) goods in free circulation that are entitled to a refund of duties and taxes when exported so that they may qualify for such refund immediately;
- (b) goods under the temporary admission procedure, so that the obligations under that procedure may be suspended or discharged; or
- (c) goods that are liable to or have borne internal duties or taxes, in order that a person liable for such internal duties or taxes may qualify for exemption from or refund of the internal duties and taxes.

(4) The Commissioner General shall by Notice published in the *Gazette*, specify goods that are subject to prohibition or restriction for entry into customs warehouses.

Time limit for storage

**150.** (1) Goods under a customs warehousing procedure shall be limited to two years from the date the goods are cleared for entry into any public or private customs warehouse.

(2) The Commissioner General may extend the time limit under subsection (1) for up to six months if the extension is justified by particular circumstances, or for such other period as may be required in exceptional cases.

Responsibilities of customs warehouse operator and declarant

**151.** (1) A customs warehouse operator and the declarant of goods shall be responsible for ensuring that while the goods are under a customs warehousing procedure they are not removed from customs supervision.

(2) A customs warehouse operator shall be responsible for —

- (a) fulfilling the obligations that arise from storage of a goods placed under a customs warehousing procedure; and
- (b) complying with the conditions specified in the license issued under section 148.

(3) The declarant of goods shall be responsible for compliance with the obligations that result from the placement of the goods under a custom warehousing procedure.

(4) In the case of a private customs warehouse, the warehouse operator shall be the depositor of goods.

Keeping of records

**152.** A customs warehouse operator shall keep a record of all warehoused goods in such manner and format as may be prescribed by the Commissioner General for -

- (a) goods received in the warehouse, and the date of receipt of the goods;
- (b) the purpose for which and, in the case of a public customs warehouse, the client on whose behalf, the goods are warehoused;
- (c) any warehoused goods that are damaged, destroyed, lost or unaccounted for;

- (d) goods removed from the warehouse, the date of removal of the goods and the person who removed them;
- (e) clearance for a specific customs procedure; or
- (f) any other purpose as may be determined.

**153.** (1) The Commissioner General may require a customs warehouse operator to submit reports to Revenue Service regarding storage of goods at the warehouse for such periods as he or she may deem necessary.

Submission of  
report

(2) A report under subsection (1) shall contain information for —

- (a) goods received in the warehouse during the reporting period;
- (b) goods removed from the warehouse during the reporting period;
- (c) any surpluses or shortfalls of goods in the warehouse, as at the end of the reporting period; and
- (d) any goods in the warehouse damaged, destroyed, lost or unaccounted for during the reporting period.

**154.** (1) A public customs warehouse shall be established as may be determined by the Commissioner General.

Establishment  
of public  
customs  
warehouse

(2) A person wishing to operate a public customs warehouse shall make an application to the Commissioner General, in such form as may be prescribed, to be so registered and licensed.

(3) The establishment of a public customs warehouse shall be subject to the provision of a guarantee by the operator upon payment of an amount as may be determined by the Commissioner General.

(4) The Commissioner General may revise the amount of the guarantee under subsection (3) where the interests of the Revenue Service so justify.

(5) The Commissioner General shall determine the conditions for the management and operation of a public customs warehouse.

**155.** A public customs warehouse shall be open for the storage of goods to any person who has the right to dispose of the goods.

Storage of goods  
in public  
customs  
warehouse

**156.** (1) In the case of loss or substitution of goods placed in a public customs warehouse, a customs warehouse operator shall be liable for —

- (a) the customs debt; or
- (b) an amount equal to the value of the goods, if they are prohibited for importation.

Liability for  
goods in  
customs  
warehouse

(2) Any shortages occurring in goods placed in a public customs warehouse that are proven to result from the removal of impurities shall be admitted free of duties and taxes by Revenue Service.

(3) Where it is proven to the satisfaction of Revenue Service that the loss of goods placed in a public customs warehouse is due to unforeseeable circumstances, to an event of force majeure or to causes inherent to the nature of the goods, the customs warehouse operator shall be relieved from liability for the duties and taxes or, if the goods are prohibited, for a sum representing the value of the goods.

**A.612**

Authorised operations

(4) In the case of theft of goods placed in a public customs warehouse, the customs warehouse operator may be relieved from liability for the duties and taxes or, as appropriate, the sum representing the value of the goods, if the theft is proven to the satisfaction of Revenue Service.

**157.** (1) For reasons deemed valid by a customs warehouse operator that supervises a customs warehouse, the declarant of goods shall be authorised —

- (a) to inspect the goods;
- (b) to take samples subject to payment, if necessary, of the duties and taxes;
- (c) to carry out the operations necessary to ensure the preservation of the goods; and
- (d) to carry out any other normal handling necessary to improve the presentation or the marketable quality of the goods, or to prepare such goods for transport, such as —
  - (i) division or grouping together of the parcels,
  - (ii) sorting and grading the goods, and
  - (iii) change of packaging.

(2) In case of default by the declarant, the customs warehouse operator under subsection (1) may, for reasons deemed valid by the customs office that supervises the warehouse, carry out the operations necessary to ensure the proper preservation of the stored goods.

(3) The Commissioner General shall, in accordance with relevant legislation, specify the nature and the level of loss acceptable in a customs warehouse.

Transfer of ownership of goods

**158.** An owner of goods stored in a public customs warehouse may transfer such goods, and any obligations of the former owner under a customs warehousing procedure shall be transferred to the new owner.

Hazardous goods

**159.** Goods which present a hazard or which are likely to affect other goods shall be —

- (a) allowed in a specially equipped customs warehouse in accordance with the relevant legislation and requirements; or
- (b) removed from a warehouse to another place if Revenue Service, in the public interest, so directs.

Removal of goods

**160.** (1) Any person entitled to dispose of goods placed in a customs warehouse shall be authorised to remove all or part of the goods from one customs warehouse to another or to place them under another customs procedure, subject to compliance with the conditions and formalities applicable in each case.

(2) Goods in a customs warehouse may, except where otherwise provided, upon their removal from the customs warehouse, receive the same treatment as if they had been directly imported.

(3) Subject to the provisions of subsection (4), where goods in a customs warehouse are declared for home use, the duties and taxes due shall be paid according to the tariff classification and on the basis of the quantities that are recorded upon their removal from the warehouse.

(4) A product placed in a customs warehouse for the discharge of operations carried out under an inward processing procedure shall be re-exported out of Botswana.

(5) Notwithstanding subsection (4), the Commissioner General may authorise a product to be entered for home use.

(6) Where goods stored in a customs warehouse are not removed after their clearance for another customs procedure, they shall be placed in a State warehouse within five days from the date of the clearance.

**161.** (1) In the case of release of goods for home use after customs warehousing, the applicable rate of duties and taxes shall be the one in force on the date of registration of a customs declaration for home use.

Applicable rate  
of duties and  
taxes

(2) In the case of shortages of goods, the rate of duties and taxes applicable to shortages shall be the one in force on the date of the discovery of the shortage.

(3) In the case of irregular removal of goods, the applicable rate of duties and taxes shall be the one in force on the date of the removal if this can be determined.

(4) If the date of removal of goods from a customs warehouse cannot be determined, the highest applicable rate in force since the date of the entry of the goods into the customs warehouse, or if possible since the last inventory, until the date the removal was reported, shall be applied.

(5) For the application of the provisions of subsections (1) and (3), the value to be taken into account is, as appropriate, that of the goods on one of the dates referred to in the relevant subsection, and shall be determined in accordance with the provisions of this Act relating to customs valuation.

**162.** (1) Goods that have deteriorated or been damaged as a result of an accident or force majeure while they are under a customs warehouse procedure shall, in the absence of re-exportation, be declared for home use as if they had been imported in their current state, provided that the deterioration or damage is proven to the satisfaction of Revenue Service.

Deteriorated or  
damaged goods

(2) Notwithstanding subsection (1), upon request by the declarant, Revenue Service may authorise the destruction of imported goods that have deteriorated or been damaged in a customs warehouse, provided that the relevant duties and taxes applicable to any waste or scrap remaining after the destruction are paid.

**163.** If within five days after the expiration of the time limit for a customs warehousing procedure the goods are not removed from the customs warehouse, the goods shall be placed in a State warehouse at the expense of the declarant.

Expiration of  
time limit

**164.** In case of closure of a customs warehouse, the declarants shall be required to transfer their goods to another customs warehouse or to place the goods under another customs procedure within five days, provided that the conditions and formalities applicable to each of the cases are fulfilled.

Closure of  
customs  
warehouse

**A.614**

Customs warehouse charges

**165.** (1) A customs warehouse operator shall be entitled to charge the declarant storage fees for goods that are placed in a customs warehouse.  
(2) Storage fees referred to in subsection (1) shall be determined by a customs warehouse operator.

*E – Customs transit*

Customs transit procedure

**166.** (1) Goods transported under a customs transit shall be allowed from —

- (a) a customs office of entry to a customs office of exit;
- (b) a customs office of entry to an inland customs office;
- (c) an inland customs office to a customs office of exit; or
- (d) an inland customs office to another inland customs office.

(2) Goods transported under a customs transit shall not be subject to the payment of duties and taxes:

Provided that —

- (a) the conditions laid down by Revenue Service are met; and
- (b) a guarantee is furnished covering the duties and taxes that may become payable in case the goods are not delivered to the customs office of destination.

(3) Except as provided for under this Act, Revenue Service shall not clear prohibited goods for transit.

(4) Where the goods under a customs transit are subject to special measures on an international level, Revenue Service may —

- (a) inform any relevant authorities; and
- (b) subject the goods to strict control measures.

Transport of goods under customs transit procedure

**167.** (1) Goods under a customs procedure shall be transported by a bonded carrier.

(2) Notwithstanding subsection (1), the Minister may prescribe other means under which goods under a customs transit may be transported.

Responsibility under customs transit procedure

**168.** A declarant and a carrier of the goods shall be responsible for compliance with the obligations for the goods under a customs transit procedure, and for ensuring that the goods are produced intact at the office of destination in accordance with the conditions imposed by Revenue Service.

Time limit for customs transit

**169.** (1) A customs transit operation shall be carried out within the time limit fixed by a customs office of departure.

(2) The Minister shall prescribe the time limit for customs transit of a mode of transport.

Customs transit movements

**170.** The Revenue Service shall, for control purposes, require goods to —

- (a) follow a prescribed itinerary; or
- (b) be transported under customs escort.

Customs seals

**171.** (1) Where goods under a customs transit are conveyed in a transport-unit, a customs seal shall be affixed on the transport-unit in such a way that —

- (a) the customs seals may be affixed simply and effectively;

- (b) no goods may be removed from or introduced into the sealed parts of the transport-unit without leaving visible traces of tampering or without breaking the customs seals;
  - (c) the transport-unit contains no concealed spaces where goods may be hidden; or
  - (d) all spaces capable of holding goods are easily accessible for customs inspection.
- (2) If the transport-unit cannot be sealed effectively, identification of the packages shall be assured and unauthorised interference rendered readily detectable by —
- (a) full inspection of the goods and recording the result on the transit document;
  - (b) affixing customs seals on each package;
  - (c) a precise description of the goods by reference to samples, plans, drawings, photographs or any other similar means, to be attached to the transit document;
  - (d) stipulation of strict routing and strict time limits; or
  - (e) transport under customs escort, if the measures referred to in paragraphs (a), (b), (c) and (d) cannot be employed or are considered to be insufficient by Revenue Service.
- (3) The Revenue Service may withhold release of the goods for transit in a transport-unit if —
- (a) the transport-unit cannot be sealed effectively;
  - (b) identification of the packages cannot be assured; and
  - (c) unauthorised interference cannot be rendered readily detectable.

**172.** (1) A customs seal and identification mark affixed by a foreign customs administration may be accepted for the purposes of a customs transit operation unless —

Seals affixed  
by foreign  
customs  
administration

- (a) the seal and identification mark are considered not to be sufficient;
  - (b) the seal and identification mark are not secure;
  - (c) customs proceeds to an examination of the goods; or
  - (d) the authenticity of the seal and identification mark is questionable.
- (2) When a foreign customs seal and fastenings have been accepted in Botswana, they shall be afforded the same legal protection as national seals and fastenings.

**173.** (1) Following a request by a person concerned, and for reasons deemed valid by Revenue Service, a customs officer may accept the change of the office of destination and, if designated, the route.

Changes *en*  
*route*

(2) Goods transported under a customs transit may be transferred from one means of transport to another without Revenue Service authorisation, provided that the customs seals are not broken or interfered with and the customs office of destination is notified.

(3) Any accident or unforeseen event directly affecting a customs transit operation shall be notified by the carrier or any person concerned to the customs office of departure or the nearest customs office as soon as possible.

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Prohibited actions *en route*

**174.** The following actions shall be prohibited during a customs transit —

- (a) removing or tampering with any customs seals affixed to the transport-unit;
- (b) changing the marks and numbers of the packages;
- (c) adding other marks and writing;
- (d) carrying out any changes to packaging; and
- (e) opening the packages or removing the identification marks affixed by Revenue Service.

Presentation of goods and transit documents upon request

**175.** Goods transported under a customs transit and the documents that accompany them shall in the course of transit, be presented upon any request made by a customs officer.

Termination of customs transit

**176.** (1) A customs transit procedure shall be terminated upon presentation of goods and the documents that accompany them at the customs office of destination —

- (a) within the time limit allowed for this purpose;
- (b) without the goods having undergone any change or having been used; and
- (c) with the customs seals and the marks of identification intact.

(2) As soon as goods are placed under the control of a customs office of destination, the customs office of destination shall notify the customs office of departure of any irregularities.

(3) A customs office of destination shall -

- (a) without delay, terminate a customs transit operation after satisfying itself that all the conditions have been met; and
- (b) release the guarantee within 24 hours.

Loss of goods under customs transit

**177.** (1) In case of failure to present all or part of the goods under customs transit to a customs office of destination, a carrier shall be liable for payment of the duties and taxes on any identified shortages.

(2) If the shortages relate to prohibited goods, the carrier shall be liable to pay a sum equal to the value of the goods.

(3) Where it is proven that the loss of goods under customs transit is due to unforeseen circumstances, an event of force majeure or causes inherent to the nature of the goods, the carrier shall be relieved from liability for the duties and taxes or, if the goods are prohibited, from payment of the sum equal to the value of these goods.

Goods deteriorated or damaged while under customs transit

**178.** (1) Goods that have deteriorated or have been damaged as a result of an accident or force majeure while under customs transit, may be declared for home use as if they had been imported in their current state, provided the deterioration or damage is proven to the satisfaction of Revenue Service.

(2) Notwithstanding subsection (1), upon request by any person concerned, a customs office may authorise the destruction of the goods under customs transit that have deteriorated or been damaged, if the relevant duties and taxes related to any waste or scrap remaining after the destruction are paid.

*F – Transshipment*

**179.** (1) Goods admitted to a customs transshipment procedure shall not be subject to the payment of duties and taxes unless the conditions laid down by Revenue Service are met.

Goods that may be admitted to customs transshipment procedure

(2) Where goods are prohibited, restricted or subject to special measures on an international level for importation, the goods may be admitted under a customs transshipment procedure with the prior approval of Revenue Service:

Provided that the goods are subjected to strict control measures by customs.

**180.** The Revenue Service shall accept one commercial or transport document as a customs declaration for both the arrival and departure of goods admitted to a customs transshipment procedure.

Customs declaration for transshipment

**181.** Where deemed necessary, a customs office shall take measures upon importation to ensure that goods to be transshipped may be identified at the time of export and that any unauthorised interference may easily be detected.

Identification of transshipped goods

**182.** (1) A customs office shall fix a time limit for the export of goods declared for transshipment.

Time limit for transshipment

(2) The time limit referred to in subsection (1) shall take into account the duration necessary for the execution of the transshipment operations.

(3) Upon a request by a person concerned, and for reasons deemed valid by Revenue Service, a customs office may extend the time limit initially fixed under subsection (1).

**183.** (1) Upon a request by a person concerned, a customs office may, under the conditions which it deems appropriate, authorise goods under a transshipment to undergo operations likely to facilitate their export.

Authorised operations

(2) Prohibited goods and those subject to special measures on an international level for importation shall be excluded from the benefit of the provisions of subsection (1).

*G – Temporary admission*

**184.** (1) The Revenue Service shall grant a temporary admission procedure where it is possible to ensure the identification of imported goods at the time of re-export.

Requirement for identification of goods

(2) The Revenue Service may take their own identification measures where commercial means of identification are not sufficient.

(3) Notwithstanding subsection (1), Revenue Service may authorise use of the temporary admission procedure without ensuring the identification of the goods when, in view of the nature of the goods or the nature of the operations to be carried out, the absence of identification measures is not likely to lead to abuse of the procedure.

**185.** (1) The Revenue Service may clear goods for temporary admission without a standard customs declaration if it is satisfied that the goods will be subsequently re-exported.

Clearance of goods for temporary admission

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Guarantee for goods under temporary admission	<p>(2) The Revenue Service may clear goods for temporary admission on authority of an ATA, CPD or other carnet.</p> <p><b>186.</b> If temporarily admitted goods are not the subject of a carnet, Revenue Service may require the submission of a guarantee covering any duties and taxes to which the goods may be liable.</p>
Operations allowed for temporary procedure	<p><b>187.</b> Temporarily admitted goods shall be allowed to undergo operations necessary for their preservation during their stay in Botswana.</p>
Duration of temporary admission	<p><b>188.</b> (1) The Revenue Service shall determine, in each case, the time limit within which goods placed under a temporary admission procedure shall be re-exported or placed under another customs procedure, and inform the persons concerned.</p> <p>(2) The time limit referred to in subsection (1) shall not exceed 12 months.</p> <p>(3) Upon a request by a person concerned and for reasons deemed valid, Revenue Service may extend the time limit referred to in subsection (2).</p>
Temporary admission with conditional relief	<p><b>189.</b> (1) The following goods may be placed under the temporary admission procedure with conditional relief of import duties and taxes —</p> <ul style="list-style-type: none"><li>(a) goods for display or use at exhibitions, fairs, meetings or similar events;</li><li>(b) professional equipment;</li><li>(c) containers, pallets, packaging, samples and other goods imported in connection with a commercial operation;</li><li>(d) goods imported for educational, scientific or cultural purposes;</li><li>(e) personal effects of travellers and goods imported for sports purposes;</li><li>(f) tourist publicity material;</li><li>(g) goods imported for humanitarian purposes;</li><li>(h) means of transport; and</li><li>(i) live animals intended for exhibitions, sporting and other events.</li></ul> <p>(2) Notwithstanding subsection (1), the Commissioner General may determine other goods that may be placed under a temporary admission procedure.</p>
Transfer of benefit of temporary admission	<p><b>190.</b> Upon request by a person concerned, Revenue Service may authorise the transfer of the benefit of a temporary admission procedure to another person, if the other person —</p> <ul style="list-style-type: none"><li>(a) satisfies the conditions laid down for the procedure; and</li><li>(b) accepts the obligations of the first beneficiary of the temporary admission.</li></ul>
Goods damaged under temporary admission	<p><b>191.</b> (1) Goods that are damaged as a result of an accident or force majeure while under a temporary admission procedure may, in the absence of re-exportation, be declared for home use as if they had been imported in their current state provided, the deterioration or damage is proven to the satisfaction of Revenue Service.</p>

(2) Notwithstanding subsection (1), upon the request of the person concerned Revenue Service may authorise the destruction of temporarily admitted goods that have been damaged, if the relevant duties and taxes applicable to any waste or scrap remaining after this destruction are paid.

**192.** (1) Where Revenue Service is satisfied that the conditions for the procedure have been met, a temporary admission procedure shall be terminated by the re-export of the temporarily admitted goods.

Termination of temporary admission

(2) Goods under temporary admission procedure may be re-exported —

- (a) through a place of exit other than the place of entry through which the goods were temporarily admitted; and
- (b) in one or more consignments.

(3) Notwithstanding subsection (1), a temporary admission procedure may be terminated by placement of the temporarily admitted goods under another customs procedure if —

- (a) the time limit for the temporary admission has not expired; and
- (b) the conditions and the formalities applicable to the requested customs procedure are satisfied.

**193.** (1) When a temporary admission procedure has not been terminated within the time limit granted for the temporarily admitted goods, Revenue Service shall recover the duties and taxes.

Expiration of time limit

(2) In addition to the recovery of duties and taxes provided for in subsection (1), Revenue Service may, depending on the circumstances, regard the goods as cleared for home use if the applicable conditions and formalities have been satisfied.

**194.** A declarant shall bear the responsibility of proving to the satisfaction of Revenue Service, that the goods placed under a temporary admission procedure were loaded for re-export or were re-exported in accordance with the conditions of the procedure.

Proof of re-export of goods

**195.** A means of transport for commercial use duly registered abroad, whether loaded or not, shall be temporarily admitted to Botswana with suspension of import duties and taxes and without any formal clearance, provided —

Temporary admission of means of transport for commercial use

- (a) they are not used for internal transport within Botswana; and
- (b) they are intended for re-exportation without having undergone any change, except normal depreciation due to their use, normal consumption of lubricants and fuels.

**196.** (1) A customs office may require that a means of transport for commercial use that is registered abroad be subject to a customs document and adequate guarantee.

Documentation for means of transport for commercial use

(2) Where a customs office fixes a time limit for the re-exportation of a means of transport for commercial use, the time limit shall be determined by taking into account the particular conditions of the intended transport operations.

*H – Common provisions for inward processing of goods for home use*

Approval of procedure by Revenue Service

**197.** (1) A person wishing to –

- (a) import goods under the inward processing procedure, the processing of goods for home use or the drawback procedure; or
- (b) export goods under the outward processing procedure, shall register with Revenue Service in accordance with this Act.

(2) Prior to importing or exporting goods in terms of subsection (1), a registered person shall submit an application to Revenue Service for approval to use the inward processing procedure, the processing of goods for home use, the drawback procedure or the outward processing procedure.

(3) A right to import goods under the inward processing procedure or the processing of goods for home use procedure or to export goods under the outward processing procedure shall not be limited to the owner of the goods.

Approval of premises for inward processing, etc.

**198.** Prior to granting an application for approval to use the inward processing, the processing of goods for home use procedure or the drawback procedure, Revenue Service shall inspect and approve the premises of the registered person where the processing of the goods is to be carried out.

Movement of imported goods under inward processing, etc.

**199.** (1) Goods that have been imported under the inward processing procedure or the processing of goods for home use procedure shall be conveyed directly to the approved premises of the holder of the permit.

(2) Notwithstanding subsection (1), upon request by the holder of the permit and for reasons deemed valid by Revenue Service, the Commissioner General may authorise the goods to be moved to premises other than those of the holder of the permit.

(3) Goods placed under the inward processing procedure or the processing of goods for home use procedure may be moved between different places in Botswana owned by the holder of the permit, if the places have been approved by Revenue Service for the procedure.

Transfer of processing operations under inward processing, etc.

**200.** The Commissioner General may authorise processing operations to be carried out by a registered person other than the holder of a permit, if the holder of the permit remains responsible to Revenue Service for compliance with the conditions for the procedure for the entire duration of the operations.

Transfer of ownership of goods under inward processing, etc.

**201.** (1) The Commissioner General may authorise transfer of ownership of goods that have been imported under an inward processing procedure or the processing of goods for home use procedure and the compensating products to another registered person, if the person assumes the responsibilities and obligations under the procedure.

(2) Goods imported under an inward processing procedure or the processing of goods for home use procedure may only be transferred to another registered person who has been approved by Revenue Service to import the same goods under the inward processing or the processing of goods for home use procedure, if the request for such a transfer is submitted to and approved by the Commissioner General prior to the transfer.

**202.** A person carrying out an activity involving the storage, manufacturing, processing or transport of goods placed under an inward processing procedure, the processing of goods for home use, a drawback procedure, an outward processing procedure, or the compensating products, shall maintain records in such a manner that enables Revenue Service to supervise the processing procedure, in particular with regard to identification of the goods placed under that procedure, their customs status and their movements.

Record keeping

*I – Inward processing*

**203.** The following shall constitute inward processing operations —

Inward processing operations

- (a) the processing of goods, including their construction, assembly with other goods, disassembly or other workings;
- (b) the manufacture of goods;
- (c) the repair of goods, including restoring their original state and their working order;
- (d) the packaging of goods, their packing or re-packing; and
- (e) the use of certain goods that shall not be found in compensating products, but that allow or facilitate the production of those products, even if they are entirely or partially used in the process.

**204.** Goods already placed under another customs procedure may benefit from the inward processing procedure.

Placement of goods under inward processing procedure

**205.** (1) Depending upon the nature of its operations, an importer shall include in an application for approval to use an inward processing procedure an expected rate of yield that will be obtained per unit of the imported goods that are to be used in processing or manufacture.

Rate of yield

(2) Where goods admitted for inward processing are to undergo manufacturing or processing, Revenue Service shall fix or agree to the rate of yield of the operation by reference to the actual conditions under which it is effected.

(3) The description, quality and quantity of the various compensating products shall be specified upon fixing or agreeing to the rate under subsection (2).

**206.** (1) Equivalent goods shall be of the same quality and possess the same characteristics as the imported goods.

Equivalent goods and compensating products

(2) Notwithstanding subsection (1), Revenue Service may allow in certain cases for equivalent goods to be at a more advanced stage of manufacture than the imported goods.

(3) The Revenue Service shall allow —

- (a) compensating products to be obtained from equivalent goods; and
- (b) compensating products obtained from equivalent goods to be exported out of the Common Customs Area prior to the importation of the imported goods.

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Identification measures	<p>(4) In the case of application of subsection (3), imported goods shall have the customs status of equivalent goods, and equivalent goods shall have the customs status of imported goods.</p> <p><b>207.</b> The Revenue Service may take such steps as are necessary for the identification of goods to be exported as compensating products, by —</p> <ul style="list-style-type: none"><li>(a) recording specific marks or numbers on imported goods that are cleared for inward processing;</li><li>(b) affixing seals, stamps or individual marks to such goods;</li><li>(c) taking samples or making use of illustrations or technical descriptions of such goods; or</li><li>(d) requesting evidence concerning the processing of the imported goods.</li></ul>
Origin of goods obtained under inward processing procedure Occurrence of customs debt	<p><b>208.</b> For purposes of determining the origin of compensating products obtained from goods placed under an inward processing procedure, the goods shall be subject to the applicable Rules of Origin when they are cleared for export or another customs procedure.</p> <p><b>209.</b> Where a customs debt is incurred on goods, the amount of the debt shall be determined on the basis of the elements of duties and taxes applicable to the imported goods at the time of the registration of the customs declaration for placement of the goods under an inward processing procedure.</p>
Termination of inward processing procedure	<p><b>210.</b> (1) Compensating products resulting from inward processing may be exported in one or more consignments.</p> <p>(2) An inward processing procedure shall be terminated upon the final export of the compensating products.</p> <p>(3) Upon request by a person concerned and for reasons deemed valid by Revenue Service, Revenue Service may authorise the re-export of the goods in their unaltered state.</p> <p>(4) An inward processing procedure may be terminated by the placement of the imported goods or the compensating products under another customs procedure, if the conditions and the formalities applicable to the procedure are satisfied.</p> <p>(5) Where the compensating products are not exported, the amount of applicable duties and taxes shall be limited to the amount of duties and taxes applicable to the goods that were imported for inward processing.</p> <p>(6) For goods lost as a consequence of their nature, the termination of the inward processing procedure shall be granted to the extent that the compensating products are exported and if the loss is duly established to the satisfaction of Revenue Service.</p> <p>(7) The waste and scrap resulting from inward processing operations shall be liable, in the case of customs clearance for home use, to the duties and taxes that would be applicable to such waste and scrap as if they had been imported in that state.</p>

*J – Processing of goods for home use*

**211.** The Revenue Service shall approve an application for processing of goods for home use procedure where it is satisfied that —

- (a) the goods are specified in the Customs Tariff Schedules as goods that may be authorised for processing for home use;
- (b) the products resulting from the processing of the goods for home use were obtained from the imported goods and that the initial state of the goods shall not be economically restored after the manufacture or processing; and
- (c) recourse to the procedure shall not result in the misuse of the Rules of Origin and quantitative restrictions applicable to the imported goods.

**212.** Goods that are under another customs procedure may also benefit from the processing of goods for home use procedure.

**213.** Where a customs debt is incurred for goods in an unaltered state or for products that are at an intermediate stage of processing, the amount of the customs debt shall be determined on the basis of the elements of duties and taxes appropriate to the goods imported at the time of the registration of the customs declaration for placement of such goods under the processing of goods for home use procedure.

**214.** (1) The processing of goods for home use procedure shall be terminated by clearance for home use of the products resulting from such processing.

(2) Following a request by a person concerned, and for reasons deemed valid by Revenue Service, the processing of goods for home use procedure may be discharged by the placement of the goods under another customs procedure, if the conditions and formalities applicable to that procedure are met.

(3) The waste and scrap resulting from the processing of goods for home use shall be liable, in the case of customs clearance for home use, to the duties and taxes which shall be applicable to such waste and scrap as if they had been imported in that state.

*K – Drawback*

**215.** (1) Drawback may be paid in respect of —

- (a) imported goods used, consumed, manufactured or processed in Botswana that are subsequently exported;
- (b) imported goods that have been replaced by the same quantity of equivalent goods used in the production of the exported goods; or
- (c) imported goods subsequently exported in the same condition as when they were imported.

(2) For the purposes of subsection (1), goods shall be deemed to be exported if they are —

Conditions for approval to process goods for home use procedure

Placement of goods under processing for home use procedure  
Occurrence of customs debt

Termination of processing of goods for home use procedure

Scope of drawback

<p>Customs declaration when goods intended for drawback are imported</p>	<p>(a) cleared for outright export from the Common Customs Area; or (b) placed in a customs warehouse or introduced into a special economic zone on condition that they are subsequently to be exported from the Common Customs Area.</p>
<p>Time limit for drawback</p>	<p><b>216.</b> (1) At the time a customs declaration is lodged to import goods that will be subject to a drawback procedure, a declarant shall indicate to Revenue Service that he or she has been approved in accordance with this Act to import the goods under the procedure. (2) Notwithstanding subsection (1), Revenue Service shall not deny the payment of drawback if, at the time of importation of the goods, the declarant did not declare the intention of claiming drawback upon exportation.</p>
<p>Claims for drawback</p>	<p><b>217.</b> (1) The time limit for a person to lodge a claim for drawback shall be within one year from the date of exportation of the imported goods for which the drawback is claimed. (2) Upon request by a declarant, for commercial or for other reasons deemed valid, the Commissioner General may extend the time limit under subsection (1).</p>
<p>Payment of drawback</p>	<p><b>218.</b> (1) A declarant shall submit a claim for drawback to Revenue Service in such form as may be prescribed. (2) A drawback shall be granted to the extent that a declarant establishes, to the satisfaction of Revenue Service, that the imported goods that were cleared for home use under the drawback procedure were exported in the form of compensating products or goods in the same condition as when they were imported. (3) Where a declarant frequently carries out drawback operations, Revenue Service may, upon request by the declarant, pay the drawback periodically for compensating products exported during a given period. (4) The amount of drawback shall be reduced by the value of any waste and scrap resulting from the imported goods that are not exported.</p>
<p>Recovery of amount not paid</p>	<p><b>219.</b> The Revenue Service shall pay a drawback as soon as possible when the drawback claim has been verified. <b>220.</b> If Revenue Service pays a drawback that was not duly payable or was in excess of the amount due to the declarant, the declarant shall repay the excess amount to the Commissioner General upon demand.</p>
<p>Outward processing operations</p>	<p><i>L – Outward processing procedure</i> <b>221.</b> (1) The following shall constitute outward processing operations – (a) the processing of goods, including their construction, assembly with other goods, disassembly or other workings; (b) the manufacture of goods; (c) the repair of goods, including restoring their original state and their working order; (d) the packaging of goods, their packing or re-packing; and</p>

- (e) the use of certain goods that shall not be found in compensating products, but that allow or facilitate the production of the products, even if they are entirely or partially used in the process.
- (2) The following goods shall not be placed under the outward processing procedure —
  - (a) goods whose export gives rise to a refund or remission of import duties and taxes; and
  - (b) goods that, prior to their exportation, had been placed under home use with full exemption from import duties and taxes because of their end use, if the conditions fixed for the granting of this exemption remain applicable.

**222.** (1) Depending upon the nature of its operations, an exporter shall include in an application for approval to use the outward processing procedure an expected rate of yield that will be obtained per unit of the exported goods that are to be used in processing or manufacture.

Rate of yield

(2) The Revenue Service may fix or agree a rate of yield for an outward processing operation when it deems it necessary or when it will facilitate the operation.

(3) The description, quality and quantity of the various compensating products shall be specified upon fixing or agreeing to the rate under subsection (2).

**223.** The Revenue Service may take such steps as are necessary for the identification of compensating products obtained from goods exported under the outward processing procedure when those products are cleared for home use, by —

Identification measures

- (a) recording specific marks or numbers on goods exported under the outward processing procedure before their export;
- (b) taking samples or making use of illustrations or technical descriptions of such goods; and
- (c) requesting evidence concerning the processing abroad of the exported goods.

**224.** An exemption from import duties and taxes for compensating products resulting from an outward processing procedure shall be granted where the compensating products are declared for home use by —

Exemption from import duties and taxes under outward processing procedure

- (a) a declarant for the outward processing procedure; or
- (b) any other person established in Botswana acting on behalf of the declarant,

if that the conditions of the procedure are fulfilled.

**225.** An exemption from import duties and taxes for compensating products obtained abroad from goods temporarily exported for outward processing shall be the amount of duties and taxes for the compensating products less —

Determination of exemption from import duties and taxes under outward processing procedure

- (a) the cost of manufacture, processing or repair; or
- (b) the amount of any exemption, refund or drawback previously granted to the temporarily exported goods.

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Repairs abroad on temporarily exported goods

**226.** (1) Where an operation of outward processing involves the repair of temporarily exported goods, their clearance for home use shall be exempt from import duties and taxes if it can be demonstrated to the satisfaction of the customs office that the repair was carried out free of charge, of —

- (a) a contractual or legal guarantee; or
- (b) the existence of a manufacturing defect.

(2) Where the temporarily exported goods were originally imported and the defective state was taken into account at the time of the original clearance for home use, subsection (1) shall not apply.

Outward processing using replacement system

**227.** (1) Outward processing using a replacement system may be granted when the processing consists of repair of the temporarily exported goods by allowing the importation of a replacement product, instead of the compensating product, while retaining the benefits of the outward processing procedure.

(2) The conditions applicable to compensating products under the outward processing procedure shall apply to replacement products.

(3) Replacement products may be imported prior to the export of the temporarily exported goods, if a guarantee covering the amount of import duties and taxes is furnished.

(4) A guarantee shall be discharged upon the export of the temporarily exported goods under the outward processing procedure.

Conditions for replacement products

**228.** (1) A replacement product shall satisfy the following conditions —

- (a) the replacement product shall fall under the same tariff classification, be of the same commercial quality and have the same technical characteristics as the temporarily exported goods; and
- (b) where the temporarily exported goods were used prior to export, the replacement product should have been used and not be a new product.

(2) The Revenue Service may grant an exception to the requirements referred to in subsection (1) where it is satisfied that the replacement product was delivered free of charge, of —

- (a) a contractual obligation or legal guarantee; or
- (b) the existence of a defect in manufacturing.

Prior importation of replacement products

**229.** (1) In the case of the prior importation of replacement products, the export of the temporarily exported goods shall be carried out within a period of 30 days from the date of registration of a customs declaration for the replacement products.

(2) Notwithstanding subsection (1), Revenue Service may extend the time limit upon request by a person concerned where the reasons are deemed valid by Revenue Service.

Termination of outward processing procedure

**230.** (1) An outward processing procedure shall be terminated by the importation of a compensating products —

- (a) in one or more consignments or, in the case of a replacement system, by the importation of the replacement product in one or more consignments;

- (b) if a part of the compensating product obtained from the temporarily exported goods is imported; or
  - (c) at a place of entry other than the place of exit from where the temporarily exported goods were originally exported.
- (2) For goods whose loss results from their nature, termination of an outward processing procedure shall be granted if the loss is demonstrated to the satisfaction of Revenue Service and any remaining compensating product is imported.
- (3) The Revenue Service shall, upon request by a person concerned, terminate an outward processing procedure by allowing the re-importation free of import duties and taxes of goods temporarily exported for outward processing if they are returned in an unaltered state.
- (4) An outward processing procedure may be terminated by the placement of the temporarily exported goods or a compensating product under the procedure of outright export, if the conditions and formalities applicable to this procedure are fulfilled.

#### PART VIII — *Special procedures*

##### *A: Travellers*

**231.** (1) Revenue Service formalities relating to travellers shall only be carried out in a customs office or a place designated for such operations. Place of customs formalities

(2) Subject to compliance with the appropriate customs controls, a traveller entering or departing Botswana by their own means of transport for private use, or by bus or rail, may be authorised to complete all the necessary customs formalities without being systematically required to leave the means of transport.

**232.** (1) A traveller shall, upon arrival in Botswana, declare to Revenue Service any accompanied or unaccompanied goods that — Declaration

- (a) were purchased or otherwise acquired abroad;
- (b) were processed or repaired abroad; or
- (c) are prohibited or restricted.

(2) A traveller shall, upon departure from Botswana, declare to Revenue Service any accompanied or unaccompanied —

- (a) goods as may be prescribed; and
- (b) prohibited or restricted goods.

(3) Goods referred to in subsections (1) and (2) in a person's accompanied or unaccompanied baggage shall be declared whether or not the person entering or leaving Botswana is the owner of the goods.

(4) A traveler that is carrying commercial goods shall declare the goods by lodging a customs declaration.

**233.** (1) An operator of a means of transport for commercial use shall provide Revenue Service with electronic advance passenger information to facilitate the customs control of travelers and the clearance of their goods, unless authorised by the Commissioner General to submit the information by any other means. Facilitation of travellers

(2) The Revenue Service shall not apply customs controls to transit passengers who do not leave a designated, secured transit area except where it is deemed necessary by the Revenue Service.

(3) Any authorised person shall be allowed to present unaccompanied baggage for clearance to Revenue Service on behalf of a traveler.

**234.** (1) A returning resident shall be authorised to re-import, free of duties and taxes, his or her personal effects and means of transport for private use, which were in free circulation in Botswana, and which they previously exported upon their departure from Botswana, if the goods have not undergone any manufacturing, processing or repairs while abroad other than maintenance in connection with their use abroad.

(2) The Revenue Service may, where necessary, require proof that the personal effects and means of transport for private use were owned and used in Botswana by the returning resident under subsection (1) prior to his or her departure.

**235.** (1) Temporary admission into Botswana may be granted by Revenue Service to the personal effects and the means of transport for private use of non-resident travelers.

(2) The Revenue Service shall not require a customs declaration or guarantee for the personal effects referred to in subsection (1) unless —

(a) they exceed, in value, quantity or duration of stay, the limits provided for by the Customs Tariff Schedules; or

(b) they are deemed by Revenue Service to be a risk.

(3) The Revenue Service shall not require a guarantee for a non-resident's means of transport for private use referred to in subsection (1).

(4) Notwithstanding subsection (3), Revenue Service may —

(a) require a simplified temporary admission document to be lodged for a non-resident's means of transport for private use and specify the duration of the temporary admission; or

(b) accept an internationally guaranteed carnet for the temporary admission.

(5) A replacement part necessary to repair a means of transport for private use that is temporarily in Botswana, may benefit from the temporary admission procedure.

(6) The personal effects and means of transport for private use of non-residents that are seriously damaged or destroyed as a result of an accident or force majeure shall be exempted from the obligation to re-export them.

(7) If in the cases referred to in subsection (6), any waste or scrap is offered for sale in Botswana, a non-resident may be liable for duties and taxes applicable to the waste or scrap in that state.

Exemptions  
and flat rate  
assessment

**236.** (1) The Minister shall, by notice published in the *Gazette*, in order to give effect to the provisions of the Customs Tariff Schedules state —

- (a) the amount in value and quantity of goods of a non-commercial nature that a traveller may import for free circulation in Botswana, free of duties and taxes;
  - (b) the applicable time limits for such exemptions; and
  - (c) the applicable declaration procedure for exemptions.
- (2) Goods imported as bona fide personal exemption articles over the amounts specified in subsection (1)(a), but less than a maximum amount specified in the Customs Tariff Schedules, shall be subject to a flat rate of duty.
- (3) Articles imported that exceed the maximum amount specified in subsection (2) shall be declared by the traveller.
- (4) The provisions of subsections (1) and (2) shall apply to a traveller, whether resident or non-resident.

**237.** For the purposes of customs control, the personal search of a traveler shall be carried out —

Searching of  
traveller

- (a) only in exceptional circumstances; and
- (b) where there are reasonable grounds to suspect smuggling or the contravention of this Act.

#### *B – Duty free shops*

**238.** A duty free shop procedure shall allow —

Duty free shop  
procedure

- (a) goods not in free circulation to be sold at retail free of duties and taxes; or
- (b) goods not in free circulation supplied to a duty free shop to be transported to the shop without placing them under a transit procedure.

**239.** A person who wishes to operate a duty free shop shall make an application to the Commissioner General in such form as may be prescribed.

Application for  
duty free shop  
license

**240.** (1) A duty free shop shall be located at a place approved by the Commissioner General.

Operation of  
duty free shop

(2) An operator of a duty free shop shall be registered and licensed by the Commissioner General.

(3) An operator of a duty free shop shall provide a guarantee for the operation of the duty free shop, which shall be determined by the Commissioner General.

(4) The Commissioner General may revise the amount of the guarantee under subsection (3) where the interests of the Revenue Service so justify.

(5) The Commissioner General shall determine the conditions for the management and operation of a duty free shop.

**241.** An operator of a duty free shop shall be responsible for —

Responsibility  
of duty free  
shop operator

- (a) fulfilling the obligations that arise from placement of the goods placed under the duty free shop procedure; and
- (b) complying with the particular conditions specified in the duty free shop license.

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Placement of goods under duty free shop procedure

**242.** (1) An operator of a duty free shop shall, for goods not in free circulation —

- (a) place the goods under a duty free shop procedure before being received in a duty free shop;
- (b) deliver the goods to the duty free shop indicated in the customs declaration; and
- (c) not redirect the goods to any place other than the duty free shop without the permission of Revenue Service.

(2) Goods in free circulation shall be deemed to be under a duty free shop procedure when the goods are placed in a duty free shop.

Goods admitted to duty free shop

**243.** (1) An operator of a duty free shop may store, display for sale or sell in a duty free shop any goods referred to under section 241, including those placed under another customs procedure.

(2) Goods for which the import, possession or export is restricted may be sold in a duty free shop in accordance with this Act.

(3) Goods in free circulation that are entitled to a refund of duties and taxes when exported may be admitted to a duty free shop, so that they may qualify for the refund immediately on the condition that they will be subsequently exported.

Buying from duty free shop

**244.** (1) An operator of a duty free shop shall sell goods in the duty free shop to —

- (a) a traveler or crewmember —
  - (i) departing from an air or rail terminal or where such goods are situated, on board an aircraft, cross-border train, vehicle or vessel to a destination outside the Common Customs Area, and
  - (ii) holding a valid boarding pass or other documents indicating that they are about to undertake the voyage to such destination; and
- (b) a diplomat accredited to Botswana.

(2) A traveler or a crewmember who has bought duty free goods shall board an aircraft, train, vehicle or vessel with the goods bought from a duty free shop.

Off-site outlet

**245.** (1) An operator of a duty free shop may, with the approval of Revenue Service and for the purpose of promoting sales, establish a retail outlet for the duty free shop in other locations outside the air or rail terminal or land border-post in which the shop is situated and transfer goods in the shop to such outlets for display purposes, if -

- (a) the outlet is only used for the purpose of taking orders;
- (b) the delivery or pick-up of goods ordered from an off-site outlet shall take place at the duty free shop;
- (c) the outlet is located within the area served by the same customs office as the duty free shop;
- (d) the outlet is secure and meets such standards as may be prescribed;
- (e) the transfer of goods for display purposes between the duty free shop and the outlet takes place in accordance with such processes and requirements as may be prescribed; and

- (f) the liability for the payment of any duties and taxes on goods in the duty free shop and in the outlet remain with the operator of a duty free shop.
- (2) Goods transferred for display purposes in terms of subsection (1) shall be regarded as forming part of the goods in the duty free shop.

**246.** (1) Goods not in free circulation supplied to a duty free shop for sale shall be limited to two years from the time of clearance of the goods under the duty free shop procedure.

Duration for keeping duty free goods

(2) The Commissioner General may extend the time limit under subsection (1) for up to six months or for such other period as may be required in exceptional cases.

#### *C – Postal Traffic*

**247.** (1) The Revenue Service shall designate to the Postal Service the postal items that shall be presented to them for the purposes of customs control and the methods of presentation of these items.

Presentation of postal items before Revenue Service

(2) The Minister shall prescribe postal items not to be presented for purposes of customs control.

(3) A postal item shall not be subject to customs formalities when it is being conveyed in international transit.

**248.** (1) For the purposes of clearance and collection of duties and taxes on goods imported to or exported from Botswana by post, when all the information required by Revenue Service is available from the CN22 or CN23 and any supporting documents, the CN22 or CN23 shall be deemed to be the customs declaration.

Declaration of postal items

(2) Notwithstanding subsection (1), a customs declaration shall be required for —

- (a) imported goods having such value as may be prescribed;
- (b) goods subject to prohibitions or restrictions;
- (c) goods the export of which shall be certified; and
- (d) imported goods intended to be placed under a customs procedure other than clearance for home use.

**249.** A customs officer shall have access to all fixed or mobile post offices, including the sorting rooms for international mail, to inspect postal items with origin inside or outside Botswana, whether such items are open or closed.

Access to postal facilities

**250.** Where an imported postal item containing goods subject to duties and taxes or other customs controls is not delivered or is refused by the addressee of the item, the Postal Service shall notify Revenue Service.

Undelivered postal items

#### *D – Stores*

**251.** Goods that are not in free circulation in Botswana shall not be subject to duties and taxes —

Status of goods under stores procedure

- (a) when cleared for the stores procedure;
- (b) when automatically placed under the stores procedure upon entering Botswana; or
- (c) while remaining under the stores procedure.

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Stores on board arriving aircraft and train

**252.** A store on board an aircraft or train which enters Botswana shall be deemed to be under the stores procedure without any formal clearance for the stores procedure when the aircraft or train enters Botswana, provided the stores remain on board.

Stores placed on board departing aircraft and train

**253.** A store placed on board an aircraft or train that is departing Botswana shall be placed under the stores procedure by the lodgement of a customs declaration for that procedure.

Supply of stores exempted from duties and taxes

**254.** A supply store in an aircraft and cross-border train that departs for a final destination located abroad shall be exempt from duties and taxes if it has —

- (a) the quantities considered reasonable by Revenue Service taking into account —
  - (i) the number of passengers and crewmembers,
  - (ii) the duration of the journey, and
  - (iii) the quantities already on board; and
- (b) for its operation and maintenance, the quantities considered reasonable for the operation and maintenance during the journey, taking into account the quantities already on board.

Prohibited or restricted goods as stores on board aircraft or train

**255.** Prohibited goods shall not be taken on board an aircraft or a cross border train.

Disposal of stores

**256.** A store on board an aircraft or cross-border train that arrives in Botswana may —

- (a) be released for home use or placed under another customs procedure, if the applicable conditions and formalities in each case are met; or
- (b) be transhipped respectively to another aircraft or train for international traffic, subject to the prior approval of the customs office.

Stores arrival and departure reports

**257.** (1) Stores that are under the stores procedure on board an aircraft or a cross-border train may —

- (a) when the aircraft arrives at or departs from a customs airport, including stores in the personal possession of a crewmember, be reported by the person in charge of the aircraft to Revenue Service; or
- (b) when the train arrives at or departs from a designated railway station, including stores in the personal possession of a crewmember, be reported by the person in charge of the cross-border train to Revenue Service.

(2) A stores arrival or departure report under subsection (1) shall be submitted to Revenue Service by the person in charge of the aircraft or cross-border train for —

- (a) an aircraft, when the aircraft arrives at or departs from a customs airport; or

- (b) a cross-border train, when the train, after entering Botswana, arrives at a designated railway station or when the train departs Botswana from a designated railway station.

*E – Relief consignments*

**258.** (1) The Revenue Service shall grant clearance of a relief consignment without regard to the country of origin or country of destination, provided the relief consignment is authorised by —

Relief  
consignment  
for Revenue  
Service

- (a) lodging of a customs declaration or of a provisional or incomplete customs declaration subject to completion of the declaration within a specified period;
- (b) lodging, registering and checking of a customs declaration and supporting documents prior to the arrival of the goods, and their release upon arrival;
- (c) clearance outside the designated hours of business or away from customs offices and the waiver of any charges in this respect; or
- (d) examination or sampling of goods only in exceptional circumstances.

(2) A relief consignment received as a gift by an approved organisation for use by or under the control of such organisation, or for distribution free of charge by them or under their control, shall be admitted free of duties and taxes

*PART IX — Relief from duties and taxes*

**259.** The Revenue Service may grant relief from duties and taxes on the following goods, subject to such conditions as may be imposed —

Relief from  
duties and taxes

- (a) samples of no commercial value that are regarded by Revenue Service to be of negligible value and that are used only to solicit orders for goods of the kind they represent;
- (b) coffins containing human remains and funerary urns containing ashes of cremated remains;
- (c) products imported for testing, provided that the quantities imported do not exceed those strictly necessary for testing, and that the products are used up during testing or that remaining products are re-exported or rendered commercially valueless under customs control;
- (d) banknotes and coins of legal tender as well as the paper securities imported; and
- (e) any other goods as may be specified in the Customs Tariff Schedules and other relevant legislation.

**260.** The Revenue Service may grant relief from duties and taxes for goods even where the goods are already placed under another customs procedure, if the conditions to benefit from the relief from duties and taxes under this Act are fulfilled.

Goods under  
another customs  
procedure

PART X — *State warehouse*Licensing of  
State warehouse

- 261.** The Commissioner General may —
- (a) designate a facility as a State warehouse to be operated by Revenue Service in accordance with this Act; or
  - (b) licence a premise to be operated as a State warehouse by a person licensed in accordance with this Act.

Goods in State  
warehouse

**262.** (1) The Revenue Service may at any time instruct an operator of a customs controlled area or any other person in physical control of goods to remove the goods to a State warehouse if —

- (a) at the expiry of the temporary storage period, a customs declaration has not been lodged for the goods;
- (b) the goods have not been removed from customs supervision within five days after their clearance;
- (c) the goods are subject to a lien in terms of this Act or any other relevant legislation;
- (d) the goods are detained, seized or forfeited by Revenue Service;
- (e) the goods were abandoned to the State; or
- (f) for any other reason, the goods are required to be removed to a State warehouse in accordance with this Act or any other relevant legislation.

(2) A person who is in physical control of goods imported into or exported from Botswana shall remove the goods to a State warehouse if —

- (a) the goods were not the subject of a declaration within the prescribed time limit;
- (b) the goods were exempt from duties and taxes and were not claimed within the prescribed time limit after the goods have been unloaded; or
- (c) the goods are delivered to a cargo depot or container terminal without any export declaration having been submitted to clear the goods for export.

(3) The Revenue Service may, for the purposes of subsections (1) and (2), determine the State warehouse to which the goods shall be removed to.

(4) The Revenue Service shall submit a copy of an instruction issued in terms of subsection (1) to a customs officer or operator of the State warehouse to which the goods are to be removed.

(5) When goods are delivered to a State warehouse in compliance with subsection (1) or (2), a carrier that transported the goods to the State warehouse or an operator of such State warehouse shall notify Revenue Service of the delivery and the receipt of the goods.

Removal of  
goods to other  
premises

**263.** (1) Notwithstanding section 262, if a condition for the removal of goods to a State warehouse exists, Revenue Service may instruct or authorise an operator or other person in physical control of the goods, instead of removing the goods to a State warehouse —

- (a) to retain the goods for a specific period on the premises where they are currently located; or
  - (b) to remove the goods to any premises as may be determined by Revenue Service.
- (2) If the premises under subsection (1) are not licenced, Revenue Service may require the operator of the premises to provide a guarantee to Revenue Service sufficient to cover any applicable duties and taxes.
- (3) The provisions of this Act relating to State warehouses shall apply to any premises where goods are retained or to which goods are removed in terms of subsection (1) as if the premises were a licenced State warehouse, unless otherwise determined.
- (4) Goods retained at or removed to any premises in terms of subsection (1) shall be recorded in the State warehouse accounting records of the customs office.
- (5) The Revenue Service shall give notice to an operator of the premises where the goods are retained or to which the goods were removed that —
- (a) the provisions of this Act relating to State warehouses shall apply to those premises for as long as the goods remain on the premises; and
  - (b) the goods are to be kept secured on those premises as if the goods were in a State warehouse.
- (6) When goods are delivered to premises determined by Revenue Service in accordance with subsection (1)(b), a carrier that transported the goods or an operator or other person who receives the goods, shall notify Revenue Service of the delivery and of the receipt of the goods.
- 264.** The Revenue Service may, where a person fails to remove goods in terms of section 263, remove the goods to any premise as may be determined at the expense of the person. Failure to remove goods
- 265.** A person shall not, without permission of Revenue Service — Redirection of goods
- (a) redirect goods, to which an instruction or authorisation to remove goods to a State warehouse or licenced premise applies, to a place other than such State warehouse or licenced premises; or
  - (b) remove goods from the premises where goods are retained or to which they were removed.
- 266.** (1) A customs officer or an operator of a State warehouse shall — Accounting
- (a) keep record of all goods received in and removed from the State warehouse;
  - (b) perform monthly stock checks; and
  - (c) perform such other accounting tasks as may be determined by the Commissioner General or stipulated in the licence.
- (2) A record in terms of subsection (1) (a) shall be kept in such a manner and format and shall contain such information as may be prescribed.

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### Reporting

**267.** (1) An operator of a State warehouse or any other person in physical control of goods under State warehouse status shall, within three working days after the end of each month or within any extension of that period granted by Revenue Service, submit to Revenue Service a report for that month in connection with all goods in that warehouse or under State warehouse status.

(2) A report in terms of subsection (1) shall contain such information as may be prescribed for the goods in the State warehouse or other premises determined by Revenue Service during the reporting period.

### Risks in connection with goods

**268.** (1) Goods in a State warehouse or other premises under State warehouse status shall remain there at the risk of -

- (a) the importer, the exporter or the owner of the goods; or
- (b) the agent in Botswana of the importer, exporter or owner, if the importer, exporter or owner is not located in Botswana, unless it can be demonstrated that any deterioration, alteration, loss or disappearance of the goods is attributable to Revenue Service or to the person in physical control of such goods.

(2) Any expenses incurred by an operator of a State warehouse or other person in physical control of goods resulting from the placement and duration spent in storage in a State warehouse or other premises under the State warehouse status shall be borne by the importer, exporter or owner of the goods.

### Time limit for storage

**269.** (1) Goods placed under a State warehouse status shall be kept for a period of two months.

(2) Notwithstanding subsection (1), the Commissioner General may extend the time limit by up to one month if the extension is justified by particular circumstances, or for such other period as may be required in exceptional cases.

(3) At the expiry of the time limit referred to under subsections (1) and (2), the goods shall be disposed of by Revenue Service.

## PART XI — *Disposal of Goods by Revenue Service*

### Disposal of goods by Revenue Service

**270.** (1) The Commissioner General shall dispose of goods —

- (a) that have not been removed from customs supervision within five days after the date of a release notification from Revenue Service;
- (b) placed under State warehouse status and are not removed within two months from their entry under that status;
- (c) that are prohibited;
- (d) that have been forfeited by Revenue Service;
- (e) that are abandoned to the State;
- (f) that are perishable or hazardous;
- (g) that would result in diminishing proceeds that would not be sufficient to cover any claims that may be applicable to the goods if there is a delay in the sale of the goods;

- (h) that are liable to storage fees the amount of which will exceed their value; or
- (i) where the storage of the goods presents difficulties due to their nature or their volume.
- (2) The Revenue Service may take measures to dispose of goods under this section by public auction or by any other measures as it may determine.
- 271.** The Commissioner General shall publish, by Notice in the Gazette, a list of goods to be disposed of under this Act and information regarding the manner of disposal of the goods. Publication of lists of goods
- 272.** The Revenue Service may urgently dispose goods that — Urgent Disposal
- (a) are of a perishable or hazardous nature; or
- (b) would result in diminishing proceeds that would not be sufficient to cover any claims that may be applicable to the goods if there is a delay in the sale of the goods.
- 273.** (1) The Revenue Service shall use the proceeds of the sale of goods for — Proceeds of sale
- (a) any duties and taxes, interest or administrative penalty payable on the goods;
- (b) any expenses incurred by the Commissioner General in connection with the goods and any amounts payable for the storage and additional charges in connection with the goods while in a State warehouse;
- (c) any charges payable to an airport or railway authority in connection with the goods;
- (d) any charges payable in connection with the goods to a carrier or operator of a customs controlled area; or
- (e) any expenses payable to a person who was instructed or authorised by Revenue Service to remove the goods to a State warehouse or licensed premises.
- (2) The computation of duties and taxes for the purposes of sale under this section shall be at the rate applicable on the date that the goods are sold.
- 274.** (1) The Commissioner General may, subject to subsection (3), instead dispose of the goods in the following manner — Disposal of goods other than by sale
- (a) donating the goods for welfare purposes;
- (b) appropriating the goods to a Government agency for use by that agency;
- (c) making the goods available as humanitarian aid to communities in other countries; and
- (d) destroying the goods.
- (2) The Commissioner General shall not destroy or otherwise dispose prohibited goods in a manner that would allow the goods into free circulation.
- (3) Subsection (1) shall apply to —
- (a) unsold goods, if efforts to sell the goods have been fruitless;

- (b) goods that cannot economically be sold having regard to the nature or condition of the goods; or
- (c) goods that pose a risk to public safety, health or morals.
- (4) Dutiable imported goods that have been forfeited may be disposed of in terms of subsection (1) only in a way that would not undermine the local production of goods of that kind.
- (5) Imported goods disposed of in terms of this section shall be excluded from the requirements for clearance for home use in accordance with this Act and the goods may be allowed into free circulation without such clearance formalities.

PART XII — *Authorised economic operator*

Types of authorisations

**275.** The status of an authorised economic operator shall consist in the following types of authorisations —

- (a) that of a preferred trader, which shall enable an economic operator to benefit from certain customs simplifications in accordance with this Act or other relevant legislation; or
- (b) that of an authorised economic operator who, in addition to qualifying as a preferred trader, is entitled to facilitations relating to safety and security in accordance with this Act or other relevant legislation.

Application to be authorised economic operator

**276.** A person who is resident in Botswana or whose business is registered in Botswana and who meets the conditions set out in this Act may apply to the Commissioner General for the status of authorised economic operator in such form as may be prescribed.

Responsibility of authorised economic operator

**277.** A person granted simplifications under the authorised economic operator status shall not be absolved from meeting the full requirements of this Act within a period as may be prescribed by Revenue Service.

Reciprocity outside Common Customs Area

**278.** The Revenue Service shall grant benefits resulting from the status of authorised economic operator to a person established in country outside the Common Customs Area, who fulfill conditions and comply with obligations defined by the relevant legislation of the country insofar as the conditions and obligations are recognised by Botswana as equivalent to those imposed on an authorised economic operator established in Botswana.

Suspension or revocation of authorised economic operator status

**279.** (1) The Revenue Service may suspend or revoke an authorised economic operator status if the authorised economic operator —

- (a) no longer meets the authorised economic operator criteria;
- (b) has failed to comply with any of the authorised economic operator requirements;
- (c) has contravened or failed to comply with a provision of this Act or any other relevant legislation;
- (d) has been convicted of an offence under this Act or any other legislation; or
- (e) has requested for his or her suspension.

(2) Subsection (1)(b) shall not apply if the authorised economic operator proves to the satisfaction of Revenue Service that he or she was not a party to, or could not have prevented, or did not benefit in any material respect from any such breach or offence by a director or an employee.

### PART XIII — *Third parties*

#### *A – Agents*

**280.** The Commissioner General may issue a license to an agent in such form and upon payment of such fee as may be prescribed.

Issuance of license

**281.** The Commissioner General may refuse to register or licence an applicant if the applicant has —

Grounds for refusal to register or licence

- (a) made a false or misleading statement with respect to any material fact;
- (b) omitted to state any material fact which was required to be stated in the application for a registration or licence;
- (c) tax affairs that are not in compliance with the revenue Laws of Botswana;
- (d) contravened or failed to comply with this Act;
- (e) been convicted of an offence under this Act; or
- (f) failed to comply with any condition or obligation imposed by the Commissioner General in respect of the registration or licence.

**282.** (1) A person responsible to perform an act or any formality under this Act, may appoint an agent to perform the act or formality on his or her behalf.

Appointment of agent

(2) An act or formality performed by an agent under subsection (1) shall in all respects and for all purposes be deemed to be the act of the principal.

(3) Notwithstanding subsections (1) and (2), a customs officer may demand the personal attendance of the principal where he or she deems it necessary.

**283.** An importer, exporter, carrier or operator of a customs controlled area or other principal shall, for the purposes of this Act, be responsible for any act done by an agent acting on his or her behalf, whether within or outside Botswana.

Liability of principal for acts of agent

**284.** (1) An agent or a person who represents himself or herself to a customs officer to perform an act or formality under this Act, shall be liable for —

Liability of principal for obligations imposed on agent

- (a) the fulfilment of all obligations, including payment of duty and taxes, imposed on the principal by the agent's act; and
- (b) any penalties or other amounts that may be incurred under this Act with respect to that matter.

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(2) Subsection (1) shall apply to an agent, including a representative or associate of the principal, representing or acting for or on behalf of any exporter, manufacturer, supplier, shipper or other principal outside Botswana who exports goods to Botswana, and the liability shall apply in respect of goods ordered through him or her, or obtained by an importer by means of his or her services.

(3) An agent or person referred to in subsections (1) and (2) shall cease to be liable if he or she proves to the satisfaction of the Commissioner General that —

(a) he or she was not a party to the non-fulfilment of the obligation by the principal;

(b) when he or she became aware of such non-fulfilment, he or she notified the Commissioner General of the non-fulfilment; or

(c) he or she took reasonable steps to prevent such non-fulfilment.

(4) Notwithstanding subsection (3), a principal shall remain liable for the fulfilment of an obligation imposed on him or her by this Act and to any penalty or amounts that may be incurred.

(5) An agent shall, before transacting business with Revenue Service, furnish a guarantee of such an amount determined by the Commissioner General for any liability incurred under this Act.

(6) The Commissioner General may accept the guarantee required from an agent referred to in subsection (2) from an association of such agents approved by him or her that undertakes to provide a guarantee on behalf of its members.

Agent to  
produce proof  
of authority

**285.** (1) A person who makes an application to Revenue Service to transact business on behalf of another person and represents himself or herself to Revenue Service as the agent of another person shall possess a power of attorney to do so and, if so required by Revenue Service, produce proof of the power of attorney in a manner acceptable to the Commissioner General.

(2) If an agent fails to produce the proof required under subsection (1), Revenue Service may refuse him or her to transact business under this Act.

*B – Registration and licensing*

Application to  
be registered or  
licensed

**286.** A person who is established in Botswana and who wishes to be registered or licensed as an agent shall make an application to the Commissioner General in such form as may be prescribed.

Provision of  
guarantee

**287.** (1) The Commissioner General may require the holder of a licence to provide a guarantee to cover risk to duties and taxes in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the holder of the licence or by a person for whom the registered person or holder of the licence acts as a representative in Botswana.

(2) The Commissioner General may at any time require that the form, nature or amount of the guarantee under subsection (1) shall be altered or renewed in such manner as be determined.

- 288.** A certificate or licence issued to an agent shall not be transferable. Transfer of certificate or licence
- 289.** (1) The Commissioner General shall suspend or revoke the registration or licence of a person as an agent if the person — Suspension or revocation of licence
- (a) had acquired the registration or licence under false pretences;
  - (b) has caused to be made to the Commissioner General, information, account, document or record filed which was false or misleading with respect to any material fact;
  - (c) has omitted to state a material fact which was required to be stated;
  - (d) is no longer entitled to registration or licensing in terms of this Act;
  - (e) is sequestered or liquidated;
  - (f) has in a material respect breached a condition applicable to the registration or licence;
  - (g) has failed to pay to the Commissioner General on or before the due date duties and taxes or other amount due on any goods for which that person is liable;
  - (h) has contravened or failed to comply with this Act;
  - (i) has been convicted of an offence under this Act; or
  - (j) has, within a period of 10 years immediately preceding the date of his or her appointment, been convicted —
    - (i) of a criminal offence within Botswana, or
    - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,
 and sentenced by a court of competent jurisdiction to imprisonment for a term of six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.
- (2) Subsection (1)(b) shall not apply if the registered person or licensee proves to the satisfaction of Commissioner General that he or she was not a party to, or could not have prevented, or did not benefit in any material respect from such breach or offence by a director or an employee.
- 290.** An agent's liabilities and obligations shall not be affected by — Liability of agent
- (a) him or her ceasing to act as an agent; or
  - (b) the revocation or suspension of his or her licence.
- C – Customs clearing agent*
- 291.** A person who wishes to carry on business as a customs clearing agent shall make an application to the Commissioner General in such form as may be prescribed. Customs clearing agent
- 292.** (1) A customs clearing agent shall be liable in respect of any customs declaration and supporting documents he or she lodges. Obligation of customs clearing agent
- (2) A customs clearing agent shall disclose the name and the type of business of the principal on the customs declaration.

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(3) If a customs clearing agent does not disclose the name of the principal or lodges a customs declaration where the name of another customs clearing agent or his or her own name is stated as the importer, exporter, bonded carrier or other type of principal, the customs clearing agent shall be liable for the fulfilment of the obligations imposed on the principal in terms of this Act.

(4) A guarantee provided by a customs clearing agent shall not be utilised or accepted as a guarantee for the fulfilment of any obligations in terms of this Act of another customs clearing agent.

Issuance of licence to company or partnership

**293.** The Commissioner General may grant a customs clearing agent license to a company or partnership that is organised or existing if at least one officer of the company or one member of the partnership holds a valid customs clearing agent licence.

Revocation

**294.** The Commissioner General may revoke a license issued to a customs clearing agent.

*D – Specified customs controlled areas*

Application for licence of specified customs controlled area

**295.** (1) A person wishing to operate a specified customs controlled area shall make an application to the Commissioner General in such form as may be prescribed.

(2) The Commissioner General may license a person to operate a customs controlled area in respect of the whole or a specified part of the business carried on in the area, premises or facility.

(3) Notwithstanding subsection (1), the Commissioner General may, in the public interest or if he or she deems it impracticable or unnecessary that the area, premise or facility should be licensed, take a decision not to issue a license for a customs controlled area.

Issuance of license

**296.** (1) The Commissioner General shall issue one license in respect of any specified customs controlled area.

(2) Notwithstanding subsection (1), the Commissioner General may, on such conditions as he or she may deem necessary, issue a licence to —

(a) an operator of a public customs warehouse in which dutiable goods are stored; and

(b) a person for distribution of goods to his or her own account from the customs warehouse.

Obligation of licensee

**297.** A licensee of a specified customs controlled area shall —

(a) be liable for the fulfilment of all obligations under this Act in respect of goods in the customs controlled area;

(b) be liable for any liability incurred under this Act in respect of goods taken from a customs warehouse; and

(c) store goods that are under customs control in the manner and in the location as Revenue Service may direct.

Keeping of records

**298.** (1) A licensee of a specified customs controlled area shall keep records in accordance with this Act.

(2) The records kept under subsection (1) shall be submitted to the Revenue Service to enable the Revenue Service to supervise the specified customs controlled area, in particular with regard to the identification of goods placed therein, their customs status and their movements.

**299.** (1) A person licensed to operate a customs controlled area may apply to the Commissioner General for the relocation of the premises to another customs controlled area.

Relocation of premises

(2) The Commissioner General shall inform the person of the outcome of the application under subsection (1) in writing within 30 days of the application.

**300.** An operator of a customs controlled area may surrender his or her licence by giving 30 days' notice in writing to the Commissioner General.

Surrender of licence

**301.** Where a customs controlled area licence is revoked or surrendered, any duties and taxes or other amounts due on all goods within the customs controlled area shall become payable by the person operating the customs controlled area, unless Revenue Service allows the goods to be removed to another customs controlled area or placed under a customs procedure.

Effect of revocation or suspension of licence

#### *E – Bonded Carriers*

**302.** (1) A person who wishes to transport goods from outside a Common Customs Area that are not in free circulation from one point to another point shall make an application to the Commissioner General for a bonded carrier licence in such form as may be prescribed.

Application for bonded carrier licence

(2) Notwithstanding subsection (1), the Minister may prescribe the circumstances for transportation of goods other than by a bonded carrier where no bonded carrier is reasonably available.

**303.** (1) The Commissioner General may issue a bonded carrier licence to —

Issuance of licence

(a) a carrier of goods owning or operating a vehicle, airline, railroad or other means of transport for commercial use for the carriage of goods; or

(b) a contract carrier or a freight forwarder authorised to operate as such by any Government agency in Botswana.

(2) A private carrier may, upon application to Revenue Service, be licensed as a bonded carrier subject to such terms and conditions as Revenue Service may prescribe.

### PART XIV — *Duties, taxes and other measures*

#### *A – Customs Tariff*

**304.** (1) Goods entering Botswana shall be liable to the customs duties provided for in the Customs Tariff Schedules —

Goods entering Botswana

(a) in the condition in which they are found; and

(b) at the time the liability for such customs duties are incurred.

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- (2) The Minister may prescribe measures for the application of tariff classification, where appropriate.
- Amendment of Customs tariff Schedules **305.** The Minister shall by Notice published in *Gazette* amend the Customs Tariff Schedules for giving effect to —
- (a) international obligations on tariffs and trade binding on Botswana in relation to imported goods; or
  - (b) an international agreement to which Botswana is a party, or an amendment to such agreement.
- Application of tariff rate **306.** (1) An applicable tariff for duties and taxes shall be the one in force on the date of the registration of a customs declaration.
- (2) In the case of goods in a single consignment where parts of the goods have been damaged as a result of events occurring before registration of a customs declaration, Revenue Service may allow the separation of the damaged goods for the purposes of application of the tariff rate.
- Provisional anti-dumping or countervailing duty **307.** (1) A provisional anti-dumping or countervailing duty imposed on goods shall be paid and recovered as if the duty has been imposed on the goods in the Customs Tariff Schedules as from the date of imposition of the provisional duty.
- (2) A provisional anti-dumping or countervailing duty on goods shall lapse at the end of the period for which it is imposed, unless the duty is definitively imposed on such goods in the Customs Tariff Schedules before the end of that period.
- (3) If a provisional anti-dumping or countervailing duty is definitively imposed in the Customs Tariff Schedules and the rate of the provisional duty on the goods exceeds the rate of the duty definitively imposed, any excess amount paid to the Commissioner General shall be refunded to the person who made the excess payment and the shortfall may not be recovered as an underpayment of duty.
- (4) If a provisional anti-dumping or countervailing duty is not definitively imposed in the Customs Tariff Schedules on the goods concerned before the end of the period for which the provisional duty was imposed, the amount of all payments made to the Commissioner General in respect of the provisional duty shall be refunded to the person who made the payments.
- (5) A refund or remission of duties and taxes shall not apply to refunds in terms of subsection (3) and (4), and the Commissioner General shall make the refund to the person entitled to such refund.
- B – Origin of goods*
- Origins of goods **308.** (1) The Revenue Service shall determine the origin of goods in accordance with —
- (a) the Rules of Origin set out in international conventions and agreements to which Botswana is a party; and
  - (b) the provisions of this Act.

- (2) The Rules of Origin shall provide for —
- (a) the determination of the origin of all goods imported into or exported from Botswana; and
- (b) the establishment or recognition, as appropriate, and the application of —
- (i) Non-Preferential Rules of Origin of all goods imported into or exported from Botswana, except those goods that benefit from Preferential Rules of Origin, and
- (ii) Preferential Rules of Origin for determining —
- (aa) the origin of goods imported into or exported from Botswana when such determination is necessary for purposes of preferential treatment as the result of an applicable bilateral or multilateral trade agreement and for determining in relation to a country or territory implementing a non- reciprocal Generalized System of Preferences, and
- (bb) the Origin of goods exported from Botswana to that country or territory when such determination is necessary for purposes of preferential tariff treatment claims under that system of preferences.

*C – Non-Preferential Origin of Goods*

**309.** (1) Non-Preferential Rules of Origin shall consist of —

- (a) the Rules contained in this paragraph; and
- (b) any Rules of Origin made under the WTO Agreement on Non- Preferential Rules of Origin.

Non-preferential  
Rules of origin

(2) In the event of an inconsistency between the Rules referred to in paragraphs (a) and (b), the Rules of Origin referred to in paragraph (b) shall prevail.

**310.** (1) The Revenue Service shall consider goods to originate in a country or territory if the goods have been wholly obtained or produced in that country or territory.

Goods wholly  
obtained or  
produced  
in country

(2) The term “goods wholly obtained or produced” in a country or territory include —

- (a) mineral products extracted from the soil of the country or territory, from its territorial waters or from its sea-bed;
- (b) fruit or vegetable products harvested or gathered in that country or territory;
- (c) live animals born and raised in that country or territory;
- (d) products obtained from live animals in that country or territory;
- (e) products obtained from hunting or fishing in that country or territory;
- (f) products obtained by maritime fishing and other products taken from the sea by a vessel of that country or territory;
- (g) products obtained aboard a factory ship of that country or territory solely from products of the kind covered by paragraph (f);

- (h) products taken from the seabed or subsoil beneath the seabed outside the territorial sea provided that country or territory has exclusive rights to exploit that seabed or subsoil;
- (i) waste and scrap from manufacturing and processing operations, and used articles, collected in that country or territory and fit only for the recovery of raw materials; and
- (j) goods produced in that country or territory solely from the products referred to in paragraphs (a) to (i).
- 311.** Goods whose production was undertaken in more than one country or territory shall be deemed by Revenue Service to originate in the country where they underwent their last substantial processing or working, resulting in the manufacture of a new product or representing an important stage of manufacture.
- 312.** Accessories, spare parts and tools for use with a machine, appliance, apparatus or vehicle shall be deemed by Revenue Service to have the same origin as the machine, appliance, apparatus or vehicle, if —
- (a) they are imported and normally sold with the machine, appliance, apparatus or vehicle; and
- (b) they correspond, in kind and in quantity, to the normal equipment of machines, appliances, apparatuses or vehicles of that kind.
- 313.** An unassembled or disassembled article which is imported in more than one consignment because it is not feasible, for transport or production reasons, to import it in a single consignment shall, if the importer so requests, be treated by Revenue Service as one article for the purpose of determining origin.
- 314.** (1) The packaging in which goods are contained shall be deemed by Revenue Service to have the same origin as the goods they contain.
- (2) Subsection (1) shall not apply to packaging required to be declared separately for tariff purposes, where duties and taxes are payable separately from goods contained in the packaging.
- 315.** When determining the origin of goods, Revenue Service shall not take into account the origin of any energy, plant, machinery or tools used in the manufacturing or processing of the goods.
- D – Proof of origin*
- 316.** (1) The Revenue Service may require proof of origin of goods for —
- (a) preferential tariff treatment;
- (b) economic or trade measures adopted nationally or under bilateral or multilateral agreements;
- (c) considering or making an origin determination or re-determination regarding such goods;
- (d) measures in relation to public health or public order;
- (e) combating fraud or the evasion of duties and taxes; or
- (f) statistical purposes.

Substantial transformation

Accessories, spare parts, etc.

Unassembled or disassembled articles contained in more than one consignment

Packaging

Energy, plant, machinery, etc.

Proof of origin

(2) The Revenue Service may, for the purposes of application of subsection (1), request to be furnished, within a specified period, the proof of origin in respect of goods imported into or exported from Botswana —

- (a) by a declarant;
- (b) by an importer or exporter of the goods;
- (c) in the case of goods produced in Botswana, by the producer or any other person involved with the production of the goods directly or indirectly; or
- (d) by a person who may be authorised to issue proof of origin in respect of the goods.

**317.** (1) A certificate of origin for goods originating in Botswana may be issued by Revenue Service or any other competent authority.

Proof of origin  
for goods of  
Botswana origin

(2) A declaration of origin for goods of Botswana origin may be issued by the producer, supplier or exporter of the goods in such form as may be prescribed.

(3) The Revenue Service may certify a declaration of origin furnished by the producer, supplier or exporter of goods produced in Botswana —

- (a) when requested to do so by the producer, supplier or exporter; and
- (b) when the facts of the declaration are established to the satisfaction of Revenue Service.

**318.** (1) A certificate of origin or a certified declaration of origin of goods imported into Botswana may be accepted by Revenue Service —

Proof of origin  
for imported  
goods

- (a) in the case of goods exported from a country or territory that qualifies for preferential tariff treatment in Botswana under a bilateral or multilateral trade agreement; or
- (b) in the case of goods exported from a country or territory that does not qualify for preferential tariff treatment in Botswana, by a competent authority empowered in terms of legislation of that country or territory to issue such certificate or to make such certificates.

(2) A declaration of origin may be issued by the producer, supplier or exporter of the goods in the country or territory of origin in such manner as may be prescribed.

(3) Notwithstanding the production of proof of origin, Revenue Service may, if it deems necessary, require —

- (a) a declaration of origin referred to in subsection (2) to be certified by a competent authority in the country or territory of origin; or
- (b) additional evidence for verification of the origin of the goods.

**319.** (1) A certificate of origin or a declaration of origin shall be written in an official language of Botswana.

Language

(2) If the proof of origin referred to in subsection (1) for goods imported into Botswana is not in an official language of Botswana, Revenue Service may require a translation of any unclear particulars on the document.

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Requests for assistance regarding proof of origin	<p><i>E – Control of proof of origin</i></p> <p><b>320.</b> (1) The Revenue Service may request for assistance from another customs administration in the country or territory where the proof of origin was issued in order to check the authenticity of a document or the correctness of information —</p> <ul style="list-style-type: none"><li>(a) where there are reasonable grounds to doubt the authenticity of a document;</li><li>(b) where there are reasonable grounds to doubt the accuracy of the particulars of information provided; or</li><li>(c) whenever it deems necessary to do so.</li></ul> <p>(2) A Revenue Service request referred to in subsection (1) (c) shall be identified as such and be kept to the minimum necessary to ensure adequate controls.</p>
Assistance received from another customs administration	<p><b>321.</b> (1) When Revenue service receives a request for assistance from another customs administration regarding verification of proof of origin issued in Botswana, it shall reply to the request after having carried out the necessary controls or investigations, and shall furnish any other information it may consider relevant.</p> <p>(2) The Revenue Service shall reply to requests for assistance regarding verification of proof of origin within six months, unless a different period is set out by a bilateral or multilateral agreement.</p>
Release of goods pending verification of proof of origin	<p><b>322.</b> The Revenue Service shall not withhold release of goods solely on the grounds that it has made a request for assistance regarding the proof of origin for those goods, where —</p> <ul style="list-style-type: none"><li>(a) deemed necessary, a guarantee is furnished to secure any duties and taxes or other charges which may be payable;</li><li>(b) the goods are not subject to any prohibitions or restrictions; or</li><li>(c) there is no suspicion of fraud.</li></ul>
Application of preferential tariff	<p><i>F – Preferential tariff treatment</i></p> <p><b>323.</b> The Commissioner General shall determine, in such manner as may be prescribed the methods for the application to enforce bilateral or multilateral trade agreements entered into for the preferential tariff treatment of goods —</p> <ul style="list-style-type: none"><li>(a) originating from a country or territory which is a party to the agreement and imported into Botswana; or</li><li>(b) originating in Botswana and exported to another country or territory.</li></ul>
Application of non-reciprocal Generalised System of Preferences Conditions for benefiting from non-reciprocal Generalised System of Preferences	<p><b>324.</b> The Commissioner General shall determine the methods of application of a non-reciprocal Generalised System of Preferences of a country or territory for goods of Botswana origin.</p> <p><b>325.</b> The following shall comply with measures of a Country or territory implementing a non-reciprocal Generalised System of Preferences for goods originating in Botswana —</p> <ul style="list-style-type: none"><li>(a) a person exporting goods of Botswana origin;</li><li>(b) a producer or supplier of goods of Botswana origin; or</li></ul>

- (c) any other person who wants to benefit from the system or has a material interest in the export of the goods of Botswana origin.

*G – Value of goods*

**326.** (1) The customs value of imported goods shall be the transaction value that is, the price actually paid or payable for the goods when sold for export to the country or territory of importation adjusted in accordance with the provisions of section 333:

Transaction  
value

Provided that —

- (a) there are no restrictions as to the disposal or use of the goods by the buyer, other than restrictions which —
- (i) are imposed or required by law or by the public authorities in Botswana,
  - (ii) limit the geographical area in which the goods maybe resold, or
  - (iii) do not substantially affect the value of the goods;
- (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of section 333; and
- (d) the buyer and seller are not related, or where they are, that the transaction value is acceptable for customs purposes.
- (2) For the purposes of subsection (1)(d), two persons shall be deemed to be related if —
- (a) they are officers or directors of one another's businesses;
  - (b) they are legally recognised partners in a business;
  - (c) one of them is employed by the other;
  - (d) any person directly or indirectly owns, controls or holds five percent or more of the equity share capital of both of them;
  - (e) one of them directly or indirectly controls the other;
  - (f) both of them are directly or indirectly controlled by a third person;
  - (g) both of them directly or indirectly control a third person; or
  - (h) they are members of the same family.
- (3) A person who is associated in business with another person as the sole agent, sole distributor or sole concessionary shall be deemed to be related to such person in terms of subsection (2).
- (4) In determining whether the transaction value is acceptable for the purposes of subsection (1), the fact that the buyer and the seller are related shall not in itself be grounds for regarding the transaction value as unacceptable:

Provided that —

- (a) the circumstances surrounding the sale are examined and the transaction value is accepted;
- (b) the relationship did not influence the price;
- (c) if in light of information provided by the importer or otherwise, Revenue Service has grounds for considering that the relationship influenced the price, Revenue Service shall communicate its grounds to the importer and the importer shall be given a reasonable opportunity to respond; and
- (d) the importer so requests, the communication of the grounds shall be in writing.

(5) In a sale between related persons, the transaction value shall be accepted and the goods valued, in accordance with the provisions of subsection (1), whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time —

- (a) the transaction value in sales to unrelated buyers of identical or similar goods for export to Botswana;
- (b) the customs value of identical goods as determined under the provisions of section 327; or
- (c) the customs value of similar goods as determined under the provisions of section 328.

(6) For the purposes of this Part, Revenue Service shall not regard goods as “identical goods” or “similar goods” unless they are produced in the same country as the goods being valued.

Transaction  
value of  
identical goods

**327.** (1) If the customs value of imported goods cannot be determined under the provisions of section 326, the customs value shall be the transaction value of identical goods sold for export to Botswana and exported at or about the same time as the goods being valued.

(2) The transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used by Revenue Service to determine the customs value of the goods.

(3) Where no sale is found, the transaction value of identical goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used by Revenue Service, unless the adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value of the goods.

(4) Where the costs and charges referred to in section 333 (2) are included in the transaction value, an adjustment shall be made by Revenue Service to take account of significant differences in the costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

(5) If, in applying the provisions of this section, more than one transaction value of identical goods is found, Revenue Service shall use the lowest value to determine the customs value of imported goods.

**328.** (1) If the customs value of imported goods cannot be determined under the provisions of sections 326 and 327, the customs value shall be the transaction value of similar goods sold for export to Botswana and exported at or about the same time as the goods being valued.

Transaction  
value of  
similar goods

(2) The transaction value of similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used by Revenue Service to determine the customs value of the goods.

(3) Where no sale is found, the transaction value of similar goods sold at a different commercial level or in different quantities, adjusted to take account of differences attributable to commercial level or to quantity, shall be used by Revenue Service, unless the adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

(4) Where the costs and charges referred to in section 333(2) are included in the transaction value, an adjustment shall be made by Revenue Service to take account of significant differences in the costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

(5) If, in applying the provisions of this section, more than one transaction value of similar goods is found, Revenue Service shall use the lowest value to determine the customs value of the imported goods.

**329.** (1) If the customs value of imported goods cannot be determined under the provisions of sections 326, 327 and 328, the customs value shall be determined under the provisions of section 340 and where the customs value cannot be determined under that section, the provisions of section 344 shall apply.

Sequence of  
application of  
valuation  
methods

(2) Notwithstanding subsection (1), at the request of an importer, the order of application of the sections 340 and 344 shall be reversed.

**330.** (1) If imported goods, identical goods or similar imported goods are sold in Botswana in the condition as imported, Revenue Service shall base the customs value of the imported goods on the unit price at which the imported goods, identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they bought the goods, subject to deductions for the following —

Deductive  
method

- (a) the commissions usually paid or agreed to be paid or the additions usually made from the profit and general expenses in connection with sales in Botswana of imported goods of the same class or kind;
- (b) the usual costs of transport and insurance and associated costs incurred within Botswana;

- (c) where appropriate, the costs and charges referred to in section 334 (2); and
- (d) the duties and taxes payable for the importation or sale of the goods.

(2) If neither imported goods, identical or similar imported goods are sold at or about the time of importation of the goods being valued, Revenue Service shall base the customs value on the unit price at which the imported goods, identical or similar imported goods are sold in Botswana in the condition as imported within 90 days of importation.

(3) If neither imported goods, identical or similar imported goods are sold in Botswana in the condition as imported, if the importer so requests Revenue Service shall base the customs value on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country or territory of importation who are not related to the persons from whom they buy the goods, due allowance being made for the value added by processing and deductions provided under subsection (1) (a).

Computed value

**331.** (1) The Revenue Service shall base the customs value of imported goods on a computed value.

(2) The computed value of imported goods shall consist of the sum of the following —

- (a) the cost or value of materials and fabrication or other processing used in producing the imported goods;
- (b) an amount for general expenses equal to that usually reflected in sales of goods of the same class as the goods being valued which are made by producers in the country or territory of exportation for export to Botswana; and
- (c) the cost or value of all other expenses necessary to reflect the valuation option chosen under section 334 (2).

(3) A person not resident in Botswana shall not be compelled to produce for examination, or to allow access to, any account or other record for the purposes of determining the computed value of imported goods.

(4) Notwithstanding subsection (3), information supplied by the producer of goods for the purposes of determining the value of imported goods may be verified in another country by the authorities of Botswana with the agreement of the producer provided the authorities give sufficient advance notice to the government of the country in question without objecting to the investigation.

Fall-back method

**332.** (1) If Revenue Service cannot determine the customs value of imported goods under the provisions of sections 326 to 331, the customs value shall be determined using reasonable means consistent with the provisions of the WTO Agreement on Customs Valuation and of Article VII of the General Agreement on Tariffs and Trade, 1994, and on the basis of any relevant data available in Botswana.

(2) The Revenue Service shall not determine the customs value of imported goods under this section on the basis of —

- (a) the selling price of the goods produced in Botswana;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the price of the goods on the domestic market of the country of exportation;
- (d) the cost of production, other than a computed value which has been determined for identical or similar goods in accordance with the provisions of sections 327 and 328;
- (e) the price of the goods for export;
- (f) the minimum customs value; or
- (g) an arbitrary or a fictitious value.

(3) Upon a request for information on determination of the customs value of imported goods by an importer, he or she shall be informed within 30 days, in writing, by Revenue Service of the customs value determined and the method used to determine such value.

**333.** (1) In determining the customs value of imported goods Revenue Service shall add to the price actually paid or payable for imported goods —

- (a) the expenses incurred by the buyer;
- (b) the value, apportioned as appropriate, of the goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable;
- (c) royalties and licence fees related to the goods being valued that the buyer shall pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable; and
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

(2) In determining the customs value of imported goods, Revenue Service shall add the following to the price payable for the imported goods —

- (a) transportation;
- (b) loading, unloading and handling;
- (c) insurance; and
- (d) associated costs incidental to delivery of the goods at the port or place of export.

**334.** (1) In determining the customs value of any goods under the provisions of section 326, there shall be added to the price paid or payable for imported goods —

- (a) to the extent that they are incurred by the buyer but are not included in the price paid or payable for the goods —

Value of  
re-imported  
goods

Adjustment of  
price paid or  
payable

- (i) commission and brokerage, except buying commissions,
- (ii) the cost of containers, which are treated for customs purposes as being one with the goods in question, and
- (iii) the cost of packaging whether for labour or for materials;
- (b) the value, apportioned of the goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price paid or payable –
  - (i) materials, components, parts and similar items incorporated in the imported goods,
  - (ii) tools, dies, moulds and similar items used in the production of imported goods,
  - (iii) materials used in the production of the imported goods, and engineering, development, artwork, design work and plans and sketches undertaken outside Botswana for the production of the imported goods;
- (c) royalties and licence fees related to the goods being valued that the buyer shall pay either directly or indirectly as a condition of sale of the goods being valued to the extent that such royalties and fees are not included in the price paid or payable; and
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

(2) In determining the customs value, the following shall be added to the price actually paid or payable for imported goods to the extent that they are not included in the price, the cost of –

- (a) transportation;
- (b) loading, unloading and handling;
- (c) insurance; and
- (d) any other associated costs,

incidental to delivery of the goods at the port or place of export in the country or territory of exportation and placing the goods on board the means of transport at the port or place of export.

(3) Any additions to the price paid or payable as customs value shall be made on the basis of objective and quantifiable data.

(4) In determining the customs value, no additions shall be made to the price paid or payable.

Value of re-imported goods under re-importation

**335.** When goods are imported under the re-importation in the same state procedure, the customs value assigned to the goods when they are exported shall be taken by Revenue Service to be the customs value of such goods when re-imported.

Value of imported used goods

**336.** (1) Goods, including a motor vehicle, that have been used by an individual outside Botswana and are imported into Botswana for use by the individual in Botswana, shall be valued for customs purposes according to the fall-back method.

(2) Subsection (1) shall not apply to imported goods declared under the temporary admission procedure on authority of an ATA or CPD carnet that indicates the value of the goods.

(3) The value indicated on the ATA or CPD carnet under shall be taken by Revenue Service to be the customs value of the goods.

(4) Notwithstanding subsections (2) and (3), Revenue Service may, for reasons it may deem valid, direct that goods be valued in accordance with the fall-back method.

**337.** (1) The customs value of goods for export shall be the price of the goods free on board at the place of departure from Botswana.

(2) If there is no price for free on board goods, the Commissioner General shall determine the method for the customs value of goods for export.

**338.** When the value of or the price payable for any imported goods is expressed in a foreign currency, the customs value shall be converted to the nearest Pula.

**339.** (1) A person declaring goods for a customs procedure shall —

(a) make a determination of the customs value, tariff classification and origin of the goods irrespective of whether duties and taxes are payable on the goods; and

(b) state the determination made on the customs declaration.

(2) If preferential tariff treatment under a bilateral or multilateral trade agreement is claimed in respect of goods —

(a) the determination of the origin of the goods shall be in accordance with the applicable Rules of Origin for that agreement; and

(b) the customs declaration shall be accompanied by documentary evidence of origin of the goods as may be required in terms of the bilateral or multilateral trade agreement, unless the relevant agreement exempts the goods from the submission of documentary evidence of origin or by Revenue Service.

(3) When declaring the customs value of imported goods, the declarant shall indicate on the customs declaration —

(a) the method used to determine the customs value of the goods; and

(b) whether he or she is related to the seller of the goods, unless the goods are exempted from this requirement as may be prescribed.

(4) The method upon which a customs value, tariff classification or origin determination is made of imported goods by the declarant, it shall be consistent with —

(a) in the case of customs value, different transactions between the same parties for the same class or kind of goods;

(b) in the case of tariff classification or origin, any relevant determination or re-determination that may be applicable to the goods; or

(c) any advance binding ruling on the customs value, tariff classification or origin that may be applicable to the goods.

Customs value  
of goods for  
export

Conversion of  
price expressed  
in foreign  
currency  
Determination  
of customs  
value, tariff  
classification,  
etc.

(5) A customs value, tariff classification or origin determination made by a declarant for non-preferential tariff treatment of imported good shall be applied for purposes of clearance of the goods, unless it is replaced by an applicable determination made by Revenue Service.

(6) An origin determination made by a declarant for preferential tariff treatment of imported goods shall be applied for purposes of clearance of the goods unless —

- (a) rejected by Revenue Service; or
- (b) replaced by an origin determination made by Revenue Service.

(7) A declarant shall, upon discovery of any inaccuracy in a customs value, tariff classification or origin determination that he or she has made, promptly notify Revenue Service of the inaccuracy.

(8) This section shall not apply to —

- (a) accompanied or unaccompanied baggage, other than commercial goods;
- (b) international postal items, other than commercial goods; or
- (c) any other category of goods or specific cases as may be determined by the Commissioner General.

Release of goods prior to determination of customs value, etc.

**340.** An importer of goods may request Revenue Service to release the goods if he or she furnishes a guarantee covering the duties and taxes that may become payable if, in the course of determining the customs value, tariff classification or origin of the imported goods, it becomes necessary to delay the final determination of the customs value, tariff classification or origin of such goods.

Re-determination of previous customs value, etc.

**341.** (1) The Revenue Service may at any time re-determine the customs value, tariff classification or origin of imported goods.

(2) The Revenue Service may make more than one customs value, tariff classification or origin re-determination of goods, as may be necessary.

(3) The method upon which a customs value, tariff classification or origin re-determination of goods is determined shall be —

- (a) in the case of a customs value, different transactions between the same parties for the same class or kind of goods; or
- (b) any advance binding ruling on the customs value, tariff classification or origin that may be applicable to the goods.

(4) A customs value, tariff classification or origin re-determination may be made by Revenue Service for goods irrespective of whether —

- (a) the goods have been declared;
- (b) the goods have been released;
- (c) the goods are dutiable;
- (d) the goods are still subject to customs control;
- (e) the goods' duties and taxes has been paid; or
- (f) any customs value, tariff classification or origin a determination has been made by the declarant for the goods.

(5) The Revenue Service shall give notice of any customs value, tariff classification or origin re-determination to the declarant in terms of subsection (1) or (2).

(6) A customs value, tariff classification or origin re-determination shall replace the previous customs value, tariff classification, origin determination or re-determination applicable to the goods.

**342.** (1) The Revenue Service may correct an error in a customs value, tariff classification, origin determination or re-determination that does not affect the customs value, tariff classification or origin ascribed to the goods, by notice to the declarant.

Correction of error in customs value, etc.

(2) The Revenue Service shall issue a superceding customs value, tariff classification or origin re-determination in the case of an error in a customs value, tariff classification, origin determination or re-determination that does affect the customs value, tariff classification or origin ascribed to goods.

**343.** (1) There shall be no time limit as to when a customs value, tariff classification, origin determination or re-determination of goods may be made by Revenue Service.

Time limit on customs value, etc.

(2) Notwithstanding subsection (1), a customs value, tariff classification, origin determination or re-determination shall be applied by Revenue Service for purposes of assessing or re-assessing duties and taxes on goods in accordance with subsection (3).

(3) A customs value, tariff classification, origin determination or re-determination that affects the dutiability of goods or the amount of duties and taxes payable shall be applied by Revenue Service for purposes of assessing or re-assessing duties and taxes on the goods —

- (a) if the determination or re-determination is made within a period of five years from the date the customs debt for the goods became due; or
- (b) if the determination or re-determination is made, whether within or after the expiry of the five years period referred to in paragraph (a) to give effect to —
  - (i) a decision in an administrative settlement or compromise settlement proceedings,
  - (ii) an independent dispute resolution,
  - (iii) a retrospective amendment to the Customs Tariff Schedules, or
  - (iv) a court order given or confirmed in a final judgment.

**344.** (1) The Revenue Service may base a customs value, tariff classification or origin determination or re-determination on the current information available to it if the particulars of goods in respect of which the customs value, tariff classification, origin determination or re-determination is made or the underlying transaction which caused the goods to be imported into or exported from Botswana are not disclosed or are not sufficiently disclosed in the customs declaration or supporting documents, and those particulars are still not disclosed or still not sufficiently disclosed following a request by Revenue Service.

Request for information for customs value, etc.

(2) Notwithstanding subsection (1), an origin determination or re-determination shall be subject to compliance with any procedures or other requirements regulating the determination of the origin of goods contained in the relevant bilateral or multilateral trade agreement or non-reciprocal Generalised System of Preferences.

**A.658**

Customs value,  
tariff  
classification  
or origin  
determination  
or  
re-determination

**345.** (1) A customs value determination or re-determination, shall apply only to goods for which it is made.

(2) A valuation method applied in a customs value determination or re-determination referred to in subsection (1) shall, unless Revenue Service decides otherwise, be applied also to goods of the same class or kind declared for a customs procedure by the same person or by a registered agent on behalf of the same person —

(a) if a customs value determination or re-determination of the goods is made by Revenue Service, whether the goods were declared before or after the date of the Customs value determination or re-determination referred to in subsection (1); or

(b) if a customs value determination is made by the declarant in respect of the goods declared on or after the date of customs value determination.

(3) A tariff classification determination or re-determination shall apply —

(a) to goods in respect of which it is made; or

(b) to identical goods declared for a customs procedure by the same person or by a registered agent on behalf of the same person, whether the goods are declared before or after the date of that tariff determination or re-determination.

(4) An origin determination or re-determination of goods made in accordance with non-preferential Rules of Origin shall apply —

(a) to the goods in respect of which it is made; or

(b) to identical goods produced by the same producer and declared for a customs procedure by the same person who declared the goods for which the origin determination or re-determination is made, whether the goods were declared before or after the date of such origin determination or re-determination.

(5) An origin determination or re-determination of goods made in accordance with Rules of Origin that may be applicable in terms of a bilateral or multilateral trade agreement or non-reciprocal Generalised System of Preferences for purposes of preferential tariff treatment under that agreement or system, shall apply —

(a) to the goods in respect of which it is made; and

(b) to identical goods for which preferential tariff treatment may be claimed under the agreement or system, produced by the same producer, and declared for a customs procedure by the same person who declared the goods for which that origin determination or re-determination was made, whether those identical goods were declared before or after the date of that origin determination or re-determination.

(6) A tariff or origin determination or re-determination that applies to identical goods referred to in subsection (3), (4) or (5) shall not be applied by Revenue Service for purposes of assessment or re-assessment of duties and taxes in respect identical goods.

(7) A tariff or origin determination made by a declarant in respect of identical goods referred to in subsection (3), (4) or (5) declared on or after the date of a tariff or origin determination or re-determination that applies to the goods, shall be consistent with the tariff or origin determination or re-determination.

(8) The Commissioner General may, by Notice published in the *Gazette*, specify particulars of any customs value, tariff classification or origin determination or re-determination in such a manner and containing such information as he or she may determine.

#### PART XV — *Guarantee*

**346.** The Revenue Service may require a guarantee to be provided — Guarantee

- (a) for the payment of the amount of duties and taxes of a customs debt;
- (b) for the performance of any conditions or requirements imposed by Revenue Service; or
- (c) in special circumstances considered valid by Revenue Service, where goods subject to seizure are released pending the payment of any amount due.

**347.** (1) A person who is liable for the payment of a customs debt may provide a guarantee to Revenue Service. Eligibility for guarantee

(2) The Revenue Service shall require the provision of one guarantee only for a single customs debt.

(3) The Revenue Service may allow a guarantee to be provided by a third party instead of the person from whom the guarantee is required where the Revenue Service deems it necessary.

(4) Where the person who is liable for the payment of a customs debt is the Government of Botswana, no guarantee shall be required.

**348.** A guarantee of a customs debt shall be compulsory for — Compulsory guarantee

- (a) customs clearing agents;
- (b) operators of the following specified customs controlled areas —
  - (i) container terminals,
  - (ii) container and cargo depots,
  - (iii) customs warehouses,
  - (iv) duty free shops, and
  - (v) privately operated State warehouses; and
- (c) bonded carriers.

**349.** (1) A guarantee of a customs debt shall not be required for the following categories — Optional guarantee

- (a) operations or industries;
- (b) customs procedures;
- (c) certain types of goods as may be prescribed; or
- (d) duties and taxes.

(2) Notwithstanding subsection (1), a guarantee of a customs debt may be required where Revenue Service is of the view that there is a risk of non-payment of duties and taxes.

**A.660**

(3) A person who is exempted from providing a guarantee of a customs debt may, for purposes of expediting his or her goods to be cleared, provide a guarantee.

Form of  
guarantee

**350.** A guarantee of a customs debt may be provided in the form of —

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(a) a surety bond issued on behalf of the person required to provide the guarantee by a financial institution registered or approved by the Bank of Botswana or the Non-Banking Financial Institutions Regulatory Authority established under the Non-Banking Financial Institutions Regulatory Authority Act; or

Release of  
guarantee

(b) a bank guaranteed cheque.

**351.** Where the obligations under which the guarantee of a customs debt was required have been fulfilled in part, or are no longer likely to occur with regard to part of the amount that was guaranteed, a corresponding part of the guarantee shall be discharged at the request of the person concerned.

**PART XVI — Liability for customs debt**

Liability for  
customs debt  
upon  
importation

**352.** (1) Liability for a customs debt upon importation shall be incurred when the goods enter Botswana, but if the goods are released for a customs procedure before the arrival of the goods at a place of entry into Botswana, the liability for duties and taxes shall commence when the goods are released.

(2) A customs debt referred to in subsection (1) shall include liability for —

(a) interest payable on such duties and taxes under this Act; and

(b) a fine, penalty or forfeiture incurred under this Act.

(3) For purposes of subsection (1), a debtor shall be the declarant or the person acting on behalf of the owner of the goods.

Liability for  
customs debt  
upon recovery  
from guarantee

**353.** (1) Liability for a customs debt on importation shall be incurred by —

(a) the unlawful introduction into Botswana of goods liable to duties and taxes; or

(b) the unlawful removal of goods from a customs controlled area or a special economic zone and their introduction into another part of the Common Customs Area.

(2) A customs debt shall be incurred under subsection (1) (a) at the moment when goods are unlawfully introduced.

(3) For purposes of this section, a debtor shall be —

(a) the person who effected the unlawful introduction of the goods;

(b) any person who took part or who knew or should reasonably have known that the introduction of the goods was unlawful; or

(c) any person who acquired or held the goods in question and who knew or should reasonably have known at the time of acquiring or receiving the goods that they had been introduced unlawfully.

**354.** A person liable for duties and taxes on goods entering or leaving Botswana shall be absolved from liability for a customs debt if the duties and taxes are recovered in full from a guarantee covering the goods.

Liability for customs debt upon unlawful entry, removal and non-compliance

PART XVII — *General provisions relating to customs debt*

*A – Assessment of duties and taxes*

**355.** (1) The Revenue Service shall, as soon as a customs declaration is registered, assess the duties and taxes on goods by —

Assessment of duties

- (a) determining the dutiability of the goods; and
- (b) calculating the amount of duties and taxes payable on the goods.

(2) Notwithstanding subsection (1), Revenue Service may accept a self-assessment by a declarant of duties and taxes by the person declaring the goods.

(3) The Revenue Service shall immediately notify a declarant of the amount of duties and taxes assessed, whether Revenue Service assessed the duties and taxes or customs accepted the declarant's self-assessment.

(4) The Revenue Service shall express the amount of duties and taxes in Botswana Pula.

(5) The duties and taxes assessed by Revenue Service for each line item in the same declaration shall be rounded down to the nearest five Thebe.

(6) The Revenue Service shall promptly record the amount of the duties and taxes assessed in the relevant revenue accounting systems.

**356.** (1) A declarant shall self-assess the duties and taxes prior to lodging a customs declaration by —

Self-assessment of duties by declarant

- (a) determining the particulars required for the customs declaration;
- (b) determining the dutiability of the goods;
- (c) stating the particulars required for calculating the amount of duties and taxes payable on the goods; and
- (d) stating any other particulars concerning the self-assessment as may be specified by the Commissioner General.

(2) A declarant shall, on discovery of any inaccuracy in a self-assessment made in respect of goods, promptly notify Revenue Service of such inaccuracy.

(3) This section shall not apply to —

- (a) unaccompanied baggage;
- (b) commercial goods;
- (c) international postal items; or
- (d) any other category of goods or specific cases as may be determined by the Commissioner General.

**357.** The Revenue Service shall make a re-assessment of duties and taxes on goods when it makes a customs value, tariff classification, origin determination or re-determination of goods if the amount of duty paid or payable on such goods is affected by —

Re-assessment of duties by Revenue Service

**A.662**

Time limit for re-assessment of duties and taxes	<p>(a) a decision in any administrative settlement or compromise settlement proceedings;</p> <p>(b) an independent dispute resolution;</p> <p>(c) an amendment to the Customs Tariff Schedule; or</p> <p>(d) a court order.</p>
	<p><b>358.</b> (1) An assessment or re-assessment of duties and taxes on goods shall be made within a period of five years from the date the customs debt was incurred.</p>
	<p>(2) Notwithstanding subsection (1), a re-assessment of duties and taxes on goods may be made after the expiry of five years in the case of goods affected by —</p>
	<p>(a) a decision made in any administrative settlement or compromise settlement proceedings;</p> <p>(b) an independent dispute resolution;</p> <p>(c) an amendment to the Customs Tariff Schedule; or</p> <p>(d) a court order.</p>
Payment of duties and taxes	<p><i>B – Procedure for payment of duties and taxes</i></p>
	<p><b>359.</b> (1) A debtor notified by Revenue Service of an amount of duties and taxes constituting a customs debt shall pay the amount on the date of the release of the goods, unless the debtor has been granted a deferred payment facility under such conditions as may be determined by the Commissioner General.</p>
	<p>(2) If the amount of duties and taxes assessed exceeds an amount of duties and taxes already paid by the declarant, Revenue Service shall notify the debtor and recover the underpayment of duties and taxes.</p>
	<p>(3) A person who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding three years, or to both.</p>
Method of payment	<p><b>360.</b> (1) A debtor shall pay duties and taxes in Botswana Pula.</p>
	<p>(2) Notwithstanding subsection (1), Revenue Service may accept payment for duties and taxes in a foreign currency that is the equivalent amount of Botswana Pula.</p>
	<p>(3) A debtor may make a payment to Revenue Service by electronic funds transfer or by other electronic means, including credit and debit cards.</p>
	<p>(4) When any duties and taxes have been paid, a receipt constituting proof of payment shall be issued by Revenue Service to the payer, unless there is other evidence provided constituting proof of payment.</p>
Payment prior to due date	<p><b>361.</b> A debtor or third party may pay all or part of the amount of the duties and taxes prior to the due date for the payment without awaiting the expiry of the payment period that was granted.</p>
Underpayment of duties and taxes	<p><b>362.</b> (1) The Commissioner General shall, subject to subsection (2), correct any under-payment of the amount of duties and taxes due by recovering the amount of the underpayment from —</p> <p>(a) a person who partially paid the duties and taxes;</p>

- (b) any other person from whom the duties and taxes could have been recovered; or
  - (c) a guarantee covering the goods.
- (2) Liability for an underpayment of duties and taxes shall cease if the time limit for the Commissioner General's claim to recover the duties and taxes has expired.

**363.** Where an amount of duties and taxes has not been paid by the due date, Revenue Service shall impose —

Late payment  
of duties and  
taxes

- (a) interest on any outstanding amount of duties and taxes charged from the date that payment was due until the date that payment is made; or
- (b) a penalty for late payment.

**364.** The Commissioner General may recover duties and taxes not paid from —

Recovery of  
unpaid duties  
and taxes

- (a) a person who failed to pay the duties and taxes;
- (b) an importer of goods or from his or her agent;
- (c) the owner of the goods or his or her agent;
- (d) a customs clearing agent who submitted the customs declaration for the goods;
- (e) a guarantee covering the goods; or
- (f) a third party covering the goods.

*C – Collection on behalf of third parties*

**365.** The Revenue Service shall assess and collect taxes, levies, duties and other charges on behalf of Government agencies or other bodies when such amounts are payable on the importation of goods.

Revenue Service  
to collect on  
behalf of  
agencies

*D – Lien and other mechanisms to secure payment of customs debt*

**366.** (1) The Commissioner General may establish a lien in order to secure payment of a customs debt over any goods —

Establishing  
lien to secure  
customs debt

- (a) of which the debtor is the owner;
- (b) of which the debtor is the co-owner; or
- (c) in which the debtor has any title or right.

(2) A lien over goods shall be established when the Commissioner General attaches the goods, and the attachment shall take place not less than 10 days after the due date for payment of the customs debt.

(3) A lien over goods shall serve as a guarantee for the customs debt owed by the debtor, except —

- (a) in the case of goods of which the debtor is the co-owner, where the lien serves as guarantee for the customs debt only up to the value of the debtor's share in the goods; or
- (b) in the case of goods in which the debtor has any title or right, where the lien serves as guarantee for the customs debt only up to the value of the debtor's title to or right in the goods.

**367.** (1) The Commissioner General may attach goods for the purposes of establishing a lien regardless of where the goods are or in whose possession the goods are.

Attachment of  
goods

- (2) The Commissioner General may issue a notice of attachment to —
  - (a) identify the goods to which the notice relates;
  - (b) state the date from which the goods are attached;
  - (c) state that the goods are being attached for purposes of establishing a lien pending payment of a customs debt;
  - (d) state the particulars and the amount of the customs debt; and
  - (e) contain any other particulars as may be prescribed.
- (3) Goods attached in terms of this section may be —
  - (a) sealed, marked, locked, fastened or otherwise secured or impounded by a customs officer at the place where the goods were attached; or
  - (b) removed to a State warehouse or a customs controlled area, as Revenue Service may determine.

Attachment of goods where debtor has no ownership

**368.** The Commissioner General shall release from a lien any goods attached by Revenue Service if it is proved that the debtor —

- (a) is not the owner or co-owner of the goods; or
- (b) does not have any title to or right in the goods.

Attachment of goods where debtor is co-owner

**369.** (1) A debtor shall promptly inform the Commissioner General, if goods in relation to which the debtor is a co-owner are attached by —

- (a) disclosing the co-ownership to Revenue Service;
- (b) submitting to Revenue Service a copy of any agreement in terms of which the co-ownership was established; or
- (c) submitting to Revenue Service an affidavit signed by the debtor attesting to the co-ownership.

(2) Upon receipt of the disclosure under subsection (1), Revenue Service shall —

- (a) notify the other co-owner that the goods have been attached by Revenue Service and that a lien in favour of the Commissioner General has been established over the goods; and
- (b) request the other co-owner to corroborate the debtor's share in ownership of the goods.

(3) If a person, other than the debtor, who is a co-owner of goods attached by the Revenue Service becomes aware of an attachment under this section, the co-owner shall immediately notify Revenue Service.

Effect of lien

**370.** (1) Goods in respect of which a lien has been established may not —

- (a) be sold or transferred to, or relinquished in favour of, another person; or
- (b) be pledged, mortgaged, hypothecated, or in any way encumbered in favour of another person.

(2) Revenue Service may, despite a lien, allow a debtor to continue using goods attached on such conditions as Revenue Service may determine.

(3) The Commissioner General may take custody of goods referred to under this section and order their removal to a State warehouse or a customs controlled area.

(4) A debtor may be liable for any costs and expenses incurred by the Commissioner General to take custody of and removal of the goods to a State warehouse or a customs controlled area.

**371.** A lien established over goods shall cease when —

- (a) the debt in respect of which the lien was established is paid to the Commissioner General;
- (b) the goods are sold; or
- (c) the Commissioner General releases the goods from the lien.

Termination of  
lien

*E – Extinguishment of customs debt*

**372.** A customs debt shall be extinguished —

- (a) by payment of the amount of the duties, taxes and penalties owed to Revenue Service;
- (b) by remission of the amount of the duties and taxes, except, where several people are liable for payment of the amount of duties and taxes corresponding to the customs debt and remission is granted, the customs debt shall be extinguished only with regard to a person to whom the remission is granted;
- (c) by withdrawal of the customs declaration where the procedure under which the goods have been declared comprises a liability to pay duties and taxes;
- (d) by abandonment to the State or destruction under customs supervision of goods liable to duties and taxes;
- (e) by the total destruction or irrevocable loss of goods liable to duties and taxes by accident or force majeure that causes the disappearance of the goods or the failure to fulfill an obligation under this Act;
- (f) where goods released for home use at a reduced or free rate of duties and taxes by virtue of their end-use have been exported with the permission of Revenue Service;
- (g) where it is proved to the satisfaction of Revenue Service that the goods have not been used or consumed in Botswana and have been exported; or
- (h) by forfeiture of the goods to Revenue Service.

Extinguishment  
of customs debt

**373.** A customs debt shall not be extinguished where the failure to pay duties and taxes is used for imposition of penalties or in the event of seizure and forfeiture.

Non-  
extinguishment  
of customs debt

*PART XVIII — Refund or remission of duties and taxes*

**374.** (1) The Revenue Service shall grant a refund or remission of duties and taxes —

- (a) where it is established that at the time of the payment of the duties and taxes the amount was not due;
- (b) where it is established by Revenue Service that an overcharge was a result of an error on the part of Revenue Service in assessing the duties and taxes;

Refund or  
remission of  
duties and taxes

- (c) where a customs declaration is withdrawn;
  - (d) upon a request submitted by a person concerned, within the time limit allowed to amend the customs declaration;
  - (e) where it is established that the amount paid or assessed relates to goods which have been rejected by the importer;
  - (f) upon re-exportation of the goods; or
  - (g) where the goods cleared for home use could not be delivered to the consignee.
- (2) The Revenue Service shall not grant a refund or remission of duties and taxes —
- (a) where the goods were imported temporarily for testing prior to their subsequent clearance for home use, unless it is established that a defect in such goods or their nonconformity with the terms of the contract could not normally be detected during these tests;
  - (b) where the defective nature of the goods was taken into consideration in drawing up the terms of the contract, in particular the price, before the goods were placed under a customs procedure involving payment of duties and taxes;
  - (c) where the goods are sold by the applicant after it has been ascertained that they are defective or do not comply with the terms of the contract; and
  - (d) on goods that are prohibited, restricted or confiscated.

PART XIX — *Seizure, detention or forfeiture of goods*

Power to detain  
or seize goods

**375.** (1) The Revenue Service may detain, seize or forfeit goods or a means of transport to which this Act applies and, if the goods or the means of transport consist of information, accounts, documents or records, a customs officer may detain or seize the information, accounts, documents or records for investigation purposes.

(2) The Revenue Service shall detain, seize or forfeit goods if the import, possession or export of the goods is not authorised in terms of this Act or any other Act.

(3) Notwithstanding subsections (1) and (2), Revenue Service shall exclude the following goods from detention, seizure or forfeiture —

- (a) imported restricted goods that are declared for the customs warehousing procedure;
- (b) imported restricted goods that are declared for the customs transit or transshipment procedure;
- (c) restricted goods on board an aircraft or cross-border train arriving in Botswana from a place outside Botswana; and
- (d) restricted goods on board an aircraft or cross-border train arriving in Botswana from a place outside Botswana as stores for the aircraft or train.

(4) A person who imports, possess or exports goods in contravention of this section commits an offence and shall be liable to a fine not exceeding P 100 000 or to imprisonment for a term not exceeding two years, or to both.

**376.** (1) The Revenue Service shall upon detention, seizure or forfeiture of goods, issue a notice to —

Notice of  
detention,  
seizure or  
forfeiture

- (a) the declarant of the goods;
  - (b) a person in possession of the goods; or
  - (c) a customs clearing agent;
- (2) A notice under subsection (1) shall —
- (a) specify the goods to which it relates;
  - (b) state the date on which the goods were detained;
  - (c) state the name of the person from whom the goods were detained;
  - (d) state the name of the customs officer who detained the goods;
  - (e) state the reason for the detention; and
  - (f) include any other particulars as may be determined.

**377.** (1) The Revenue Service shall terminate a seizure of goods, means of transport, currency, information, accounts, documents or records, if —

Termination of  
seizure

- (a) the goods, means of transport, currency, information, accounts, documents or records, were seized in error;
- (b) an appeal by the declarant or any other person concerned for the termination of the seizure is granted; or
- (c) a court order is granted for termination of seizure.

(2) Upon termination of a seizure, Revenue Service shall notify a person to whom the notice of seizure was issued that the seizure of the goods, means of transport, currency, information, accounts, documents or records, is terminated.

#### PART XX — *Voluntary disclosure*

**378.** (1) A person shall not be liable for any error or omission in a customs declaration if the person has voluntarily disclosed the error or omission to Revenue Service, either orally or in writing.

Voluntary  
disclosure of  
errors or  
omission

(2) A voluntary disclosure referred to in subsection (1) shall only be granted where the disclosure is made before Revenue Service has notified a person that —

- (a) the goods to which the declaration relates have been selected for examination by Revenue Service;
- (b) documentation is required to be presented to Revenue Service in relation to the declaration; or
- (c) the Revenue Service intends to conduct an audit or investigation in relation to a selection of declarations which includes that declaration or in relation to declarations made over a period of time which includes the time when that declaration was made.

**379.** If a person has made a false or misleading statement in a voluntary disclosure or failed to disclose information that was material for the consideration of granting a relief, Revenue Service may —

Withdrawal of  
voluntary  
disclosure

- (a) withdraw any relief granted based on an approval of the voluntary disclosure;

- (b) recover the amount due to it;
- (c) retain any amount paid to the Commissioner General as a payment for the amount due; or
- (d) impose a penalty in accordance with this Act.

PART XXI — *Appeals*

Appeals

**380.** (1) Any person aggrieved by a decision of Revenue Service may lodge an appeal with the Commissioner General.

(2) An appeal lodged under subsection (1) shall be made by the person concerned in writing within 30 days from the date of the decision by Revenue Service, and shall specify particulars of the grounds on which it is made.

(3) The Commissioner General shall consider the appeal lodged and may amend, vary, or uphold the decision by Revenue Service and shall, by notice in writing, inform the person concerned of his or her decision.

(4) A person aggrieved by the decision of the Commissioner General under this section may within 30 days from the date of the decision of the Commissioner General, lodge an appeal with the High Court.

PART XXII — *Final Provisions*

Prescription period for bringing action by Revenue Service

**381.** (1) The right to take action for total or partial recovery of duties and taxes by Revenue Service shall be barred, unless collection proceedings have been undertaken within 15 years from the date the payment of the duties and taxes was due.

(2) Except as otherwise provided by this Act, the right to institute administrative or judicial proceedings in regard to a customs offence under this Act shall be barred, unless the proceedings have been undertaken within five years from the date that the offence was discovered.

Prescription period for bringing action against Commissioner General or customs officer

**382.** The right to institute any legal action against the Commissioner General or a customs officer on a cause of action arising out of the provisions of this Act shall be one year from the date on which the action arose.

Publication of offenders

**383.** The Commissioner General may from time to time publish for general information a notice specifying the names of offenders and the fine or sentence imposed.

Regulations

**384.** The Minister may make regulations prescribing anything under this Act which is to be prescribed or which is necessary for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

**385.** (1) Any person who contravenes a provision of this Act, where no specific penalty is provided, shall be liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding six months or to treble the value of the goods in respect of such offence, whichever is greater, and the goods and the container in respect of which the offence is committed shall be liable to forfeiture.

Offences and  
penalties

(2) Any person who impersonates a customs officer commits an offence and shall be liable to a fine not exceeding P 1 000 000 or to imprisonment for a term not exceeding five years, or to both.

(3) Any person who aids or abets a person charged with a customs offence, commits an offence and shall be liable to a fine not exceeding P 5 000 000 or to imprisonment for a term not exceeding two years, or to both.

(4) Any person who offers or promises to offer an incentive to a customs officer for purposes of influencing the actions of the customs officer commits an offence and shall be liable to a fine not exceeding P 1 000 000 or to imprisonment for a term not exceeding 10 years, or to both.

PASSED by the National Assembly this 12th day of July, 2018.

B. N. DITHAPO,  
*Clerk of the National Assembly.*