

# **REPUBLIC OF VANUATU**

## **EXCISE ACT NO 24 OF 2002**

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Assent 31 December 2002  
Commencement 1 January 2003

## REPUBLIC OF VANUATU

### EXCISE ACT NO 24 OF 2002

An Act relating to excise, and for related purposes

Be it enacted by the President and Parliament as follows-

#### PART 1 – PRELIMINARY MATTERS

##### 1 Interpretation

In this Act, unless the contrary intention appears:

**alcohol product** means any alcohol product classified under Chapter 22 of the Harmonized System.

**approved form** means a form approved in writing by the Director.

**blended petroleum product** means the product of the blending of a petroleum product (including a petroleum product that is itself a blended petroleum product) with another substance or other substances, whether that other substance or those other substances are petroleum products or not.

**bonded warehouse** means:

- (a) premises approved as a bonded warehouse under section 7; or
- (b) premises referred to in subsection 10(4); or
- (c) a bonded warehouse within the meaning of the Customs Act No. 15 of 1999.

**Customs** means the Department responsible for customs.

**Director** means the Director of Customs.

**excisable products** means products in respect of which excise tax is imposed by this Act.

**excise tax** means the excise tax imposed by this Act.

**Harmonized System** means the Harmonized System set out in Schedule 1 to the Import Duties (Consolidation) Act [CAP 91] as amended from time to time, and includes the General Rules for the Interpretation of the Harmonized System set out in that Schedule as amended from time to time.

**home use** of a product means the use or consumption of the product in Vanuatu.

**import duty** means a duty levied under the Import Duties (Consolidation) Act [CAP 91].

**licence** means a licence to produce excisable products.

**licensed producer** means a person granted a licence under section 10 to produce excisable products.

**licensed production centre** means the premises on which a person is licensed to produce excisable products, and includes:

- (a) any bonded warehouse deemed to be a part of those premises under subsection 10(4); and
- (b) all adjoining premises connected with that production or with the business of the producer.

**Minister** means the Minister responsible for finance.

**officer** means:

- (a) a person who is a Customs officer within the meaning of the Customs Act No. 15 of 1999; or
- (b) any person authorised by the Director to carry out or undertake functions or duties of an officer for the purposes of this Act.

**person** includes an individual, any statutory body, company or association of persons corporate or unincorporated.

**petroleum product** means any product classified under Chapter 27 of the Harmonized System.

**production** includes all processes in the production of excisable products.

**premises** includes any place (whether enclosed, or built on, or not), vehicle, vessel or aircraft.

**prescribed** means prescribed by the regulations.

**records** means all papers, books, registers, computer or electronic files, tapes, discs, films, videos, sound tracks or any other devices in which information is recorded or stored.

**regulations** means the regulations made under this Act

**still** means any apparatus used for carrying out the distillation of alcohol products.

**tobacco product** means any product classified under Chapter 24 of the Harmonized System.

## **2 Application of Act**

This Act applies to:

- (a) any excisable product produced in Vanuatu, or imported into Vanuatu, on or after the commencement of this Act; and
- (b) any excisable product produced in Vanuatu, or imported into Vanuatu, before the commencement of this Act, and that has not been entered for home use or exported before that commencement.

## **3 Importer of excisable products to comply with Customs legislation etc.**

- (1) To avoid doubt, the importer of excisable products must comply with the requirements of the Customs Act No. 15 of 1999 and the Import Duties (Consolidation) Act [CAP 91] and any subordinate legislation made under those Acts.
- (2) Subject to this Act, the importer of excisable products must pay the excise tax payable on those products in the same manner in which import duty is payable and the excise tax is to be collected in the same manner in which import duty is collected.

## **4 Administration**

- (1) The Director is responsible for the general administration of this Act.
- (2) The Director has the right to require and take securities for the purpose of compliance with this Act.

## **5 Securities**

- (1) If a security is required by or under this Act, the Director must specify how it is to be given.
- (2) The ways in which a security can be given are:
  - (a) by bond; or
  - (b) by guarantee; or
  - (c) by cash deposit; or
  - (d) partly by one such method and partly by another.

## **6 Delegation**

- (1) The Director may delegate to an officer all or any of the Director's functions or powers under this Act. However, the Director must not delegate the power of delegation.
- (2) A delegation:
  - (a) must be made in writing; and
  - (b) may be made either generally or subject to express limitations or conditions; and
  - (c) may be given for a specified period, but may be revoked at any time by the Director.
- (3) The Director remains responsible for actions taken under a delegation.
- (4) The Director may continue to perform a function or exercise a power that has been delegated.

## **7 Bonded warehouse**

- (1) The Director may on application in writing by a person (whether or not the person is a licensed producer) approve in writing premises to be a bonded warehouse for the purposes of this Act.
- (2) An approval is valid for a period of one year from the date on which the approval is given, and is subject to payment of a prescribed annual fee.
- (3) An approval may be given on such other terms and conditions as are determined by the Director and specified in the approval.

## **PART 2 - LICENSING AND RESPONSIBILITY OF PRODUCERS**

### **8 Licence requirement**

- (1) A person must not produce any excisable products in Vanuatu unless:
  - (a) the person is the holder of a valid licence for producing the excisable products; and
  - (b) the person has given a security to the Director as required by the Director; and
  - (c) the excisable products are produced at a licensed production centre.
- (2) Subsection (1) does not apply to excisable products referred to in items 6 and 7 of the Exemptions Table in Schedule 2.
- (3) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by:
  - (a) in the case of an individual – a fine not exceeding VT 1 million or a term of imprisonment of not more than 2 years, or both; or
  - (b) in the case of a company – a fine not exceeding VT 5 million.

### **9 Application for licence**

- (1) A person must apply to the Director in the approved form for a licence to produce excisable products at a production centre.
- (2) The applicant must:
  - (a) pay to the Director the prescribed application fee and licence fee; and
  - (b) give the security to the Director as required by the Director; and
  - (c) provide necessary information relating to the production centre and production process; and
  - (d) if applicable, include a description of any premises to be used as a bonded warehouse for the production centre, whether or not those premises are part of or separate from the production centre.



## **10 Grant of licence**

- (1) If the Director is satisfied with the security of a proposed production centre and the production procedures and controls, the Director may grant a licence in the approved form to the applicant, subject to any conditions determined by the Director.
- (2) If the Director refuses to grant a licence to an applicant, the Director must within 7 days after making the decision:
  - (a) inform the applicant in writing of the decision; and
  - (b) return the prescribed licence fee and the security to the applicant.
- (3) If the Director refuses to grant a licence to an applicant, the prescribed application fee is not refundable to the applicant.
- (4) If a licence is granted and the application for the licence included premises to be used as a bonded warehouse under paragraph 9(2)(d), those premises (whether or not a part of or separate from the production centre) are deemed to be a part of the production centre for the purposes of this Act.

## **11 Period and renewal of licence**

- (1) A licence is valid for a period of 12 months from the date the licence is granted.
- (2) A licence may be renewed on:
  - (a) application by the holder of the licence made before the expiry of the licence; and
  - (b) payment of the prescribed licence fee.
- (3) If a licence is renewed, the liability of the subscribers to the security given for the original licence remains in force for the period of the renewal, unless notice of termination is given by the subscribers.

## **12 Transfer of licence**

- (1) A licence may be transferred with the written consent of the Director.
- (2) The transferee must give such security to the Director as the Director specifies in writing.

## **13 Cancellation of licence**

- (1) The Director may cancel a licence if the holder of the licence contravenes or fails to comply with any of the conditions of its licence or if the holder of the licence is convicted of an offence against this Act.

- (2) The Director must give the holder of a licence written notice of any cancellation of the licence within 7 days after the cancellation decision is made.
- (3) A cancellation takes effect on the date specified by the Director in the notice mentioned in subsection (2).

#### **14 Removal of products on cancellation etc. of licence**

- (1) If a licence:

- (a) has been cancelled; or
- (b) has expired and has not been renewed;

a person must not, except with the prior approval of the Director, remove from the premises that constituted the licensed production centre any excisable products on which excise tax has not been paid.

- (2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine of not more than VT 100,000 or a term of imprisonment not exceeding 12 months, or both.

#### **15 Removal of products by Director on cancellation etc. of licence**

- (1) If a licence has been cancelled, or has expired and has not been renewed, the Director may remove:

- (a) from the premises that constituted the licensed production centre any excisable products on which excise tax has not been paid; and
- (b) the packages in which the products are contained;

to a bonded warehouse or such other place of security as the Director thinks fit.

- (2) Unless, within one month after the removal of products and packages:
  - (a) they are claimed, in writing, by the person entitled to them; and
  - (b) the excise tax, expenses of removal, warehouse rent and charges and other storage charges (if any) on or in respect of them are paid;

they may be sold by the Director in accordance with section 61.

- (3) The excise tax to be paid on the excisable products claimed under subsection (2) is to be calculated at the rate in force at the time when the excise tax is paid.

**16 Fresh security**

- (1) The Director may at any time require a licensed producer to give fresh security.
- (2) If fresh security is not given as required by the Director, the Director may cancel the licence.
- (3) The Director must give to the person written notice of his or her decision to cancel the licence within 7 days after the decision is made.

**17 Alterations, additions or rebuilding of licensed production centres**

- (1) A licensed producer must obtain the written approval of the Director before undertaking any alterations, additions or rebuilding of the licensed producer's production centre.
- (2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by:
  - (a) in the case of an individual - a fine not exceeding VT 100,000 or a term of imprisonment of not more than one year, or both; or
  - (b) in the case of a company – a fine not exceeding VT 500,000.

**18 Supervision by officers**

- (1) For the protection of the public revenue, the licensed producer of excisable products is subject to the right of supervision by officers.
- (2) If a licensed producer fails to provide all reasonable facilities for enabling officers to exercise their powers under this Act, the licensed producer is guilty of an offence punishable on conviction by:
  - (a) in the case of an individual - a fine not exceeding VT 100,000 or a term of imprisonment of not more than one year, or both; or
  - (b) in the case of a company – a fine not exceeding VT 500,000.

**19 Licensed producer to keep records**

A licensed producer must:

- (a) keep in Vanuatu sufficient records in English, French or Bislama so as to enable an officer to ascertain the licensed producer's liability to excise tax; and
- (b) retain in Vanuatu such records for a period of at least 5 years or such longer period as the Director directs.

**20 Director may give directions**

- (1) The Director may give written directions to a licensed producer directing:
  - (a) in what parts of the licensed production centre any process in the production is to be carried on; and
  - (b) in what parts of the licensed production centre materials and other matters used in the production and excisable products produced are to be kept.
- (2) A licensed producer must comply with the directions.
- (3) If a licensed producer contravenes subsection (2), the licensed producer is guilty of an offence punishable on conviction by:
  - (a) in the case of an individual - a fine not exceeding VT 100,000 or a term of imprisonment of not more than one year, or both; or
  - (b) in the case of a company – a fine not exceeding VT 500,000.

## **PART 3 – IMPOSITION, RATE AND PAYMENT OF EXCISE TAX, AND EXEMPTIONS**

### **21 Imposition and rate of excise tax**

- (1) An excise tax is imposed on products that:
  - (a) are classified under the tariff items of the Harmonized System that are listed in Column 2 of the Excisable Products Table in Schedule 1; and
  - (b) are produced in, or imported into, Vanuatu.
- (2) The rate of excise tax payable on excisable products is specified in Column 4 of the Excisable Products Table in Schedule 1.
- (3) Column 1 of the Excisable Products Table in Schedule 1 contains a reference number for ease of identification should the Table be amended in the future. Column 3 of the Excisable Products Table in Schedule 1 contains a general description of the products classified under the tariff items of the Harmonized System

### **22 Payment of excise tax**

- (1) Subject to subsection (2), the licensed producer or the importer of excisable products must pay to the Director, in accordance with this Act, the excise tax on those products.
- (2) If the owner of excisable products enters them for home use, the owner of the products must pay to the Director, in accordance with this Act, the excise tax on those products.
- (3) The excise tax on excisable products must be paid when those products are entered for home use.
- (4) The Director may issue written directions as to how excise tax is to be calculated and paid.
- (5) The excise tax payable on excisable products is in addition to any other tax, levy, duty, charge or fee payable in relation to that product under or by any other Act.

### **23 Exemption from excise tax**

- (1) Despite section 21, the excisable products listed in the Exemptions Table in Schedule 2 are exempt from excise tax, subject to compliance with any conditions specified in that Schedule.

- (2) A person wishing to obtain an exemption under item 7 of the Exemptions Table must apply in writing to the Director for the exemption.
- (3) The Director must not grant an exemption under item 7 of the Exemptions Table unless the Director is satisfied that the excisable products concerned are to be used exclusively in the production of other excisable products in Vanuatu.
- (4) The Director may grant an exemption on such terms and conditions as the Director considers appropriate.

## **PART 4 – ENTRY AND CONTROL OF EXCISABLE PRODUCTS**

### **24 Entry for home use etc.**

- (1) An entry of excisable products authorizes the removal of those products for one of the following:
  - (a) home use;
  - (b) removal to a bonded warehouse or another place approved by the Director to receive and hold such products;
  - (c) removal between bonded warehouses or other places approved by the Director to receive and hold such products;
  - (d) exportation from Vanuatu.
- (2) An entry of excisable products must:
  - (a) be made in accordance with an approved form or in a manner approved by the Director; and
  - (b) contain such information as is required by the Director; and
  - (c) be signed or authorised in a manner required by the Director; and
  - (d) be lodged with, or transmitted to, Customs.
- (3) The licensed producer, the importer or the owner of excisable products, or their agents, may make entries for those products.
- (4) An entry of excisable products is of no effect unless it is approved by the Director.
- (5) If it is intended to export excisable products, the exportation of those products must be dealt with under the Customs Act No. 15 of 1999, but such products remain under Customs control in accordance with section 25.

### **25 Customs control**

- (1) All excisable products are subject to the control of Customs until removed for home use or for exportation to a place outside Vanuatu, whichever first occurs.

- (2) A person who takes possession of, moves, alters or interferes with any such products except as authorised by or in accordance with this Act is guilty of an offence punishable on conviction by a fine of not more than VT 1 million or a term of imprisonment not exceeding 2 years, or both.
- (3) The Director may, at any time before excisable products cease to be subject to the control of Customs, direct that the products be moved to a bonded warehouse.
- (4) If a person defaults in complying with a direction under subsection (3), the Director:
  - (a) may cause the products to be moved to that bonded warehouse; and
  - (b) has a lien on the products for any expenses incurred in connection with their removal to the warehouse and for any warehouse rent and charges incurred in relation to the products.

## **26 Removal of excisable products**

- (1) A person who removes or causes or permits excisable products to be removed from a licensed production centre without:
  - (a) an entry made and approved under section 24; or
  - (b) permission given under section 30 or 31;is guilty of an offence punishable upon conviction by a fine of not more than VT 1 million or a term of imprisonment not exceeding 2 years, or both.
- (2) Excisable products must be removed from a licensed production centre only in packages or containers of such sizes and marked or labelled in such manner as the Director approves in writing.
- (3) The alcoholic strength and volume of any alcohol product must be clearly set out in such manner as the Director approves in writing:
  - (a) on the label of any bottle, can or other thing in which the alcohol product is made available for retail sale; and
  - (b) on the packages in which such bottles, cans or things are packed and made available for retail sale.
- (4) A person who fails to comply with subsection (2) or (3) is guilty of an offence punishable upon conviction by a fine of not more than VT 1 million or a term of imprisonment not exceeding 2 years, or both.



## **27 Storage of excisable products**

- (1) The licensed producer of excisable products on completion of production must within such reasonable time as the Director specifies move the products from the licensed production centre to a bonded warehouse in accordance with an entry under section 24 or a permission under section 31.
- (2) A person who fails to comply with subsection (1) is guilty of an offence punishable upon conviction by a fine of not more than VT 1 million or a term of imprisonment not exceeding 2 years, or both.
- (3) Only excisable products that are subject to the control of Customs are to be stored in a bonded warehouse.

## **28 Safe custody of excisable products**

If a person who has the possession, custody or control of excisable products that are subject to the control of the Customs:

- (a) fails to keep those products safely; or
- (b) when so requested by the Director, does not account for those products to the satisfaction of the Director;

the person must, on demand in writing made by the Director pay to the Director an amount equal to the amount of the excise tax that would have been payable on those products if they had been entered for home use on the day on which the Director made the demand.

## **29 Deficiency in excise tax**

- (1) This section applies if on examination of:
  - (a) a licensed producer's records; or
  - (b) the excisable products produced in the relevant licensed production centre and entered under paragraph 24(1)(b);

the Director is satisfied that those excisable products are not in the quantities that the Director believes should have been produced and entered.

- (2) The licensed producer must on demand in writing made by the Director pay to the Director the amount of the deficiency unless such deficiency is accounted for to the satisfaction of the Director.

**30 Permission to deliver certain products for home use without entry**

- (1) The Director may give permission in writing to a person specified in the permission to remove for home use from a place specified in the permission products of a specified kind that are subject to the control of Customs, without an entry for home use under paragraph 24(1)(a).
- (2) The permission continues in force until the permission is revoked in writing by the Director.
- (3) A person to whom permission has been given under subsection (1) must, within 7 days or such longer period as the Director approves after the end of each month, file with the Director in relation to the products specified in the permission:
  - (a) an entry for home use under paragraph 24(1)(a) for those products; and
  - (b) a return in the approved form:
    - (i) setting out the amount of excise tax payable by that person for that month in relation to those products; and
    - (ii) containing such other information as the Director requires.
- (4) Permission under subsection (1) may be given subject to the condition that the person to whom the permission is given complies with such requirements as are specified in the permission, being requirements that, in the opinion of the Director are necessary for the protection of the revenue or for the purpose of ensuring compliance with this Act.
- (5) If, in relation to the delivery for home use of any products, a person to whom permission has been given under subsection (1), fails to comply with a requirement specified in the permission or subsection (3), the person is guilty of an offence punishable upon conviction by a fine of not more than VT 1 million or a term of imprisonment not exceeding 2 years, or both.

**31 Permission to remove products subject to Customs control without entry**

- (1) The Director may give permission in writing to a person specified in the permission to remove products of a kind specified in the permission that are subject to the control of the Customs from a place specified in the permission to another specified place, without an entry under paragraph 24(1)(b), (c) or (d).
- (2) The permission continues in force until it is revoked by the Director.
- (3) A person to whom permission has been given under subsection (1) must, within 7 days or such longer period as the Director approves after the end of each month, file with the Director in relation to the products specified in the permission:
  - (a) an entry under paragraph 24(1)(b), (c) or (d) (whichever applies); for those products; and
  - (b) a return in the approved form:
    - (i) setting out the amount of excise tax payable by that person for that month in relation to those products; and
    - (ii) contain such other information as the Director requires.
- (4) Permission under subsection (1) may be given subject to the condition that the person to whom the permission is given complies with such requirements as are specified in the permission, being requirements that, in the opinion of the Director are necessary for the protection of the revenue or for the purpose of ensuring compliance with this Act.
- (5) If, in relation to the removal of any products, a person to whom permission has been given under subsection (1), fails to comply with a requirement specified in the permission or subsection (3) the person is guilty of an offence punishable upon conviction by a fine of not more than VT 1 million or a term of imprisonment not exceeding 2 years, or both.

## **PART 5 –REFUNDS, RECOVERY, DISPUTES AND REVIEW**

### **32 Refunds**

- (1) Subject to this section, if a person has paid to the Director any amount in excess of the amount of the excise tax payable under this Act, the Director must refund the amount paid in excess.
- (2) Before a refund can be made, a person must apply in the approved form to the Director for a refund stating fully and in detail the grounds of the refund.
- (3) An application for a refund must be made not more than one year after the day on which the excess was paid.
- (4) No amount in excess of VT 150,000 is to be refunded under this Act except with the approval of the Director General of the Ministry responsible for finance.

### **33 Recovery of excise tax**

- (1) Excise tax payable under this Act by any person is recoverable as a debt due to the State in a court of competent jurisdiction.
- (2) If the Director, after consultation with the Director General of the Ministry responsible for finance, is satisfied that the unpaid tax is irrecoverable, the Director may write off the unpaid tax.
- (3) An amount payable under section 28 or 29 is a debt due to the State and may be recovered in a court of competent jurisdiction.

### **34 Statute of limitation**

No statute of limitation bars or affects any action or remedy for recovery of excise tax under this Act.

### **35 Relief from tax**

Despite anything in this Act, the Director may refrain from collecting or refunding excise tax if:

- (a) the balance of any tax payable does not exceed VT 400; or
- (b) the tax paid exceeds the amount of the tax for which the taxpayer is liable by an amount not exceeding VT 400.

### **36 Set off**

If a person has failed to pay in whole or in part any amount of excise tax payable under this Act, the Director may set off against that unpaid tax any other amount refundable or payable by the State to that person by or under any other Act.

### **37 Deposit of excise tax**

- (1) If any dispute arises as to the amount or rate of excise tax or as to the liability of products to excise tax, the owner may deposit with the Director the amount of excise tax demanded by the Director.

- (2) If a deposit is made:
- (a) the owner upon making a proper entry for home use of the products is entitled to delivery of the products; and
  - (b) the amount of the deposit is deemed to be the proper amount of the excise tax unless the contrary is determined in proceedings under subsection (3).
- (3) Within 6 months after making the deposit, the owner may commence proceedings against the Director in any court of competent jurisdiction for the recovery of the whole or any part of the amount of the deposit.
- (4) Any excess of the deposit over the proper excise tax as determined in the proceedings is to be refunded by the Director to the owner.
- (5) The provisions of this section do not apply in a case where the Director is of the opinion that any evasion of this Act has been committed or attempted.

### **38 Review of decisions**

- (1) If the Director makes any of the following decisions:
- (a) a decision not to grant a licence;
  - (b) a decision to cancel a licence;
  - (c) a decision to make a demand under section 28 or 29;
  - (d) a decision under section 32 in relation to a refund of excise tax;
  - (e) such other decisions as are prescribed by the regulations;
- the person in respect of whom the decision was made may appeal to the Supreme Court against that decision.
- (2) An appeal must be brought, by originating application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the Supreme Court may allow.

- (3) The Supreme Court may:
- (a) confirm, reverse or modify the decision appealed against, and make such orders and give such directions to the Director as may be necessary to give effect to the Court's decision; or
  - (b) refer the matter back to the Director with directions to reconsider the whole or any specified part of the matter.

## **PART 6 –POWERS OF OFFICERS**

### **39 Access to licensed production centres**

- (1) An officer may at any reasonable time of the day or night:
  - (a) enter and have complete access to every part of any licensed production centre; and
  - (b) examine, take account of, and note all containers, utensils, materials and excisable products in the production centre.
- (2) An officer may at any reasonable time of the day or night enter and have complete access to every part of a bonded warehouse and may examine and take account of the excisable products in the warehouse.

### **40 Power to enter and search with warrant**

- (1) If an officer has reasonable grounds to believe that there are in any premises:
  - (a) any excisable products on which excise tax has not been paid; or
  - (b) any records relating to such products;

the officer may make a declaration on oath to that effect before a magistrate.
- (2) The magistrate may issue a warrant authorising the officer:
  - (a) to enter and search the premises with such force as may be reasonably necessary, by day or night; and
  - (b) to seize, and remove any such excisable products or records found in the premises.
- (3) An officer in possession of a warrant under subsection (2) may require a police officer to assist him or her in the execution of the warrant.

### **41 Stopping and search of aircraft, vehicles and vessels**

- (1) An officer may, on reasonable grounds of suspicion, stop and search any aircraft, vehicle or vessel for the purposes of ascertaining whether any excisable products on which excise tax has not been paid are in or on it.

- (2) For the purposes of subsection (1), an officer may:
- (a) question the person apparently in charge of the aircraft, vehicle or vessel about any products in, on, or in a container on, the aircraft, vehicle or vessel; and
  - (b) give directions relating to the unloading of any excisable products or other thing from the aircraft, vehicle or vessel and their movement to another place for further examination.
- (3) If a direction under paragraph (2)(b) is not complied with, an officer may do what is necessary to give effect to the direction or to arrange for it to be done.
- (4) An officer must not detain an aircraft, vehicle or vessel under this section for longer than is necessary and reasonable to exercise the powers conferred by this section.

#### **42 Examining of products and plant**

- (1) Any officer may:
- (a) open packages and examine, weigh, mark and seal any excisable products subject to the control of Customs; and
  - (b) lock up, seal, mark or fasten any plant at a licensed production centre.
- (2) The expense of the examination of the products including the cost of their removal to the place of examination is to be borne by the owner.
- (3) If a person opens, alters, breaks or erases a fastening, lock, mark, or seal placed by an officer upon any products or upon any plant in a licensed production centre, the person is guilty of an offence punishable on conviction by a fine of not more than VT 100,000 or a term of imprisonment not exceeding 12 months, or both.

#### **43 Power to search a person and the person's baggage**

- (1) An officer may stop, and search any person if the officer has reasonable grounds to suspect that there may be:
- (a) excisable products subject to the control of Customs concealed on the person; or
  - (b) evidence of an offence against this Act concealed on the person.



- (2) A person may be searched under subsection (1) only by a person of the same sex as the first-mentioned person and the search must take place:
  - (a) in a place set aside for that purpose; or
  - (b) in any other private place.
- (3) For the purposes of subsection (1), an officer may search any baggage, packages or other items in the person's possession and may question the person about any products or evidence found on the person.
- (4) Customs is not liable for any costs incurred by a person:
  - (a) in the production or search of baggage, except for exceptional damage or destruction beyond that which is reasonable in a search; or
  - (b) arising from any delay caused by the search of baggage or of the person.
- (5) An officer may use such reasonable force as is necessary for the purposes of this section.

#### **44 Samples**

- (1) An officer may at any reasonable time take a sample of:
  - (a) any excisable product which is subject to the control of Customs; or
  - (b) which he or she has reasonable grounds for suspecting are products on which excise tax has not been paid.
- (2) Any sample is to be dealt with and disposed of by any officer in a manner determined by the Director.
- (3) A person must not charge any officer for a sample taken under subsection (1).

**45 General power to inspect records**

- (1) Despite anything in any other Act, an officer has at all times full and free access to all records, whether in the custody or under the control of a licensed producer, a public officer or a body corporate or any other person, for the purpose of inspecting any records which the Director:
- (a) considers necessary or relevant for the purpose of collecting any excise tax; or
  - (b) considers likely to provide any information otherwise required for any such purpose;
- and may make extracts from or copies of any such records, and may remove and retain any such records for this purpose.
- (2) An officer may for the purpose of any inspection under this section require any person:
- (a) to give all reasonable assistance in the inspection; and
  - (b) to answer all proper questions relating to any such inspection either orally, or, if an officer so requires, in writing, or by statutory declaration, and for that purpose may require the person to attend at such premises as nominated by the officer.
- (3) To avoid doubt, the powers in this section apply to commercial records relating to an entry of excisable products, whether or not those products are still subject to Customs control.
- (4) A person who fails to comply with paragraph (2)(a) or (b) is guilty of an offence punishable on conviction by a fine not exceeding VT 1 million, or imprisonment for a term not exceeding 2 years, or both.

## **PART 7 – SEIZURE AND OFFENCES**

### **46 Seizure and forfeiture of products**

- (1) An officer may seize any of the following:
  - (a) excisable products that are, or that an officer has reasonable cause to believe are, produced, or partly produced, by a person who is not a licensed producer;
  - (b) all products that are, or that an officer has reasonable cause to believe are, used, or capable of being used, in the production of excisable products and that are found on premises that are not a licensed production centre;
  - (c) all excisable products subject to the control of Customs that are taken possession of, moved, altered or interfered with except as authorised by or in accordance with this Act;
  - (d) all packages in which seized products are contained;
  - (e) all aircraft, vehicles and vessels conveying any products referred to in paragraph (a),(b) or (c), or any packages referred to in paragraph (d).
- (2) Any thing seized under subsection (1) or under any other provision of this Act is upon seizure forfeited to the Government.

### **47 Notice of seizure**

- (1) An officer must give written notice of the seizure of any product to the owner of the product.
- (2) All seized products must be moved to such place as the Director directs.
- (3) The Director may sell or dispose of any seized product in accordance with section 61 unless the person from whom the products were seized or the owner gives written notice to the Director that he or she claims them within one month after the date of the seizure.
- (4) If a claim has been made for the seized products, the Director:
  - (a) may retain possession of the products; and
  - (b) must give the claimant written notice requiring the claimant to take proceedings against the Director for the recovery of the products.
- (5) If the claimant does not, within 4 months after the date of the notice, commence legal proceedings for the recovery of the products, the Director may sell or otherwise dispose of the products without further notice to any person.
- (6) The Director may authorise any products seized to be delivered to the claimant on the claimant giving security determined by the Director.

- (7) Despite subsection (3), if any of the products seized are perishable, the Director may sell them immediately after seizure.
- (8) The proceeds of any sale must be paid to the Director subject to the deduction of any expenses incurred in the sale.

#### **48 Prevention of seizures**

If 2 or more persons are assembled for the purpose of preventing the seizure of, or for rescuing after seizure any forfeited products, each person is guilty of an offence punishable on conviction by a fine of not more than VT 100,000 or imprisonment for a period not exceeding 12 months, or both.

#### **49 Reasonable cause for seizure a bar to action**

- (1) An officer is not liable for any seizure under this Act for which there was reasonable cause.
- (2) If a person recovers any products seized or any proceeds of any such products and at the same time reasonable cause for the seizure is found, the finding bars proceedings against any person concerned in the seizing.

#### **50 Evasion of excise tax**

- (1) If a person:
  - (a) evades payment of any excise tax which is payable; or
  - (b) obtains any refund of excise tax which is not payable; or
  - (c) receives or deals with products, if the person knows or has reason to believe that the excise tax payable on the products has been or is likely to be evaded; or
  - (d) buys, sells or offers for sale, except with the prior approval of the Director, any excisable products unlawfully removed from a licensed production centre;

the person is guilty of an offence punishable on conviction by:

- (e) in the case of an individual - a fine not exceeding VT 1 million, or imprisonment for a term not exceeding 2 years, or both; or
  - (f) in the case of a company – a fine not exceeding VT 5 million.
- (2) In the case of an offence against paragraph (1) (a) or (b), the court may in addition to any penalty under subsection (1) impose a fine not exceeding 5 times the amount of excise tax evaded or the refund obtained and not less than 2 times that amount.

## **51 Failing to provide information and keep records**

If a person:

- (a) refuses or fails to furnish any return or information as and when required by or under this Act; or
- (b) fails to keep or retain records required by or under this Act; or
- (c) knowingly falsifies any records required to be kept by or under this Act;

the person is guilty of an offence punishable on conviction by a fine not exceeding VT 1 million, or imprisonment for a term not exceeding 2 years, or both.

## **52 False statements**

(1) If a person:

- (a) knowingly or recklessly:
  - (i) makes a statement to an officer that is false or misleading in a material particular; or
  - (ii) omits from a statement made to an officer any matter or thing without which the statement is misleading in a material particular; or
- (b) intentionally misleads or attempts to mislead an officer in relation to any matter under this Act;

the person is guilty of an offence punishable on conviction by a fine not exceeding VT 1 million, or imprisonment for a term not exceeding 2 years, or both.

- (2) In the case of an offence against paragraph (1)(a), in relation to a statement made, or an omission from a statement made, in respect of the amount of excise tax payable on particular products, the court may, in relation to that offence, impose an additional penalty not exceeding twice the amount of the excise tax payable on those products.

## **53 Obstruction of officers etc**

(1) If a person:

- (a) obstructs, hinders or impedes any officer in the performance of his or her duties or a person assisting the officer; or
- (b) threatens or intimidates, or attempts to intimidate any officer in the performance of his or her duties or a person assisting the officer;

the person is guilty of an offence punishable on conviction by a fine of not more than VT 100,000 or imprisonment for a term not exceeding 12 months, or both.

- (2) If a person assaults an officer in the performance of his or her duties or a person assisting the officer, the person is guilty of an offence punishable on conviction by a fine of not more than VT 1 million or imprisonment for a term not exceeding 2 years, or both.

#### **54 Bribery and collusion**

- (1) A person who:

- (a) offers or gives, whether directly or indirectly, to an officer any payment or reward, whether in money or otherwise; or
- (b) proposes or enters into any agreement with the officer ;

in order to induce him or her to do, or abstain from doing, permit or conceal any act intended to defraud the Government, or is otherwise unlawful under this Act or any other law, is guilty of an offence punishable on conviction by a fine of not more than VT 1 million or imprisonment for not more than 2 years, or both.

- (2) If an officer:

- (a) asks for or takes, whether directly or indirectly, any payment or reward, whether in money or otherwise, that is not a payment or reward he or she is lawfully entitled to receive; or
- (b) proposes or enters into any agreement, to do, or refrain from doing, permit or conceal any act to defraud or attempt to defraud the Government, or which is otherwise unlawful under this Act or any other law;

the officer is guilty of an offence punishable on conviction by a fine of not more than VT 1,000,000 or imprisonment for not more than 2 years, or both.

#### **55 Aiding and abetting**

A person who aids, abets, counsels or procures or is in any way concerned in the commission of any offence under this Act is deemed to have committed the offence and is punishable on conviction to the penalty for that offence.

**56 Conduct by directors, servants or agents**

- (1) If in a prosecution in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is deemed for the purposes of this Act to have been engaged in also by the body corporate.
- (3) Any conduct engaged in on behalf of a body corporate by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent is deemed, for the purposes of this Act , to have been engaged in also by the body corporate
- (4) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

## **PART 8 – SPECIAL PROVISIONS IN RELATION TO CERTAIN EXCISABLE PRODUCTS**

### **57 Spoilt alcohol products**

- (1) If alcohol products produced in a licensed production centre are unfit for human consumption, the Director may, upon the written request of the producer, approve their destruction or allow them be dealt with as requested by the producer, without entry for home use and payment of any excise tax.
- (2) If alcohol products are found to be unfit for human consumption after they cease to be subject to the control of Customs, no refund of any excise tax paid on the products is to be made.

### **58 Consumption of alcohol products**

- (1) Alcohol products must not be consumed in a licensed production centre or a bonded warehouse unless an entry for home use for the products has been made under paragraph 24(1)(a) or a permission in relation to the products has been given under section 31.
- (2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine of not more than VT 10,000.

### **59 Stills**

- (1) An officer may seize any still that is more than 10 litres in capacity and not located in a licensed production centre and upon seizure is forfeited to the Government.
- (2) Section 48 applies to a seizure under subsection (1).
- (3) A person who operates a still referred to in subsection (1) is guilty of an offence punishable on conviction by a fine of not more than VT 100,000 or imprisonment for a term not exceeding one year, or both.

### **60 Blended petroleum products**

- (1) A blended petroleum product is deemed to be an excisable product for the purposes of this Act and excise tax is imposed and payable on the blended petroleum product as if it were a petroleum product.
- (2) The production of a blended petroleum product is deemed to constitute the production of an excisable product for the purposes of this Act.
- (3) A person must not produce a blended petroleum product unless the person is a licensed producer and the production takes place in a licensed production centre.



- (4) A person who contravenes subsection (3) is guilty of an offence punishable on conviction by a fine of not more than VT 1 million or a term of imprisonment not exceeding 2 years, or both.
- (5) The regulations may specify a blended petroleum product or class of blended petroleum products to be exempt from excise tax.

## **PART 9 – MISCELLANEOUS**

### **61 Sale by Director**

- (1) Products and packages which the Director is authorized to sell (“sale products”) under this Act must not be sold except by auction or by tender and after such public notice as is approved by the Director.
- (2) The sale products may be sold either free of excise tax or subject to excise tax.
- (3) The proceeds of a sale of products by the Director are to be applied:
  - (a) in payment of the warehouse rent and charges and other storage charges (if any) in respect of the products; and
  - (b) in payment of the expenses of the removal of the products; and
  - (c) in payment of the expenses of the sale; and
  - (d) unless the products are sold subject to excise tax, in payment of the excise tax on the products;

in that order, and the balance, if any, must be paid to the Director on account of the person entitled to it.
- (4) The rate of excise tax applicable to sale products sold by the Director is the rate in force at the time of the sale.

### **62 Indemnity**

An individual is not liable to an action or other proceeding for damages for or in respect to an act done or omitted to be done in good faith in the exercise or performance, or purported exercise or performance, of a power, function or duty conferred on him or her by this Act.

### **63 Transitional provision**

- (1) This section applies to a person producing excisable products immediately before the commencement of this Act (“existing producer”).
- (2) An existing producer can continue to produce excisable products for 2 months or such longer period as the Director allows for a particular producer as if the existing producer were a licensed producer and the products were being produced at a licensed production centre.
- (3) An existing producer must apply for a licence under section 9 within 7 days after the commencement of this Act.
- (4) A licence issued following an application referred to in subsection (3) is deemed to have come into force on the commencement of this Act.

**64 Regulations**

- (1) The Minister may make regulations:
  - (a) for or with respect to any matter that by this Act is required or permitted to be prescribed; or
  - (b) that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), regulations may be made prescribing forms and rules or procedure for the ascertainment, assessment and collection of excise taxes imposed under this Act.

**65 Commencement**

This Act commences on 1 January 2003.

## SCHEDULE 1

### Section 21

EXCISABLE PRODUCTS TABLE			
Number	Harmonized System Tariff Items	Description of Items	Rate of excise tax
1	22030010	Beer, not exceeding 3% volume of alcohol	120Vt/litre
2	22030090	Other beer made from malt	120 Vt/litre
3	22041000	Champagne and sparkling wine	100 Vt/litre
4	22042100	Other wine in containers of 2 litres or less	100 Vt/litre
5	22042900	Other wine	100 Vt/litre
6	22043000	Other Grape Must	100 Vt/litre
7	22051000	Vermouth and similar flavoured wines in containers of 2 litres or less	100 Vt/litre
8	22059000	Other Vermouth, and similar flavoured wines	100 Vt/litre
9	22060000	Other fermented alcoholic beverages and mixtures eg Ciders	100 Vt/litre
10	22071000	Undenatured Ethyl Alcohol containing 80% or more by volume.	850 Vt/litre
11	22072000	Denatured Alcohol of any strength	850 Vt/litre
12	22081000	Alcohol for Beverages containing less than 80% by volume of alcohol	750 Vt/litre
13	22082000	Brandy any strength	750 Vt/litre

14	22083010	Whisky less than 10% by volume of alcohol	250 Vt/litre
15	22083020	Whisky 10 to 37% by volume of alcohol	700 Vt/litre
16	22083030	Whisky greater than 37% by volume of alcohol	750 Vt/litre
17	22084010	Rum less than 10% by volume of alcohol	250 Vt/litre
18	22084020	Rum 10 to 37% by volume of alcohol	700 Vt/litre
19	22084030	Rum greater than 37% by volume of alcohol	750 Vt/litre
20	22085010	Gin less than 10% by volume of alcohol	250 Vt/litre
21	22085020	Gin 10 to 37% by volume of alcohol	700 Vt/litre
22	22085030	Gin greater than 37% by volume of alcohol	750 Vt/litre
23	22086010	Vodka less than 10% by volume of alcohol	250 Vt/litre
24	22086020	Vodka 10 to 37% by volume of alcohol	700 Vt/litre
25	22086030	Vodka greater than 37% by volume of alcohol	750 Vt/litre
26	22087010	Liquor less than 10% by volume of alcohol	250 Vt/litre
27	22087020	Liquors 10 to 37% by volume of alcohol	700 Vt/litre
28	22087030	Liquors greater than 37% by volume of alcohol	750 Vt/litre
29	22089010	Other Spirits less than 10% by volume of alcohol	250 Vt/litre

30	22089020	Other Spirits 10 to 37% by volume of alcohol	700 Vt/litre
31	22089030	Other Spirits 37 to 80% by volume of alcohol	750 Vt/litre
32	22089040	Other Spirits greater than 80% by volume of alcohol	850 Vt/litre
33	24021000	Cigars	2500 Vt/kg
34	24022000	Cigarettes containing tobacco	2 Vt/stick
35	24029000	Cigarettes containing tobacco substitute	2 Vt/stick
36	24031000	Stick or twist tobacco	750 Vt/kg
37	24032000	Plug Tobacco	750 Vt/kg
38	24039100	Reconstituted tobacco	750 Vt/kg
39	24039900	Other tobacco products, extracts and essences	750 Vt/kg
40	27100010	Motor Spirits	5 Vt/l
41	27100050	Distillate Fuels	5 Vt/l

## SCHEDULE 2

### Section 23

<b>EXEMPTIONS TABLE</b>		
<b>Item</b>	<b>Excise Exemption Number</b>	<b>Exemption</b>
1	010	Excisable products produced in Vanuatu, being products that would have been eligible for an exemption from duty under Schedule III of the Import Duties (Consolidation) Act [CAP. 91] had the products been imported, but subject to the conditions in that Schedule being complied with.
2	020	Excisable products imported into Vanuatu that are exempt from duty under Schedule III of the Import Duties (Consolidation) Act [CAP. 91], other than diesel fuels imported under Exemptions X7 of that Schedule.
3	030	Excisable products produced in Vanuatu, being products that would have been eligible for a reduction in duty under Schedule III of the Import Duties (Consolidation) Act [CAP. 91] had the products been imported, but subject to the conditions in that Schedule being complied with.
4	040	Excisable products imported into Vanuatu that are eligible for a reduction in duty under Schedule III of the Import Duties (Consolidation) Act [CAP. 91], other than diesel fuels imported under Exemption X7 of that Schedule.
5	050	The production of beer by a person in quantities not exceeding 200 litres per annum for personal consumption.
6	060	The production of tobacco for personal consumption prepared in traditional ways by curing leaf stripped from tobacco plants, without further manufacture other than by rolling or chopping.
7	070	Excisable products produced or imported into Vanuatu that are to be used exclusively in the production of other excisable products in Vanuatu and for which an approval has been obtained under subsection 23(2).