

REPUBLIC OF KIRIBATI

(No. 15 of 2013)

I assent



Ando Turo
Beretitenti

30 Dec, 2013

EXCISE TAX ACT, 2013

to provide for the imposition of excise tax and for matters connected therewith

Commencement

2013

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

PART I

PRELIMINARY

Short Title and Commencement

1. (1) This Act may be cited as the Excise Tax Act, 2013.
- (2) This Act comes into operation on the date notified in the Gazette.
- (3) This Act applies to –
 - (a) an import of excisable goods on or after 1 January 2014; and
 - (b) the removal from Customs control on or after 1 January 2014 of excisable goods manufactured in Kiribati.



Interpretation

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

“approved form” has the meaning in the Revenue Administration Act;

"Board" means the Internal Revenue Board established by the Internal Revenue Board Act, 1990;

“commencement date” means the date specified in section 1(3);

“Comptroller” means the Comptroller of Customs appointed under the Customs Act;

“Customs Act” means the Customs Act, 2005;

“Customs control” has the meaning under the Customs Act as modified by section 3;

“entered” has the meaning under the Customs Act;

“excisable goods” means the goods specified in column 2 in the First Schedule, other than exempt goods;

“excisable value, in relation to excisable goods, has the meaning determined under section 7;

“excise tax” means the excise tax imposed under this Act;

“excise tax rates order” means the excise tax rates order in force from time to time made by the Minister under section 6(2);

“exempt goods” means goods specified in the Second Schedule;

“export”, in relation to goods, means the delivery of the goods to, or the making available of the goods at, an address outside Kiribati as evidenced by documentary proof acceptable to the Board;

“fair market value” has the meaning in section 4;

“import” means to bring goods, or cause goods to be brought, into Kiribati from a place outside Kiribati;

“importer” in relation to an import of excisable goods, means the person who owns the goods, and includes any person for the time being possessed of or beneficially interested in the goods, or permitted to make a Customs entry in relation to the goods under section 29(2) of the Customs Act;

“international organisation” means an organisation to which the International Financial Organisation Act, 1985 applies or any other organisation the members of which are sovereign powers or governments of sovereign powers;

“licensed premises” means premises licensed under section 15;

“manufacture”, in relation to excisable goods, includes any process in the course of manufacturing or producing excisable goods such as –

- (a) filtering, diluting, or blending the excisable goods with other goods;
- (b) putting the excisable goods, for the first time, into a container in which they may be presented or from which they can be dispensed; or
- (c) labelling or marking, for the first time, of containers filled with excisable goods;

“Minister” means the Minister responsible for finance;

“person” means a natural person, partnership, trust, company, government, political subdivision of a government, or an international organisation;

“prescribed” means prescribed in Regulations;

“registered manufacturer” means a person to whom a Certificate of Excise Tax Registration has been issued under section 13; and

“value added tax” means value added tax imposed under the Value Added Tax Act, 2013.

Customs Control of Excisable Goods

3. (1) Customs control as defined in section 15 of the Customs Act also applies to excisable goods manufactured in Kiribati on the basis that –
 - (a) the reference to “goods imported” in section 15 of the Customs Act includes excisable goods manufactured by a registered person in licensed premises; and
 - (b) the reference to the “time they were imported” in section 15 of the Customs Act includes the time manufacturing of the excisable goods commenced.
- (2) For the purposes of section 16 of the Customs Act, licensed premises are treated as a place under Customs control.

Fair Market Value

4. (1) The fair market value of excisable goods at the time of removal from Customs control is the price (excluding excise tax and value added tax) that a manufacturer of the goods could reasonably expect to fetch for the goods at that time in an open market sale, at wholesale, freely transacted between persons dealing with each other at arm's length.
- (2) If the fair market value of excisable goods cannot be determined under subsection (1), the fair market value may be determined using any method approved by the Comptroller for calculating an objective approximation of the price (excluding excise tax and value added tax) that a manufacturer of the goods could reasonably expect to fetch for the goods at that time in an open market sale, at wholesale, freely transacted between persons dealing with each other at arm's length.

Time of Import

5. (1) An import of excisable goods occurs –
 - (a) if the goods are under Customs control, on the date on which the goods are entered for use in Kiribati or otherwise cease to be under Customs control as determined under the Customs Act; or
 - (b) in any other case, on the date the goods are brought into Kiribati.
- (2) In this section, "Customs control" has the meaning under the Customs Act.

PART II

IMPOSITION OF EXCISE TAX

Imposition and Liability for Excise Tax

6. (1) Subject to this Act, excise tax is imposed at the rates specified in the excise tax rates order on –
 - (a) the removal of excisable goods from Customs control by a registered manufacturer; or
 - (b) an import of excisable goods.

- (2) Subject to subsection (4), the Minister, acting in accordance with the advice of the Cabinet, may make an order, known as the excise tax rates order, setting the rates of excise tax payable on the removal of excisable goods from Customs control by a registered manufacturer or an import of excisable goods.
- (3) The order referred to in subsection (2) is made by publishing the order in the Gazette.
- (4) An export of excisable goods is subject to a zero rate of excise tax provided the goods have been entered for export under the Customs Act.
- (5) The liability for excise tax under subsection (1)(a) arises at the time of removal of the excisable goods from Customs control and must be accounted for to the Comptroller by the registered manufacturer removing the goods in accordance with section 19.
- (6) The liability for excise tax under subsection (1)(b) arises at the time of import and must be paid by the importer in accordance with section 20.

Excisable Value and Quantity

7. (1) If the excise tax rates order specifies a rate of excise tax payable by reference to the excisable value of excisable goods, the excisable value is --
 - (a) if the goods are imported, the sum of the following amounts --
 - (i) the customs value of the goods as determined under the Customs Act, whether or not import duty is payable on the goods;
 - (ii) to the extent not included under sub-paragraph (i), the cost of services that are ancillary or incidental to the import of the goods other than the cost of freight and insurance in transporting the goods to Kiribati;
 - (iii) the amount of any import duty imposed on the goods under the Customs Act;
 - (iv) the amount of any other tax (other than excise tax or value added tax), duty, fees, or other charges payable upon the entry of the goods into Kiribati; or

- (b) if the goods are manufactured in Kiribati, the fair market value of the goods at the time of removal of the goods from Customs control.
- (2) If—
- (a) the excise tax rates order specifies a rate of excise tax payable by reference to a quantity measured by volume or weight;
 - (b) the goods are imported or removed from Customs control in a container intended for sale with, or of a kind usually sold with, the goods in a sale by retail; and
 - (c) the container is marked, labelled, or commonly sold as containing, or commonly reputed to contain, a specific quantity of such goods,

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

Deemed Removal of Excisable Goods

8. (1) A registered manufacturer that cannot account, to the satisfaction of the Comptroller, for any quantity of excisable goods manufactured or warehoused by the manufacturer is deemed to have removed those goods from Customs control in the month in which the discrepancy arose.
- (2) A registered manufacturer is required to notify the Comptroller of any discrepancies between the manufacturer's actual and recorded inventory as soon as the manufacturer becomes aware of the discrepancy.

Temporary Importation

9. (1) The Comptroller may, upon application by an importer, grant permission to the importer for the temporary import of excisable goods without payment of excise tax if—
- (a) the goods are imported for temporary use or for a temporary purpose only, or the goods are the bona fide property, and are for the exclusive use, of a person temporarily in Kiribati;
 - (b) the goods will be exported within three months from the grant of the permission for their temporary import; and

- (c) the importer deposits with the Comptroller as security an amount equal to the excise tax payable on the goods.
- (2) Despite subsection (1), the Comptroller may, if considered appropriate, allow such further period as the Comptroller determines for the export of goods referred to in subsection (1).
- (3) If goods for which the Comptroller has granted permission under subsection (1) are exported within the time specified in subsection (1)(b), or within a further period allowed under subsection (2), the Comptroller must refund the security deposit referred to in subsection (1)(c) to the importer.
- (4) If goods imported in circumstances to which subsection (1) applies are not exported within the period specified in subsection (1)(b), or within such further period allowed under subsection (2), the Comptroller must bring to account as excise tax the security deposit placed with the Comptroller under subsection 1(c).

Relief for Raw Materials

- 10. (1) If the Comptroller is satisfied, on the basis of a certificate issued by a registered manufacturer in the approved form, that excisable goods, whether imported into, or manufactured in, Kiribati, are intended to be used by the registered manufacturer as raw materials for the manufacture of other excisable goods, the Comptroller may, in respect of such goods, instead of requiring payment of excise tax in full, require that the manufacturer deposit security in such amount as the Comptroller thinks fit.
- (2) If the Comptroller is satisfied that goods to which subsection (1) applied were used as raw materials for the manufacture in Kiribati of other excisable goods, the Comptroller may apply any security deposit given under subsection (1) against any excise tax that becomes payable on the removal of those other excisable goods from Customs control.
- (3) If the Comptroller is satisfied that goods to which subsection (1) applied were applied to a purpose other than as raw materials for the manufacture of other excisable goods, the Comptroller must apply any security deposit given under subsection (1) as payment of the excise tax liability that would have arisen were it not for the Comptroller's decision under subsection (1).

Relief for Damaged or Destroyed Goods

11. No excise tax is payable by a registered manufacturer in respect of excisable goods –
- (a) destroyed by fire or other natural cause prior to removal from Customs control; or
 - (b) that have deteriorated or have been damaged in storage in the manufacturer's licensed premises and are securely disposed of in a manner approved by the Comptroller.

PART III

REGISTRATION OF MANUFACTURERS AND LICENSING OF PREMISES

Prohibition on Manufacture of Excisable Goods

12. (1) A person must not manufacture excisable goods in Kiribati unless –
- (a) the person is a registered manufacturer for the purposes of manufacturing those goods;
 - (b) the person has provided security as required under section 13(2)(c); and
 - (c) the excisable goods are manufactured in licensed premises.
- (2) A person who manufactures excisable goods in contravention of subsection (1) is liable for excise tax in respect of the excisable goods at the rates specified in the excise tax rates order.
- (3) Excise tax payable under subsection (2) is payable on demand made by the Comptroller.

Registration

13. (1) A person wishing to manufacture excisable goods must apply to the Board, in the approved form and prescribed manner, for registration as a manufacturer of excisable goods.
- (2) The Board must register a person who has applied for registration under subsection (1) if satisfied that the person –
- (a) will carry on the business of manufacturing excisable goods;

- (b) will comply with the obligations imposed under the Act on registered manufacturers; and
 - (c) has entered into a general bond, to continue in force while the manufacturer remains a registered manufacturer, with security in such amount as the Board thinks fit.
- (3) The Board may impose such terms, conditions, or restrictions as the Board considers appropriate in relation to the registration of a person as a registered manufacturer for the purposes of this Act.
 - (4) The Board must issue a registered manufacturer with a Certificate of Excise Tax Registration in the approved form.
 - (5) Registration takes effect from the date set out in the manufacturer's Certificate of Excise Tax Registration.
 - (6) A registered manufacturer must notify the Board, in writing, of --
 - (a) any change in the name, address, place of business, constitution, or nature of the principal activity or activities carried on by the manufacturer, including any significant change in the nature or quantity of excisable goods manufactured; or
 - (b) any period in which the manufacturer closes operations on a temporary basis.
 - (7) A notification under subsection (6) must be lodged with the Board no later than 21 days after the event requiring notification occurs.

Cancellation of Registration

- 14. (1) A registered manufacturer who ceases to manufacture excisable goods must, within seven days of the date of such cessation, notify the Board in writing, stating --
 - (a) the date on which the manufacturer ceased to manufacture excisable goods;
 - (b) the date on which the manufacturer expects that no excisable goods will remain in the manufacturer's licensed premises; and
 - (c) whether or not the manufacturer intends to recommence manufacturing excisable goods within twelve months from the date specified under paragraph (b).

- (2) If the Board receives a notification under subsection (1), the Board must, by notice in writing, cancel the registration of the manufacturer with effect from the first day on which there are no longer excisable goods in the manufacturer's licensed premises unless the Board has reasonable grounds to believe that the manufacturer will recommence manufacturing excisable goods at any time within twelve months from the date provided under subsection (1)(b).
- (3) Any obligation or liability under this Act of a registered manufacturer in respect of anything done or omitted to be done by the manufacturer while the manufacturer was a registered manufacturer, including the obligation to pay excise tax and to file excise tax returns, is not affected by cancellation of the manufacturer's registration.
- (4) A registered manufacturer who sells a business of manufacturing excisable goods as a going concern must notify the Board, in writing, of that fact at least three days before the earliest of the date on which –
 - (a) the sale is completed;
 - (b) the purchaser acquires any legal interest in the assets to be acquired; or
 - (c) the assets of the going concern are transferred.
- (5) The Board may cancel, by notice in writing, the registration of a manufacturer on the Board's own motion if satisfied that the manufacturer has regularly failed to comply with its obligations under this Act.
- (6) The cancellation of the registration of a manufacturer under subsection (5) takes effect from the date specified in the notice of cancellation and the manufacturer is liable for excise tax on all excisable goods (including those subject to relief under section 10) on hand at that date.

Licensed Premises

15. (1) A registered manufacturer must apply to the Comptroller for approval of premises as licensed premises for the purposes of manufacturing and selling excisable goods.
- (2) An application under subsection (1) must be made in the approved form and prescribed manner, and be accompanied by the prescribed licence fee.

- (3) The Comptroller must approve a registered manufacturer's premises as licensed premises if satisfied that the premises meet the standards set out in the regulations.
- (4) A licence issued under this section is valid for twelve months from the date of issue.
- (5) A registered manufacturer may apply to the Comptroller, in the approved form and prescribed manner, for renewal of a licence issued under this section.
- (6) An application for renewal of a licence under subsection (5) must be made before the expiry date of the licence or within such further time as the Comptroller may allow and be accompanied by payment of the prescribed licence fee for renewals.
- (7) The Comptroller must grant an application for renewal of a licence if satisfied that the premises continue to meet the standards set out in the regulations.
- (8) The Comptroller must cancel a licence issued under this section if satisfied that the premises no longer meet the standards set out in the Regulations.
- (9) A registered manufacturer is permitted to manufacture and sell excisable goods only from licensed premises.

PART IV

EXCISE STAMPS

Excise Stamps

16. (1) Subject to subsection (2), manufactured and imported alcoholic spirits and tobacco products that are excisable goods must be marked by the importer or registered manufacturer with an excise stamp as prescribed prior to their removal from licensed premises or a licensed warehouse as evidence that excise tax has been paid on the goods.
- (2) Subsection (1) does not apply to alcoholic beverages sold in containers not exceeding 50 millilitres.

- (3) The marking of imported alcoholic spirits and tobacco products must be done within seven days of entry into Kiribati.
- (4) Any alcoholic spirits or tobacco products that are supplied without an excise stamp as prescribed are liable to be seized by the Comptroller.
- (5) No person is permitted to manufacture or print excise stamps unless licensed to do so by the Comptroller in accordance with the Regulations.

PART V

EXCISE TAX PROCEDURE

Records

17. (1) A registered manufacturer must maintain such accounts, documents, and records so as to enable the computation of the excise tax payable on the removal of excisable goods manufactured by the registered manufacturer from Customs control.
- (2) A person importing or exporting excisable goods must maintain Customs documentation relating to imports or exports of excisable goods.
- (3) The documentation required to be maintained by a person under this section must be retained by the person for the period and in the manner specified in the Revenue Administration Act.

Excise Tax Returns

18. A registered manufacturer must file an excise tax return, in the approved form and prescribed manner, for each calendar month within 15 days after the end of the month, whether or not any excise tax is payable for that month.

Payment of Excise Tax by Registered Manufacturer

19. (1) The excise tax payable by a registered manufacturer under section 6(1)(a) in respect of the removal of excisable goods from Customs control during a calendar month is payable by the due date for filing the manufacturer's excise tax return for that month.

- (2) A registered manufacturer must not remove excisable goods from Customs control if the removal would result in the amount of excise tax payable by the manufacturer but not yet paid (including excise tax that has not been paid because the time allowed for payment under subsection (1) has not expired) exceeding the amount of security given under section 13(2)(c), unless –
- (a) the Comptroller, on application in writing by the manufacturer, gives permission for the removal;
 - (b) the manufacturer, with the agreement of the Comptroller, increases the amount of the security given with the general bond prior to removal; or
 - (c) in any other case, the manufacturer pays the excise tax payable on the goods before the excisable goods are removed from Customs control.
- (3) If a registered manufacturer pays excise tax to the Comptroller under subsection (2)(c), the manufacturer must include the excise tax in its excise tax return for the month following the making of the payment, but is entitled to a credit for the amount paid.

Payment of Excise Tax by Importers

20. (1) The excise tax payable on the import of excisable goods into Kiribati is payable by the importer to the Comptroller at the time of import.
- (2) For the purposes of subsection (1) –
- (a) a passenger who imports baggage for which no entry is required is treated as having entered the baggage for use within Kiribati at the time the baggage is delivered to the passenger in Kiribati; or
 - (b) the addressee of goods imported by post for which no entry is required is treated as having entered the goods for use within Kiribati at the time the goods are delivered to the addressee.
- (3) For the purpose of collecting and enforcing the payment of excise tax on the importation of goods into Kiribati, the Customs Act applies as if the excise tax were customs duty.

Security

21. Any security required to be provided under this Act must be provided in accordance with the Revenue Administration Act.

Penalty

22. (1) A person who contravenes section 12 by manufacturing excisable goods in Kiribati without being registered is liable for a penalty equal to double the excise tax that would have been payable on the goods if the person had complied with section 12.
- (2) A registered manufacturer who contravenes sections 12 and 15 by manufacturing excisable goods in premises that are not licensed premises is liable for a penalty equal to double the amount of excise tax payable on the goods if the manufacturer had complied with sections 12 and 15.

Offences

23. (1) A person who --
- (a) fails to comply with section 8(2);
 - (b) contravenes section 12;
 - (c) manufactures excisable goods in premises that are not licensed premises;
 - (d) fails to comply with section 13(6) and (7);
 - (e) fails to apply for cancellation of registration as required by section 14(1) or notify the Board under section 14(4);
 - (f) removes excisable goods from Customs control in contravention of section 19(2);
 - (g) without authorisation, enters a place where there are excisable goods under Customs control; or
 - (h) is involved in the unauthorised removal, alteration, or interference with excisable goods that are subject to Customs control,

commits an offence and upon conviction is liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 2 years, or to both such fine and imprisonment.

- (2) A person who –
- (a) knowingly smuggles, unlawfully conveys, or has in the person's possession any smuggled excisable goods;
 - (b) knowingly offers for sale smuggled or unlawfully imported excisable goods; or
 - (c) receives excisable goods knowing or believing the goods to have been smuggled or to have been unlawfully imported,

commits an offence and upon conviction is liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 10 years, or to both such fine and imprisonment.

- (3) A person who –
- (a) marks alcoholic spirits or tobacco products that are excisable goods with an excise stamp knowing that the excise tax in respect of alcoholic spirits or tobacco products has not been paid;
 - (b) fails to mark alcoholic spirits or tobacco products that are excisable goods with an excise stamp as required under section 16;
 - (c) fraudulently appropriates excise stamps belonging to a registered manufacturer; or
 - (d) manufactures excise stamps when not being the lawful holder of a licence to manufacture such stamps,

commits an offence and upon conviction is liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 10 years, or to both such fine and imprisonment.

- (4) If penalty has been paid under section 22 and the Comptroller commences a prosecution under this section for the same act or omission, the penalty must be refunded and is not payable unless the prosecution is withdrawn.

PART VI
MISCELLANEOUS PROVISIONS

Tax Avoidance Schemes

24. (1) Despite anything in this Act, if the Comptroller is satisfied that –
- (a) a tax avoidance scheme has been entered into or carried out;
 - (b) a person has obtained a tax benefit in connection with the tax avoidance scheme; and
 - (c) having regard to the substance of the tax avoidance scheme, it would be concluded that a person, or one of the persons, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person referred to in paragraph (b) to obtain the tax benefit,

the Board may determine the excise tax liability of the person who obtained the tax benefit as if the tax avoidance scheme had not been entered into or carried out.

- (2) If a determination is made under subsection (1), the Comptroller must issue an assessment giving effect to the determination.
- (3) A determination under subsection (1) must be made within six years from the last day of the month to which the determination relates.
- (4) In this section –

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

“tax avoidance scheme” means any scheme if one of the main purposes of a person in entering into the scheme is the avoidance or reduction of any person’s liability for excise tax under this Act; and

“tax benefit” means –

- (a) a reduction in the liability of a person to pay excise tax;
- (b) an entitlement to a refund;

- (c) a postponement of a liability for the payment of excise tax; or
- (d) any other advantage arising because of a delay in payment of excise tax.

Currency Translation

25. (1) An amount taken into account under this Act must be expressed in Australian dollars.
- (2) If any amount is expressed or paid in a currency other than Australian dollars -
- (a) in the case of an import of goods, the amount is converted into Australian dollars at the exchange rate applicable under the Customs Act for the purposes of computing the import duty payable on the import; or
 - (b) in any other case, the amount is converted to Australian dollars at the Reserve Bank of Australia mid-exchange rate applying between the foreign currency and Australian dollars on the date the amount is taken into account for the purposes of this Act.

Application of Act

26. (1) This Act binds the Government.
- (2) Despite any other Act or agreement made before or after the commencement date, an exemption from tax in such other Act or agreement for a person must not be construed as an exemption from the payment of excise tax under this Act unless the exemption is also provided for under this Act.
- (3) The Board must carry out the functions assigned to it under this Act.
- (4) The delegation of any function under this Act by the Board must be made in accordance with Part III of the Internal Revenue Board Act.
- (5) The provisions relating to secrecy in the Internal Revenue Board Act apply to this Act.

PART VII
FINAL PROVISIONS

Regulations

27. (1) The Beretitenti, acting in accordance with the advice of Cabinet, may make regulations –
- (a) prescribing any matter required to be prescribed for the purposes of the Act;
 - (b) giving full effect to this Act and for its due administration; or
 - (c) amending the Schedules.
- (2) Without limiting the general effect of subsection (1), regulations made under that subsection may –
- (a) contain provisions of a saving or transitional nature consequent upon the making of this Act; or
 - (b) prescribe penalties for the contravention of the regulations.
- (3) If regulations made under this section are of a transitional nature and are made within six months after the commencement date, the regulations may provide that they take effect from the date on which the Act comes into force.

Transitional

28. If a registered manufacturer concluded a contract before the commencement date, the registered manufacturer is entitled to recover excise tax due on excisable goods supplied under that contract after the commencement date, notwithstanding that the contract contained no provision relating to increasing the amount payable under the contract because of the imposition of excise tax.

FIRST SCHEDULE

Excisable Goods

Tariff Classification Heading	Description of Goods
2203	Beer
2204-2206	Wine, vermouth and other fermented beverages (for example, cider, perry and mead)
2207-2208	Ethyl alcohol (other than denatured) and other alcoholic beverages
2401-2403	Tobacco and tobacco products
2710	Gasoline, diesel fuel and other petroleum products
8702-8707	Motor vehicles

SCHEDULE

Exempt Goods

- (1) The following goods are exempt from excise tax –
- (a) goods of a non-commercial nature of an aggregate value of up to \$200;
 - (b) an import by a passenger or a member of a crew of a ship or aircraft of the following –
 - (i) the lesser of the following –
 - (A) not more than 200 cigarettes, 50 cigars, or 250 grams of tobacco; or
 - (B) not more than any combination of the goods set out in sub-sub-paragraph (i)(A) with a total weight of 250 grams;
 - (ii) not more than two litres of wine;
 - (iii) not more than one litre of spirits;
 - (b) excisable goods that are bona fide stores of a ship or aircraft, being goods for the use of the passengers and crew of the ship or aircraft while on board and while the ship or aircraft is in international traffic in such quantities as approved by the Comptroller;
 - (c) excisable goods carried across Kiribati in transit;
 - (d) excisable goods imported by a diplomatic or consular mission, or by a diplomat or a member of the diplomat's family forming part of the diplomat's household in Kiribati, to the extent provided for in the Diplomatic Privileges and Immunities Act 1983;
 - (e) excisable goods imported by an international organisation or foreign government to the extent provided for under an international agreement or the International Financial Organisation Act, 1985.

- (2) In this Schedule -

“international agreement” means an agreement between the Government and a foreign government or international organisation for the provision of financial, technical, humanitarian, or administrative assistance to the Government; and

“international traffic”, in relation to a ship or aircraft, means any operation of the ship or aircraft except as between two places in Kiribati.

EXCISE TAX ACT, 2013
EXPLANATORY MEMORANDUM

Introduction

The Excise Tax Act 2013 (referred to as "the Act") provides for the imposition of excise tax in relation to excisable goods manufactured in or imported in Kiribati and removed from Customs control from the 1st January 2014.

Part I – Preliminary

Section 1 provides for the short title and commencement of the Act.

Section 2 provides definitions of commonly used terms in the Act. The definitions in section 2 apply unless the context requires otherwise.

Section 3 provides for Customs control of excisable goods manufactured in licensed premises in Kiribati. The effect of the section is to extend the application of the concept of Customs control under the Customs Act so that it applies also to excisable goods manufactured in licensed premises.

Section 4 defines "fair market value" for the purposes of the Act. The definition is relevant to section 7(1)(b), which applies when the excisable value of excisable goods manufactured in Kiribati is determined on an *ad valorem* basis.

Section 5 provides rules for determining the time of an import of excisable goods. These rules are relevant to: (i) section 1(3) (which provides that the Act applies to an import of excisable goods on or after 1 January 2014); (ii) section 6(4) (which provides that the liability for excise tax imposed on an import of excisable goods arises at the time of import); and (iii) section 20 (which provides that the excise tax on an import of excisable goods is payable by the importer at the time of import).

Part II – Imposition of Excise Tax

Section 6 provides for the imposition of excise tax in relation to excisable goods. Excise tax is imposed on the removal of excisable goods from Customs control by a registered manufacturer. The registered manufacturer must account to the Comptroller for the excise tax on a monthly basis in accordance with section 19. Excise tax is also imposed on an import of excisable goods. The liability for excise tax arises at the time of import and the tax must be paid by the importer in accordance with section 20. Excise tax is imposed at the rates specified in the excise tax rates order in force from time to time made by the Minister by publication in the Gazette. This is subject to a zero rate of excise tax applying to an export of excisable goods.

Section 7 provides for the determination of excisable value of excisable goods applicable when excise tax is imposed on an *ad valorem* basis. The section also provides rules relevant to the imposition of excise tax on a per unit or specific basis. If such goods are either imported or removed from Customs control in a container in which the goods are normally sold by retail, the container is treated as containing, at least, the specified quantity of the goods marked on the container.

Section 8 provides for accounting of shortfalls in excisable goods manufactured in Kiribati.

Section 9 provides the Comptroller with discretion to grant to an importer permission to temporarily import excisable goods without the payment of excise tax on the import. The importer must provide security in relation to the import.

Section 10 provides a mechanism under which a registered manufacturer can apply for relief in respect of the excise tax payable on the acquisition of excisable goods that are to be used by the manufacturer as raw materials in the manufacture of other excisable goods. This could apply, for example, to the import of tobacco by a registered manufacturer for the manufacture of cigarettes in Kiribati. The value of the imported excisable goods as raw materials is effectively captured as part of the excisable value of the subsequently manufactured excisable goods.

Section 11 provides that excise tax is not payable on excisable goods that: (i) are destroyed by a fire or other natural cause (such as a cyclone) prior to removal from Customs control; or (ii) have been destroyed before removal from Customs control because they have been damaged or deteriorated in condition.

Part III – Registration of Manufacturers and Licensing of Premises

Section 12 prohibits the manufacture of excisable goods in Kiribati except by registered manufacturers. If a person manufactures excisable goods in contravention of the section, the person is liable for excise tax in relation to the excisable goods.

Section 13 provides for the registration of manufacturers of excisable goods. Registration of manufacturers is made by the Board rather than the Comptroller because the Board coordinates the issue of tax identification numbers under the Revenue Administration Act. A registered manufacturer must be issued with a Certificate of Excise Tax Registration.

Section 14 provides for the cancellation of a manufacturer's registration. A registered manufacturer is obliged to notify the Board if the manufacturer ceases to manufacture excisable goods and the Board must cancel the manufacturer's registration. Cancellation of a manufacturer's registration takes effect from the date that the manufacturer no longer has any excisable goods in the manufacturer's licensed warehouse. The Board is also empowered to cancel the registration of a manufacturer on the Board's own motion if satisfied that the manufacturer has regularly failed to comply with its obligations under the Act.

Section 15 provides for the approval by the Comptroller of premises of a registered manufacturer as licensed premises for the purposes of the Act. Premises are approved by the Comptroller (rather than the Board) because similar standards apply as applicable to the licensing of warehouses under the Customs Act. A registered manufacturer can manufacture excisable goods only in licensed premises.

Part IV – Excise Stamps

Section 16 provides for the marking of manufactured and imported alcoholic spirits and tobacco products with an excise stamp.

Part V – Procedure

Section 17 provides for the keeping of records relating to excise tax.

Section 18 obliges a registered manufacturer to file an excise tax return, in the approved form and the prescribed manner, for each calendar month within 15 days after the end of the month.

Section 19 provides for the payment of excise tax on a monthly basis by registered manufacturers. As excise tax is a self-assessed tax, the excise tax payable by a registered person for a calendar month is payable at the time the excise tax return for the month is due to be filed.

Section 20 provides for the payment of excise tax by importers on the import of excisable goods. The Customs Act applies to the collection of excise tax on imports on the basis that the references in the Customs Act to import duty are treated as references to excise tax.

Section 21 provides that any security required to be provided under this Act must be provided in accordance with the Revenue Administration Act.

Section 22 imposes penalty tax on: (i) a person who contravenes section 12 by manufacturing excisable goods in Kiribati without being registered; or (ii) a registered manufacturer who contravenes sections 12 and 15 by manufacturing excisable goods in premises that are not licensed premises.

Section 23 provides for excise tax offences.

Part VI – Miscellaneous Provisions

Section 24 provides for a general anti-avoidance rule for the excise tax regime. If the Comptroller is satisfied that a person (who need not necessarily be a registered manufacturer) entered into a scheme for the sole or dominant purpose of enabling that person or some other person to obtain a tax benefit in connection with the scheme and the tax benefit was in fact obtained, the Comptroller may determine the liability of the person who obtained the benefit as if the scheme had not been entered into or carried out.

Section 25 provides that all amounts taken into account under the Act are to be expressed in Australian dollars. Currency translation rules are provided if an amount is expressed in a currency other than Australian dollars.

Section 26 provides that the Act binds the Government. This means, for example, that if the Government wants to engage in the manufacture of excisable goods, the Government must register as a manufacturer under section 13. It is also provided that tax exemptions specified in other legislation do not apply for the purposes of the excise tax unless also specified in the Act. It is intended that the only exempt goods are those specified in the Second Schedule.

Part VII – Final Provisions

Section 27 empowers the Berentitani to make regulations for the purposes of the Act.

Section 28 provides a transitional rule applicable to contracts entered into prior to a person becoming a registered manufacturer.

Schedules

The First Schedule specifies the goods that are excisable goods.

The Second Schedule specifies goods that are exempt from excise tax.

Titabu Tabane
Attorney General March
2013

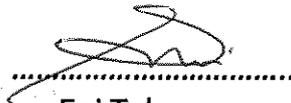
CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 16th December 2013 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 30 day of December 2013.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu