

THE CUSTOMS AND EXCISE (AMENDMENT) BILL 1999
(NAME OF BILL)

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**THE CUSTOMS AND
EXCISE (AMENDMENT)
ACT 1999
(NO. 6 OF 1999)**



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EXCISE (AMENDMENT)
ACT 1999**

(NO. 6 OF 1999)

Passed by the National Parliament this twenty-second day of June 1999.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.

Elizabeth Andresen
 Acting Clerk to National Parliament

Assented to in Her Majesty's name and on Her Majesty's behalf this seventh day of September 1999.

Rev John Ini Lapli
 Governor-General

Date of commencement: see section 1

AN ACT TO AMEND THE CUSTOMS AND EXCISE ACT

Short title and date of commencement.

1. This Act may be cited as the Customs and Excise (Amendment) Act, 1999, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Insertion of new sections 212A, 212B and 212C in Cap. 121.

2. The Customs and Excise Act is hereby amended by inserting therein immediately after section 212, the following new sections as sections 212A, 212B and 212C respectively -

"Penalty for loss of revenue due to false statement

212A. (1) Subject to section 212C, where a person makes in respect of any goods a statement to an officer, for a purpose in connection with the operation of this Act -

(a) that is false or misleading in a material particular; or

(b) omits any matter or thing without which the statement is misleading in a material particular; and

(c) the duty properly payable by the person on those goods exceeds the duty that would have been payable by the person if the duty was assessed or determined on the basis that the statement was not false or misleading, as the case may be,

the person is liable to pay additional duty as prescribed in subsection (2).

(2) The Comptroller may within twelve months after the statement was made, by notice in writing, require the owner of the goods (not being a person who is to be treated as the owner of the

(3) The notice may be served on the owner of the goods or on the agent of the owner.

(4) If an amount required to be paid in accordance with subsection (2) within a period of ninety days is not so paid it becomes, upon the expiration of that period, a debt due to the Government and may be recovered in a court of competent jurisdiction.

(5) Where a person in respect of whom a demand for the payment of penalty in respect of any particular goods has been made under subsection (2) makes application to a court for review of the decision as to the amount of duty payable on those goods -

(a) the period commencing on the making of that application and ending on the final determination of the amount of duty by the court shall not be taken into account in computing the period of ninety days referred to in subsections (2) and (4); and

(b) if it is determined, or ultimately determined, that the duty, or any part of the duty, demanded in respect of those goods is not payable, the demand for penalty shall thereupon be treated as if it were, and had always been, a demand for such amount, if any, as would be appropriate under subsection (2)

(6) Where the Comptroller serves a notice under subsection (2) in relation to a statement made, or an omission from a statement made, by a person, proceedings shall not be instituted under any other provision of this Act against that person in relation to that statement or omission.

Remission
of penalty

212B. (1) Where a penalty is payable under section 212A as a result of a statement, or an omission from a statement, the Comptroller may, on the basis of a written application made to the Comptroller within thirty days after the Comptroller served the notice under section 212A(2) in relation to the statement or the omission from the statement, by the person liable to pay the penalty, remit the whole or any part of that penalty.

(2) Within thirty days after receiving an application for remission of penalty the Comptroller shall inform the applicant of the Comptroller's decision in relation to the application.

(3) Where the Comptroller fails to inform the applicant of the decision within thirty days after receiving the application, the Comptroller shall be taken to have decided not to remit the penalty.

(4) In considering an application under subsection (1) to remit the whole or a part of a penalty in respect of a statement or omission made by the applicant or by an agent of the applicant

(a) whether the applicant or the applicant's agent, as the case requires, had voluntarily admitted that the statement was, or was as a result of the omission, false or misleading;

(b) the risk to the revenue occasioned by such a statement or omission;

(c) the capacity of the applicant or of the applicant's agent, as the case requires, to avoid making such a statement or omission and the extent to which that capacity was exercised;

(d) the history of the applicant or of the applicant's agent, as the case requires, in relation to the making of statements or omissions giving rise to convictions under this Act or to liability for penalty under section 212A.

(5) Where a decision of a court on an application for review of a decision taken under section 212A will result in a lesser amount of duty being payable than the amount demanded or in no duty being payable, the Comptroller shall remit any penalty paid or payable under section 212A to the extent necessary to give effect to the decision of the court.

212C (1) Where the

as false or misleading in a material particular, that owner or agent may, by writing included in the statement, specify that information as information of which the owner or agent is uncertain and set out the reasons for that uncertainty, and, where the owner or agent does so, no penalty shall be imposed under section 212A in relation to that information.

(2) Where the owner of any goods or the agent of the owner is uncertain whether, by reason of the omission of particular information from a statement made in respect of those goods, that statement might be regarded as misleading in a material particular, that owner or agent may, by writing included in the statement, specify the information that has been omitted and set out the reason for uncertainty concerning the effect of its omission, and, where the owner or agent does so, no penalty shall be imposed under section 212A in relation to that information."

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