



LICENSING AND REGISTRATION OF DUTY FREE SHOP

Definitions and Abbreviations

CCA Common Customs Area

This is the combined Customs territories of the government of the Republic of Botswana, Kingdom of Lesotho, Republic of Namibia, Republic of South Africa and the Kingdom of Swaziland. This is normally referred to as the SACU Customs area.

Duty Free shop

A facility designated to operate under Customs control to offer for sale duty free goods to qualified buyers

Duty free goods

Goods on which customs duties are waived/not collectable.

The Commissioner

This refers to the Commissioner of Customs and Excise unless the text otherwise specifies.

Travelers

These are the people who visit Lesotho for short period of time and are resident of countries beyond the SACU countries.

Qualified buyers

This refers to travelers and diplomats including diplomatic missions to Lesotho

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1 Introduction

1.1 Background

Duty Free Shops are licensed premises allowed to store and sell duty free goods to qualified buyers. The intention is to cater for the necessities and requirements of international travelers and tourists as well as promotion of international tourism.

1.2 Purpose and scope

This document provides the procedure of the licensing and registration of Duty Free Shops. Provided herein are the requirements of Customs and Excise and VAT Acts as well as the infrastructural and documentation for registration and licensing of duty free shops.

The procedures shall be followed by the duty free shop operators as they offer goods for sale to travelers and tourists who are citizens of any other country other than SACU countries, provided such goods shall be consumed out of the CCA. Offer for sale of the goods to any other person is prohibited.

Travelers or international tourists shall buy from the duty free shops provided they are onboard for foreign leaving aircraft. The licensing of such Duty Free shops is based on the fact that only eligible or qualifying persons shall be allowed to purchase goods from such shops and also that these goods need to be exported to a market outside the CCA. Purchases or offer to sale of these goods by any other person is prohibited.

1.3 Legal Framework

The applicable laws are the Customs and Excise no 10 of 1982 and the VAT Act of 2001 with regards to issues of registering a Duty Free Shop in Lesotho. As per the provisions of section 18, the Commissioner may license a facility for storage of goods on which duties have not been collected. The operations of these facilities

are under close supervision of Customs for the fact that goods offered for sale in these facilities duties have not been collected. The controls of these facilities are provided for in the Customs and Act as relates to bonds and registration requirements.

In terms of the VAT Act (section 47), since the of Diplomats and Diplomatic Mission accredited to Lesotho (persons with Diplomatic Status in Lesotho) are exempted from payment of duties and taxes on goods imported by them and for their own use or use by such diplomatic missions, they therefore are regarded as qualifying buyers from the duty free shops.

2 Requirement for licensing

2.1 Physical

In the case of an application for registration/licensing as a bonded warehouse/shop, a signed and stamped site plan, clearly indicating the proposed premises, must be handed over to the Lesotho Revenue Authority Customs and Excise inspector at time of inspection of the warehouse/shop. In aforementioned case an inspection will be conducted prior to the approval of the application.

The Duty Free shop must comply with the following physical requirements.

- The main exit must lead directly on to a public thoroughfare (this need not be insisted upon if the Controller is otherwise satisfied with the warehouse) and the door must be fitted with a hasp and staple to accommodate an official lock;

- All other doors, lifts or chutes communicating from the warehouse must be capable of being locked from within;
- The walls of the building should in general be of brick, stone or concrete, and the roof of slate, tiles or iron;
- In the case of a building comprising bonded and free stores on the same floor, the partition may be of wood or other substantial material, but must extend to the ceiling, and if this is not the case, suitable steps should be taken to prevent access to the materials via the walls eg. By covering the top with steel wire mesh;
- If a wood or iron building is approved for the storage of rough goods, etc., the iron walls must be bolted with nuts inside the building;
- All windows on the ground floor and on other floors when accessible from outside and all skylights must be securely barred;
- The duty free shop must be independent and self-contained, i.e. If another floor or a portion of the building is a normal store, there must be means of access to the latter other than through the duty free shop;
- In the case of yards, used as a warehouse for the storage of materials packed in drums or similar unpacked goods, the minimum height of the walls or fence must be at least 2 metres

2.2 Documentation required

The following documents are required for the processing of the application:

1. Registration certificate of business – As issued by the Registrar of Companies or Master of the Supreme Court in the case of a Trust.
2. Resolution/consent or other authority as applicable.
3. Department of Trade and Industry permit.
4. Identity documents (Passports) for both Lesotho Citizen and nonresident:
 - Individual.
 - Partners Close Corporation and Trust – All Members/Partners/Trustees.
 - Company – All directors, including Managing Director and Financial Director.
5. Site plan indicating all the proposed structure of the shop.

After all these requirements have been fulfilled, the person requesting to be license shall be required also to be familiar with all the Customs and Excise laws and regulation pertaining to control of duty free shop and conduct under this license. In this regard, they shall be required to sit for both oral and written interview by the Commissioner. The license issuance is dependent on the outcome of the interviews.

2.3 Establishment sites

Duty free shop may be allowed to operate at the Moshoeshoe I international Airport (MIA) or in the city center for all passengers destined to places outside the CCA.

Duty free shop operating at the airport shall only serve those passengers who are transiting through the SACU countries to places outside the CCA. Purchases by any other passengers shall not be allowed.

2.4 Security

Security must be lodged before a license will be issued as contemplated in section 60 of the Act. This refers to a surety bond in the format and manner prescribed by the Commissioner from a local bank. The Commissioner shall determine the amount of bond required. The amount of the security shall be M65, 000.00 and is subject to review by the Commissioner as he may find necessary as provided for in section 61(2). The

operators of duty free shops shall be duly informed of any review of the security by the Commissioner. The license to operate duty free shop is valid for a period of one calendar year and is renewable every 31st December.

3 Regulation and administration of a duty free shop

Goods sold in the duty free shop are subjected to the following conditions;

- i. Shall be sold for export to destinations outside the CCA and if otherwise consumed in Lesotho (or any of the SACU countries), the duties due shall be recalled and paid accordingly.
- ii. If consumed locally, should be bought by eligible persons and or their organizations in terms of exemptions provided under the VAT Act Of 2001.
- iii. If goods are sold locally to any other person, a prior approval of the Commissioner is required. Application shall state all factors and circumstances warranting such a sale.

3.1 Tax exemption by Diplomats and Diplomatic Mission

Diplomatic Missions shall be exempted from payment of import VAT at the point of entry (Border Post). By these provisions, diplomats and diplomatic missions are eligible for purchasing duty free goods. The following are the documentations requirements:

- Upon production of proof that goods belong to the mission (copy of order/passport/ID) the imported goods shall be cleared for importation without payment of import VAT
- The original copy of invoice shall not be retained since there will be no VAT refund to be processed by LRA

3.1.1 Exemption to the Individual Diplomats

Exemption from VAT to Individual Diplomats shall apply at the point of sale by using the exemption cards provided. The exemption card exempts the holder of the card from payment of VAT at the point of sale. The following procedure shall apply;

- i. The Diplomat shall produce the exemption card to the vendor
- ii. Upon production of the exemption card the Vendor shall not charge VAT on goods/service provided.
- iii. The vendor will keep a separate record showing the following for future LRA inspection;

- Name of Diplomat
- Exemption card number
- Value of goods purchased
- Date of purchase

3.2 Exemptions to tourism and international travelers

Tourists and international travelers may buy their goods from the duty free shops at the airports only. The following documentation is required when such travelers buy from duty free shop.

- i. Identification document of the buyer in the form of a passport or any such acceptable form of identification document (e.g. drivers license, ID etc)
- ii. Travel plan or any such indication which shows the date of departure from Lesotho
- iii. Boarding passes showing that the traveler/tourists are already leaving the CCA. This shall apply to sales at the airport

For tourists and international travelers, the purchases shall take place at the airport when such travelers have board the foreign leaving aircraft.

3.3 Special cases for local resident

Local nationals who are travelling abroad may buy from the duty free shops only if they are taking journeys to places outside the CCA. This is allowed only if such goods shall not be re-imported into the country or into the CCA within a period of 6 months. If goods are returned within this time period relevant duties and taxes shall be payable from such importer. They shall need to produce all necessary

travel documents including passports, itinerary, boarding passes. Of importance on these documents is the fact that they are travelling to places outside the CCA.

3.4 Operators' obligations

The operators undertaking duty free shops shall have the responsibility of ensuring that all goods administered within the duty free shops are properly accounted for and shall further ensure that such goods are sold to people who qualify. The operators shall ensure that qualifying buyers identify themselves as such and possess documents which prove that they indeed are leaving the CCA. These documents include boarding passes, travel plans (itinerary) indicating that such a traveler is leaving the CCA.