

CUSTOMS AND EXCISE ACT, 2010

CUSTOMS POST CLEARANCE AUDIT REGULATIONS 2024

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CUSTOMS POST CLEARANCE AUDIT REGULATIONS 2023

IN EXERCISE of the powers conferred on the Minister of Finance and Economic Affairs under section 297 (t) of the Customs and Excise Act, 2010, these regulations are hereby made.

PART I- PRELIMINARY

1. Citation and Commencement

- (1) These regulations may be cited as the Customs Post Clearance Audit Regulation 2023.
- (2) These regulations shall come into effect on the date appointed by the Minister.

2. Interpretation

In these Regulations, unless the context otherwise requires-

“**Act**” means the Customs and Excise Act 2010

“**Agent**” includes a person who is-

- (a) authorized in writing to act for or in the place of another in the transaction of business with the;
- (b) appointed by the Commissioner General to act for another for the purpose of collecting duty; or
- (c) appointed by the Commissioner General to perform some of his functions under the Act.

“**Authority**” means the Gambia Revenue Authority as defined under Section 3 of the Gambia Revenue Authority Act;

“**Commissioner General**” means the Commissioner general appointed under Section 9 (1) of the Gambia Revenue Authority Act 2004;

“**Consignee**” means the person to whom goods are consigned;

“**Consignor**” means the person which, by contract with a carrier, consigns or send goods with the carrier, or has them conveyed by him or her;

“Customs and excise revenue” means amount collectable by the customs in accordance with section 15 of the Customs & Excise Act 2010.

“Customs assessment” means any assessment decision issued by the Commissioner General or any officer authorized by him of any duties, taxes, penalties, rents or other charges due under the Customs and Excise Act.

“Declarant” means any person who makes a Customs declaration or entry in whose name such declaration is made

“document” includes magnetic tapes, disc and microfilm

“import” means to bring or cause to be brought into the Gambia from a foreign country.

“Minister” means the Minister responsible for Finance and Economic Affairs

“Tribunal” means the Customs Tribunal established under section 261 of the Act

PART II- THE AUDIT

3. Persons and companies subject to Post Clearance Audit

All persons and businesses involved in the import and/or export of goods or in the receipt, storage, manufacture and delivery of goods subject to customs control shall be subjected to post clearance audit including but not limited to importers, declarants, consignees of the imported goods; owners of the imported goods; subsequent acquirers of the imported goods; Customs clearing agents of the imported goods; storage agents of the imported goods; transporters of the imported goods and other persons/companies directly or indirectly involved in the transaction of the imported goods.

4. Authority to Conduct Post Release Controls

1. A Customs Officer may, after releasing the goods and in order to ascertain the accuracy of the particulars contained in the cargo report or goods declaration, inspect any documents and data relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods. The Customs Department may also examine or recount such goods and/or take samples where it is still possible for them to do so.
2. The Customs Department may also take inventory of goods in a warehouse. Such inspections may be carried out at the premises of the holder of the goods or his representative, of any other person directly or indirectly involved in those

operations in a business capacity or of any other person in possession of those documents and data for business purposes.

5. Authority and Powers of Customs officers

1. A Custom officer conducting post clearance audit shall have the power under this Regulation to:
 - a. access the auditee's premises;
 - b. examine business records, business systems and commercial data relevant to customs declarations;
 - c. inspect auditee's premises;
 - d. uplift and retain documents and business records;
 - e. inspect and take samples of goods.

6. Obligations of the Auditees

An auditee shall be under an obligation under this Regulations to:

- a. maintain specified documentation, information and records for a period of seven years from the date of importation. ;
- b. make such documentation, information and records available in a timely manner;

7. Scope of post clearance audit

The scope of the post clearance audit procedure shall include—

- a. imported goods;
- b. exported goods;
- c. bonded facilities and related goods;
- d. duty remission, refund or rebates, drawbacks, and exemptions; and
- e. any other matters related to goods that are subject to the Customs law.

8. Conduct of post clearance audit

- a. The Customs may, when conducting post clearance audit, require the party under audit to provide all records, documents, accounting journals and computer files or database information related to the exported, imported, transferred or manufactured goods.
- b. The Commissioner General may, for purposes of sub- regulation (a) and, subject to any conditions he or she deems necessary, designate any officer to conduct the audit.

- c. Save for spot audit, the Commissioner General shall notify the party under audit fifteen days prior to the commencement of the audit, specifying the documents to be produced for the purpose of the audit. .

9. Post clearance audit manual

Post clearance audit shall be conducted in accordance with the guidelines prescribed in the standard operation procedure of the post clearance audit being in force for the time being.

10. Party under audit to provide facilities

The auditees shall provide adequate facilities to enable the post clearance audit exercise at the party's premises as the Commissioner General may require.

11. Records to Be Kept

(1) Every person with a tax obligation, whether for payment of tax or withholding of tax, shall maintain in The Gambia, in the English language, books and records adequate to substantiate the tax due in accordance with the person's method of accounting (provided such method is consistent with international accounting standards and any applicable regulations), and is required to produce them upon request.

(2) The records to be maintained include the following items as well as any other items specified in this Regulation:

(a) A copy of all goods and services, tax invoices, purchase orders, sales receipts, sales logs, invoices, bank statements (from Gambian and foreign banks, whether resident or nonresident), credit notes, and debit notes issued by the person.

(b) Customs documentation relating to imports or exports (including transshipment) by the person.

(c) Accounting and other financial and related records specified in regulations.

(3) For purposes of paragraph (2), regulations may specify additional records to be kept, provided that they are reasonably related to the determination of tax liability or to compliance with obligations under this Regulations and Customs and Excise Act and may specify the records appropriate to a particular type of business.

(a) Regulations may specify additional disclosure and documentation requirements for transactions between related persons that are not applicable to transactions between unrelated persons.

(b) An agreement governing a related-party transaction is a record subject to this Regulation and must be provided upon request.

(4) The invoices, receipts, or notes a person generates must be serialized and must be created using a method that allows for production in duplicate or, in the case of a Value Added Tax invoice, in triplicate, one copy of which is retained by the person.

(5) The books and records required to be maintained under this Regulation must be retained for 7 years after the end of the tax period to which they relate.

12. Production of information

(1) The Commissioner General may require any person mentioned in sub-regulation (1) of regulation 11 to –

(a) furnish to the Commissioner General, in such form or manner as the Commissioner General may require, information relating to the goods;

(b) produce and permit the Commissioner General or any officer designated by him to inspect, take extracts from, make copies of, or remove for reasonable period, any contract, invoice, bill of lading, or other book, document or computer record relating to those goods;

(c) produce to the Commissioner General any computer in the control of that person which may contain information relating to the goods and to allow the Commissioner General or any officer designated by him to remove that computer for a reasonable period for the purpose of examining the information held on the computer which relates to the goods.

(2) A person who fails to comply with a request made by the Commissioner General under sub-regulation (1) of this Regulation commits an offence.

13. Refusal or Revocation of Clearance

(a) For the purpose of securing compliance with any provisions of the Customs laws or any other enactment relating to the importation or exportation of goods, the Commissioner General, may, on good cause being shown, at any time, refuse clearance of any vessel or aircraft and, where clearance has been granted, at any time whilst the vessel is within the limits of a Customs port the

aircraft is on the ground at the place of departure demand that the clearance be revoked turned to it.

(b) Any such demand may be made orally or in writing to the person in charge of the vessel or aircraft and if made in writing may be served by-

(1) delivering it to him personally;

(2) leaving it on board the vessel or aircraft with the person appearing to be in charge thereof; or,

(3) delivering it to the agent of the vessel or aircraft at the port of clearance.

(c) Where a demand for the return of a clearance is made as aforesaid, the clearance shall forthwith become void.

PART III- OFFENCES

14. False information and document

A person who-

- (a) by any means knowingly falsifies, alter, and doctored any record or information;
or
- (b) knowingly damages or impairs any document; or
commits an offence.

15. Penalty

Any person guilty of an offence under this Regulations for which no specific penalty is provided shall be liable upon conviction to a fine not exceeding six hundred thousand Dalasi or to 3 years imprisonment or to both the fine and the imprisonment.

PART IV- THE APPEAL PROCESS

16. Right to appeal

A person who is aggrieved with the findings and/or the decision of a Customs officer shall have the right to:

- 1. an explanation from Customs concerning determination of Customs value;
- 2. expect confidential treatment of business documentation;
- 3. clearance of goods at the frontier with provision of security

PART V- MISCELLANEOUS

17. General Power of the Commissioner General

The Commissioner General reserve the right to exercise his/her discretion on any matter concerning the commencement, discontinuation, termination and any other matter concerning Post Clearance Audit. The rational for the exercise of such discretion shall be reasonable, documented and all parties duly notified in writing.