

# ADMINISTRATION PENALTIES

## 147A . Interpretation

In this Division, unless the contrary intention appears-

“**materially incorrect**” means that the entry contains an error or omission in relation to any of the following matters:-

- (a) the identity and full address of the overseas supplier;
- (b) the identity and full address of the importer or exporter;
- (c) the identity and full address of the person making the entry;
- (d) the identification of the importing or exporting vessel, aircraft or vehicle and its voyage or registration number;
- (e) the bill of lading, air waybill, or container identification details;
- (f) the Suppliers invoice number;
- (g) the customs general orders;
- (h) the tariff item in which the goods are classified under the *Customs Tariff Act 1999*;
- (i) a customs agent’s code number;
- (j) the statistical quantity of the goods;
- (k) the exchange rate for the currency in which the goods are traded;
- (l) the value for duty expressed in the currency in which the goods are traded;
- (m) the value for duty expressed in Papua New Guinea Kina;
- (n) the country of origin or destination of the goods;
- (o) the country from which the goods have been exported from;
- (p) the amount paid or payable to transport the goods to PNG from the country of exportation, including any amount paid or payable for internal transportation of the goods in that country;
- (q) the insurance costs associated with importation of the goods, including of any insurance costs in the country of exportation;
- (r) the particulars of shipping containers, packages or break bulk including marks and numbers.
- (s) The Customs Procedure Code

“**Technical offence**” means a breach of the Act or Regulations in respect of any obligation for a person to:

- (a) Communicate information to Customs;
- (b) Deal with goods in accordance with the Act;
- (c) Deal with a conveyance in accordance with the Act;
- (d) Keep, retain or produce documents or records;
- (e) Comply with any term or condition of a licence issued under this Act;
- (f) Allow or permit unauthorised entry to a Customs Controlled Area;
- (g) Answer questions or make any statement to a Customs officer;

and includes such a breach by a person arriving in Papua New Guinea who is required to make a statement to Customs by virtue of the Customs (Personal Effects) Regulation.”

## 147B. Administrative Penalties

- (1) Subject to Section 147C, where the Commissioner General is satisfied that

an entry of goods pursuant to Section 35 of the Act contains an error or omission and that as a result-

- (a) the customs duty payable under the Act has not been paid or declared for payment or would not have been paid or declared for payment; or
- (b) the entry is otherwise materially incorrect,

the Commissioner General may, within 5 years after the entry was made, by notice in writing, require the owner or agent of the goods to pay within 30 days after service of the notice, a penalty of an amount not less than 50 percent and not exceeding 200 percent of the duty unpaid, not declared or attempted to be avoided or where the goods are exempt, free or zero rated from duty then a penalty of not more than 5 percent of the value of the goods or, where the entry is otherwise materially incorrect, a penalty of not more than 5 percent of the value of the goods.

(2) The notice under Subsection (1) may be served on the owner of the goods or his agent.

(3) Where the Commissioner General serves a notice under Subsection (2) in relation to a statement made, or omission from a statement made, by a person, proceedings may also be instituted under Section 153 against that person in relation to that statement or omission.

(4) For the purposes of Subsection (1), any document presented to Customs in respect of any goods under the control of Customs is to be treated as a statement made to an officer.

(5) If an amount required to be paid in accordance with Subsection (1) is not paid, it becomes, upon the expiration of that period, a debt due to the State and may be recovered in a court of competent jurisdiction.

(6) Where a person in respect of whom a demand for payment of penalty in respect of any particular goods has been made under subsection (1), makes an application under Section 177 or 178 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 Commissioner General or by a Court on appeal from the decision of the Commissioner General shall not be taken into account in computing the period of 30 days referred to in Subsections (1) and (5); and
- (b) if it is determined that the duty or any part of the duty demanded in respect of those goods is not payable, the demand for penalty shall be treated as if it were a demand for such amount as would be appropriate under Subsection (1) having regard to the determination of the Commissioner General.

#### **147C. Section 147B Not To Apply in Certain Cases.**

- (a) Where the owner of goods or his agent is uncertain whether particular information included in a statement made in respect of those goods might be regarded as false or misleading in a material particular, that owner or agent may, by writing included in the statement, nominate 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 to the satisfaction of the Collector, no penalty shall be imposed under Section 147B in relation to that information.

- (b) Where the owner of 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 his agent may, by writing included in the statement, specify the information that has been omitted and set out the reasons for uncertainty concerning the effect of the omission and where the owner or agent does so to the satisfaction of the Collector, no penalty shall be imposed under Section 147B in relation to that omission

#### **147D. Penalty for Technical Offences**

- (a) Where a person has committed a technical offence against this Act, the Commissioner-General may, by notice in writing within 14-days of the alleged breach being detected, require that person to pay within 30 days after service of the notice, a penalty as prescribed
- (b) Subject to this Section, a person on whom a notice of a penalty has been served under subsection (a) and payment of which remains outstanding after the completion of the 30-day period, shall pay, in addition to the penalty, interest at the rate of 8% of the amount of unpaid penalty for each 5-day period or part thereof, beginning on the day after the notice was served on the person and ending on the day the penalty has been paid in full.
- (c) Where the Commissioner-General serves a notice under subsection (a) in relation to a technical offence, a customs prosecution in respect of that offence may only be commenced if the penalty remains unpaid 30 days after payment was due. The Court may take account of any unpaid penalty and interest accrued when imposing a penalty in respect of such action.

#### **147E. Power to Impose Administrative Penalties Extends to Travellers**

- (a) Where an officer is satisfied that a person arriving in or departing from Papua New Guinea has committed a technical offence against this Act resulting in duty or GST being short-paid, the officer, in place of the penalty provisions outlined under Section 147D, may:
  - (i) if the goods were found in the course of a search of the baggage of a person, issue that person with a penalty notice for an amount equal to the amount of the duty or GST that, in the opinion of the officer issuing the notice, the person has sought to evade;  
or
  - (ii) if the goods found were concealed in any manner likely to have deceived the officer, issue that person with a penalty notice for an amount equal to twice the amount of the duty or GST that, in the opinion of the officer issuing the notice, the person has sought to evade;

- (b) Any penalty charged under subsection (a) is in addition to any duty or GST payable on the goods.
- (c) An officer may detain any goods subject to subsection (1) until such time as the penalty and any short-paid duty or GST is paid in full, whereupon the goods may be released to the owner in accordance with any provision of this Act.
- (d) Notwithstanding the provisions of Section 147D(2), where a person does not fully pay the penalty and any short-paid duty or GST within 30-days after service of the penalty notice, the goods are taken to be forfeited goods.
- (e) A reference in this section to the baggage of a person who has arrived in Papua New Guinea shall be read as including a reference to goods on his person or otherwise with him.
- (f) This section does not apply to prohibited imports or exports

**147F. Remission of Penalties.**

- (a) Where a penalty is payable under this Division, the Commissioner-General may, on the basis of a written application, remit the whole or any part of the penalty.
- (b) For the purposes of subsection (a), an application for remission of a penalty:
  - (i) must be made by the person liable to pay the penalty; and
  - (ii) must be made within 30 days from the date of service of the penalty notice for which the applications is made; and
  - (iii) may only be made after payment of the penalty; and
 failure to comply with these conditions are grounds for the application to be dismissed..
- (c) The Commissioner General shall inform the applicant of his decision in relation to the application within 30 days after receiving an application for remission of penalty.
- (d) In considering to remit the whole or a part of an administrative penalty referred to in this Division, the Commissioner General may have regard to the following matters:—
  - (i) whether the applicant or his agent, as the case may be, has voluntarily admitted that a statement or omission, is false or misleading;
  - (ii) the risk to revenue occasioned by such a statement or omission or act or conduct;
  - (iii) the capacity of the applicant or his agent to have avoided making such a statement or omission or engage in such an act or conduct, as the case may be, and the extent to which that capacity was exercised;
  - (iv) the history of the applicant or his agent resulting in previous revenue loss or any Customs prosecution instituted against the applicant or his agent.

**147G. Disputes as to the Application of this Division.**

- (a) Where a person who has been issued a notice of penalty disputes the decision of the Commissioner-General made under section 147F, that person may make an application under Section 177 or

178 for a review of the decision;

- (b) Notwithstanding the general provisions of section 177 and 178, an application in respect of an administrative penalty, issued under this Division, may only be made if the applicant has first exhausted a claim for remittance under section 147F.
- (c) Where a decision of the Commissioner General under Section 177 or Section 178 results in the penalty being remitted in part or in whole, the Commissioner General shall remit any penalty paid under this Division to the extent necessary to give effect to the decision of the Commissioner General.
- (d) Nothing in this Division affects the right of a person to appeal any decision of the Commissioner-General to the National Court.
- (e) Where a person makes an application to the National Court for a review of a decision made under this Division:-
  - (i) the period commencing on the making of that application and ending on the final determination by a Court on appeal from the decision of the Commissioner-General, shall not be taken into account in computing the time periods referred to in this division;
  - (ii) Where a decision of a Court on an appeal results in the penalty amount being remitted in part or whole, the Commissioner General shall remit any penalty paid under this Division to the extent necessary to give effect to the decision of the Court.