



# Tax First Alert

## A. Customs and Excise Act Amendments

## B. VET Levy Claims Procedure

11 April 2017

### A. Customs and Excise Act Amendments

In terms of Notice No. 74 published in the Government Gazette No. 6277 on 31 March 2017, the Honorable Minister of Finance, Mr. Calle Schlettwein, announced that the Customs and Excise Amendment Act, 2016 (Act No. 17 of 2016) will come into effect on **31 March 2017**.

It is important to note the provisions on an “**authorized economic operator**” under the new section 18B of the Customs and Excise Act, Act No. 20 of 1998. The Commissioner for Customs and Excise (“the Commissioner”) has been authorized to register a legal person who complies with the section as an authorized economic operator to benefit from trade facilitations by the Commissioner and reduced levels of Customs controls.

The criteria for granting the status of an authorized economic operator by Customs includes the following:

- A good record of customs compliance and tax requirements;
- A satisfactory system of managing commercial and transport records to allow for appropriate Customs controls;
- Financial solvency;
- Effective automated systems capable of complying with authorized economic operator requirements;
- Skilled employees capable of complying with authorized economic operator requirements; and
- Any other criteria which the Commissioner may consider necessary.

Application may be made to the Commissioner to obtain authorized economic operator status. An application fee (as determined by the Minister of Finance) may be charged. The Commissioner shall determine the procedures for granting, suspension or revocation as well as the trade facilitation benefits accorded to the authorized economic operator. Note that an authorized economic operator is not absolved from complying with the provisions of the Customs and Excise Act, but would benefit from reduced Customs controls leading to faster clearing of commercial cargo.

This development is welcomed in the interests of increased trade facilitation under Namibia’s commitments under the World Customs Organization’s Kyoto Convention.

PwC has been closely involved with the drafting of the new Customs and Excise Act during a workshop sponsored by the World Customs Organization and can provide helpful insights and assistance in this often neglected, yet important area.

A brief summary of **other amendments** to the Act and our comments are as follows:

1. Some important definitions are to be inserted in the principal Customs and Excise Act, Act No. 20 of 1998:

“*audit-based control*”, means measures by which the Customs and Excise office satisfies itself as to the accuracy and authenticity of declarations through examination of the relevant books, records, business systems and commercial information held by persons concerned;

“*electronic communication*” means a communication by means of data which is generated, displayed, sent, received or stored by electronic or similar means”

“*risk analysis*” means the systematic use of available information to determine how often risks occur and the magnitude of their likely consequences.

2. Provision is made for a definition of “*environmental duties*” to be levied in terms of section 58A (new section) of the Act. The Amendment Act wrongly refers to “environmental levies” in section 1 of the Act, which should be amended to “environmental duties”.
3. Provision is made in the Act to make it clear that “the Commissioner for Customs and Excise (‘the Commissioner’), an officer of staff member of the customs and excise office shall not have any direct financial interest in the manufacture, sale, trade in, transport, handling or storage of imported or exported or excisable or fuel levy goods or in the import or export of such goods.”
4. The so-called “*secrecy*” provisions on the exchange of information and confidentiality will be part of customs legislation in line with other Tax Acts, such as the Income Tax Act and Value-added Tax Act, which in short means that the Commissioner, an officer or any staff member, including a former officer or staff member or person seconded to or contracted by the customs and excise office shall not disclose, exchange or allow access to any information to any person, concern or business acquired in the exercise or performance of duties in terms of the Act unless required:

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## A. Customs and Excise Act Amendments (continued)

- i. by the provisions of the Act;
- ii. as a witness in a court of law or tribunal;
- iii. by a government office, ministry or agency of Namibia in terms of a law;
- iv. in connection with legal proceedings; or
- v. by the written consent of the person that will be affected by the disclosure.

Breach of this important provision can lead to penalties of N\$10 000 and the name and address, further particulars and the amount of the penalty of a guilty transgressor shall be printed in the Gazette.

5. The Permanent Secretary for Finance is authorized to appoint an official place of entry into Namibia. This provision is now enlarged as the President may enter into an agreement with the government of a Southern African Customs Union ("SACU") member state or other country adjoining Namibia to provide for -
  - i. joint, one-stop or side by side places of entry and exit;
  - ii. a place of entry or exit for Namibia alone at a location in such state or country; or
  - iii. a place of entry or exit for Namibia alone at a location in Namibia.

Other cosmetic changes were made in the effort to modernize some important Customs concepts and requirements, although the whole Act will be replaced in the near future by a consolidated Act that will be easy to understand and focusing on promoting trade facilitation with other countries.

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## B. VET Levy Claims Procedure

*A media statement released by the Namibia Training Authority ("NTA") on 3 April 2017 titled "Submission of applications for the Vocational Education and Training (VET) Levy Employer Training Grant" set out important considerations for the claiming of such VET Levies.*

1. In terms of the Employer Training Grant, VET Levy-paying employers may claim, within 31 days after the end of the NTA's financial year (which is 31 March each year), up to 50% of levies paid. (Employer Training Grant)
  2. An application must be submitted to the NTA, which contains evidence of training implemented and the actual cost of training. VET Levy-registered employers who wish to apply for the Employer Training Grant must make sure that they have paid their levies for the full financial year and have no outstanding interest or penalties.
  3. Evidence to be submitted includes:
    - Signed attendance register;
    - Invoices and receipts from the training service provider;
    - Invoices and receipts for training materials procured;
    - Subsistence and travelling records;
    - Accommodation invoices / receipts;
    - Assessment and certification records and costs;
    - Proof of payment for all costs incurred; and
    - Any other supplementary records and receipts applicable to the training (for example, as the course content).
- Many claims in the past have been refused due to one or other of the above documents not being included.*
4. If the course has already previously been approved or has been registered with the NTA, it is not necessary to re-submit the course content.
  5. Applications and supporting evidence for the Employer Training Grant can be submitted online via the link <http://www.vetmis-nta.co.za>.
  6. This year, the NTA will not allow for extensions for submissions. The cut-off date is **1 May 2017**.
  7. Employers can submit claims at any time during the year and is encouraged to not wait until 1 April annually to start submitting claims.
  8. It is believed that some employers are deducting the 1% training levy from employees. It should be noted that this is **illegal and can lead to heavy fines**.



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