

Tobacco Tax

Act No 8 of 1999

AN ACT TO IMPOSE A TAX ON CIGARETTES, CIGARS, BEEDIES, CIGARETTE
SUBSTITUTES AND PIPE TOBACCO, MANUFACTURED IN SRI LANKA ; AND TO
PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Act Nos,

8 of 1999

9 of 2004

[9th April , 1999]

[8th October , 2004]

[3rd April , 1999]

Short title.

1. This Act may be cited as the Tobacco Tax Act. No. 8 of 1999.

Imposition of
tobacco tax.

2.

(1) There shall be charged, levied and paid on every cigarette, cigar, beedi and every kilogramme of pipe tobacco manufactured in Sri Lanka. a tax (hereinafter referred to as the "tobacco tax") at such respective rates as may be fixed by the Minister by Order published in the Gazette.

(2) The rate or rates of tobacco tax levied in respect of any article referred to in subsection (1) may be determined by reference to the class or description of that article and accordingly, different rates of tobacco tax may be determined in respect of different classes or descriptions of that article.

(3) The rate of the tobacco tax charged respectively on cigarettes, cigars, beedies and pipe tobacco or any class or description thereof may from time to time be varied by the Minister in charge of the subject of Finance by Order published in the Gazette.

(4) Every Order under subsection (1) or subsection (3) shall come into force on the date of its publication in the Gazette or on such later date as may be specified in the Order, and shall be brought before Parliament for approval as soon as may be convenient.

(5) Any Order under subsection (1) or subsection (3) which Parliament refuses to approve shall with effect from the date of such refusal, be deemed to be revoked but without prejudice to the validity of anything done thereunder. Notification of the date on which any such Order is deemed to be revoked shall be published in the Gazette.

(6) For the purposes of this Act, the cigarettes, cigars, beedies and pipe tobacco, removed from any factory shall be presumed to be cigarettes, cigars, beedies, and pipe tobacco, manufactured at such factory.

Tax to be payable
by manufacturers of
cigarettes, cigars,
beedies or pipe

3.

(1) The tobacco tax shall be payable by each person who carries on business as a manufacturer of cigarettes or cigars, beedies, or pipe tobacco. The amount of the tax shall be computed by reference to the number of cigarettes, cigars, beedies, and kilograms of pipe tobacco manufactured at, and removed from, the factory at which such manufacture is carried on ; and the amount of the tax payable upon the total quantity of cigarettes, cigars, beedies, s or kilograms of pipe tobacco so removed from a factory in any week shall be paid as provided in this Act not later than the end of the next succeeding week.

(2) Subject to the provisions of this Act, a person shall not cause or permit any cigarettes, cigars, beedies, or pipe tobacco to be removed from any factory at which cigarettes, cigars, beedies, or pipe tobacco are or is manufactured unless and until the tobacco tax payable thereon has been duly paid in accordance with the provisions of this Act.

(3) Where any quantity of tobacco leaf or beedi tobacco is delivered at a factory or any quantity of cigarettes, cigars, beedies, or pipe tobacco is to be removed from a factory, it shall be the duty of the person in charge of the

factory, within a period of forty eight hours after the; time of such delivery or forty eight hours prior to the time of such removal, as the case may be, to furnish to the Commissioner General of Excise or to any officer designated by the Commissioner General of Excise for the purpose, a declaration signed by such person specifying the quantity of tobacco leaf or beedi tobacco so delivered or the quantity of cigarette, cigars, beedies, or pipe tobacco proposed to be so removed, as the case may be.

(4) Every declaration referred to in subsection (3) shall be in such form as may be approved or provided for the purpose by the Commissioner General of Excise.

Manufacturer
intending to export
cigarettes, cigars,
beedies or pipe
tobacco to make
declaration to the
Commissioner
General of Excise.

4.

(1) Where a manufacturer registered for the purpose under this Act makes a declaration to the Commissioner General of Excise that he intends to export to such country as is specified in such declaration, cigarettes, cigars, beedies, or pipe tobacco manufactured by him. of such quantity as is specified in such declaration, the Commissioner General of Excise shall allow such manufacturer to remove such cigarettes, cigars, beedies, or pipe tobacco from any factory or warehouse in which they are stored, without the payment of the tobacco tax payable thereon, under this Act.

(2) Every manufacturer making a declaration under subsection (3) shall adduce proof to the satisfaction of the Commissioner General of Excise, within six months of such declaration, that he has exported cigarettes, cigars, beedies, or pipe tobacco of such quantity as is specified in such declaration, to the country specified in such declaration.

(3) Where a manufacturer referred to in subsection (1) fails to adduce proof to the satisfaction of the Commissioner General of Excise, that he has exported cigarettes, cigars, beedies, or pipe tobacco of such quantity as is specified in the declaration made by him under that subsection, to the country specified in such declaration, the Commissioner General of Excise shall direct him to pay the tobacco tax payable on such cigarettes, cigars, beedies, or pipe tobacco, with interest on the amount of such tax at the rate of ten per centum per annum, from the date on which such cigarettes, cigars, beedies, or pipe tobacco were removed from any factory or warehouse in which they were stored, to the date of payment of such tax and the interest thereon.

Registration of
manufacturers.

5.

(1) From and after the date of commencement of this Act, a person shall not use any tobacco leaf or beedi tobacco in the manufacture of cigarettes, cigars, beedies, or pipe tobacco unless he has been registered by the Commissioner General of Excise as a manufacturer for the purposes of this Act.

(2) livery application for registration as a manufacturer for the purposes of this Act.

(a) shall be made to the Commissioner General of Excise in such form as he may provide for the purpose ;

(b) shall contain all such particulars as may be set out in such form with respect to the use or the proposed use of tobacco leaf or beedi tobacco in the manufacture of cigarettes, cigars, beedies, cigarette substitutes or pipe tobacco ; and

(c) shall be accompanied by an application fee of the prescribed amount.

(3) A person who is registered as a manufacturer for the purposes of this Act shall, whenever so required by the Commissioner General of Excise, furnish a return containing particulars as to the quantity of cigarettes, cigars, beedies, or pipe tobacco, as the case may be, being manufactured or estimated to be manufactured by the use of a specified quantity of tobacco leaf or beedi tobacco; and separate particulars shall be furnished in such return with respect

Importation

5A.

to each class or description of cigarettes, cigars, beedies, or pipe tobacco manufactured by that manufacturer.

(1) No person, shall import beedi of beedi tobacco, unless he is a holder of a licence issued tobacco. on that behalf, by the Commissioner General of Excise.

(2) Every application for a licence to import beedi tobacco

(a) shall be made to the Commissioner- General of Excise in such form as may be prescribed ;

(b) shall be accompanied by an application fee of the prescribed amount.

(3) Every person holding a licence for the importation of beedi tobacco shall whenever so required by the Commissioner-General of Excise, furnish a return containing particulars of the beedi tobacco imported by him in respect of any particular period or periods as the case may be.

Tobacco tax to be paid to the Commissioner General of Excise.

6.

(1) The amount of the tobacco tax payable from time to time under this Act by any manufacturer shall be paid to the Commissioner General of Excise or to a person designated by such Commissioner General and shall be credited by the Commissioner General of Excise or such person to the Consolidated Fund.

(2) Regulations made under section 21 may provide for the manner of payment, of the tobacco tax.

Powers of inspection with or without a warrant.

7.

[4.9 of 2004]

(1) The Commissioner- General of Excise or any officer of me Excise Department of a rank not below that of Inspector or any officer of the Customs Department of a rank not below that of Superintendent or any police officer not below the rank of a Sub-Inspector of Police-

(a) may on the authority of a warrant issued by a Magistrate, upon information obtained and after such inquiry as he thinks necessary having reason to believe that an offence under this Act has been or is likely to be committed ; or;

(b) may without a warrant, whenever an offence under this Act is being or likely to be, committed, in case where a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence being or likely to be committed, after recording the grounds of his belief,

take such steps as may be necessary to

(i) stop and search any person suspected of committing an offence under this Act;

(ii) stop and search any boat, vessel, vehicle or container in which any tobacco leaf, cigarettes, cigars, beedis, beedi tobacco or pipe tobacco or any contraband under this Act is being carried or transported or suspected to be carried or transported ;

(iii) open and examine any package, parcel or container found with such person or carried in such boat, vessel, vehicle or container ; or

(iv) enter and inspect any factory or premises in which any tobacco leaf, cigarettes, cigars, beedis, beedi tobacco or pipe

tobacco is being kept or stored or suspected to be kept or stored, for the purpose of ascertaining whether an offence under this Act has been or is being committed or for the purpose of ascertaining the quantity of the tobacco leaf, cigarettes, cigars, beedis, beedi tobacco or pipe tobacco which are or is in such boat, vessel, vehicle, container factory or premises or of ascertaining whether or not the tobacco tax, any duty payable in terms of the Excise (Special Provisions) Act, No. 8 of 1994, customs duty or any other tax has been paid or is payable thereon or of verifying the accuracy of any return or any declaration furnished to the Commissioner General of Excise under this Act or of examining any books or documents relating to such tobacco leaf, cigarettes, cigars, beedis, beedi tobacco or pipe tobacco as the case may be.

(2) Any officer referred to in subsection (1) may, in the exercise of the powers conferred on him by that subsection

- (a) seize any contraband in possession of such person, carried or transported in any such boat, vessel, vehicle or container, or kept or stored in such factory or premises;
- (b) seize any document in the possession of any such person, carried in any such boat, vessel, vehicle or container or kept or stored in any factory or premises, which may be produced as evidence of such offence ;
- (c) arrest and detain any person for committing an offence under this Act, if such person is in possession of contraband or if he is in control of any boat, vessel, vehicle or container used in the commission of an offence under this Act;
- (d) seize any boat, vessel, vehicle, container or any other article or equipment which appears to such officer to have been or being used in the commission of the offence or which may be produced as evidence of such offence.

(3) Every officer referred to in subsection (1), shall be deemed to be a Peace Officer, within the meaning and for the purposes of the Code of Criminal Procedure Act, No. 15 of 1979.

(4) Every person who resists or obstructs an officer referred to in subsections (1) and (2), in the exercise by such officer of the powers conferred on him by those subsections, shall be guilty of an offence under this Act.

For the purposes of this section "contraband means any tobacco leaf, cigarettes, cigars, beedis, beedi tobacco or pipe tobacco on which tobacco tax or any other duty has not been levied."

imported tobacco
leaf or beedi
tobacco and tobacco
products. **8.**

(1) A person who is registered as a manufacturer for the purposes of this Act shall not have in his factory any quantity of imported tobacco leaf or beedi tobacco, cigarettes, cigars, beedies, or pipe tobacco unless he has in his possession a duplicate of the bill of entry relating to the importation of that quantity of tobacco leaf or beedi tobacco, cigarettes, cigars, beedies, or pipe tobacco, as the case may be, into Sri Lanka.

(2) Every person who is registered as a manufacturer For the purposes of this Act shall, when requested to do so by any officer of the Excise Department of a rank not below that of Inspector or any Police officer not below the rank of an Inspector of Police, produce for inspection a duplicate of the bill of entry relating to any quantity of imported tobacco leaf or beedi tobacco, cigarettes, cigars, beedies, or pipe tobacco, as the ease may be, kept in his factory.

Weights and
weighing
instruments to be
kept in factories.

9, Every person who is registered as a manufacturer for the purposes of this Act shall keep in his factory such weights and weighing instruments for weighing quantities of tobacco leaf or beedi tobacco as are in conformity with the standards established under any law for the time being in force relating to weights and measures and stamped as provided by such law, and shall, when requested to do so by any officer of the Excise Department of a rank not below that of Inspector or any Police officer not below the rank of sub-Inspector of Police weigh, or cause to be weighed, any quantity of tobacco leaf or beedi tobacco which is in such factory.

Appeals.

10.

(1) Any person who is aggrieved by any decision made by any officer of the Excise Department other than the Commissioner General of Excise under the provisions of this Act or any regulation made thereunder may within thirty days after such decision is communicated to him, appeal therefrom to the Commissioner General of Excise.

(2) Any person who is aggrieved by any decision made by the Commissioner General of Excise under the provisions of this Act or any regulation made there under may. within thirty days after such decision is communicated to him, appeal therefrom to the Secretary of the Ministry of the Minister in charge of the subject of Finance.

(3) Every appeal under this section shall be in writing and shall state the grounds of appeal.

(4) The Commissioner General of Excise shall before determining any appeal made to him under subsection (1), afford the appellant an opportunity of being heard either in person or by his authorised representative.

(5) The Commissioner General of Excise or the Secretary to the Ministry of the Minister may. upon any appeal made to him under subsection (1) or subsection (2) as the case may be, affirm, vary or annul the decision against which such appeal was made.

Dealing in improperly imported cigarettes be an offence.

11. Every person who stores, transports, supplies, possesses, sells or otherwise deals with any cigarettes which being cigarettes chargeable on their importation with customs or excise duty"

(a) were unshipped at or brought into, any port or other place in Sri Lanka or were unloaded from any aircraft in Sri Lanka, without payment of that duty except as provided by or under the Customs Ordinance, and Excise (Special provisions) Act, No. 13 of 1989;

(b) are imported into Sri Lanka concealed in a container holding goods of a different description;

(c) are found whether before or after delivery in Sri Lanka, not to correspond to the bill of entry made in respect thereof; or

(d) are concealed or packed in any manner appearing to be intended to deceive an officer of the Customs Department or the Excise Department, shall be guilty of an offence under this Act.

Dealing in illicitly manufactured or imported tobacco products be an offence.

12. Every person who transports, supplies, sells or stores or exposes for sale any cigarettes, cigars, beedis, beedi tobacco or pipe tobacco on which tobacco tax or Customs duty or excise duty has not been paid shall be guilty of an offence under this Act.

[5.9 of 2004]

Non compliance with the provision of the Consumer Protection Act be an offence.

13. Every person who, being a manufacturer of or trader in, or importer or dealer of, cigarettes, cigars, beedis, beedi tobacco or pipe tobacco fails or neglects to comply with any direction issued to him under the Consumer Protection Act, No. 1 of 1979, shall be guilty of an offence under this Act.

[6.9 of 2004]

Miscellaneous offences.

14. Any person who contravenes or fails to comply with any of the provision of this Act or of any regulation made thereunder shall be guilty of an offence under this Act.

Penalty.

15.

[7.9 of 2004]

(1) Every person guilty of an offence under this Act shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one million rupees or to imprisonment of either description for a term not exceeding five

years.

(2) The court which convicts any person of any offence under this Act committed in respect of any tobacco leaf or beedi tobacco, cigarettes, cigars, beedis, beedi tobacco or pipe tobacco, may in addition to any other punishment which it may impose, make order declaring that such tobacco leaf or beedi tobacco, cigarettes, cigars, beedies, or pipe tobacco and any vehicle or article used in or in connection with the commission of that offence shall be forfeited to the State.

(3) An order made under subsection (2) shall take effect"

(a) where an appeal has been preferred to a High Court established under Article 154P of the Constitution against the order of forfeiture, upon the final determination of such appeal confirming or upholding the order of forfeiture;

(b) where an appeal has not been preferred to a High Court established under Article 154P of the Constitution against the order of forfeiture within the period allowed therefor, after the expiration of that period .

(4) Where a person convicted of an offence under this Act has been registered as a manufacturer for the purposes of this Act, the court may in addition to any other punishment hereinbefore provided make order cancelling the registration of that person as a manufacturer: Provided, however, that any such person may again be registered as a manufacturer by the Commissioner General of Excise if he thinks fit so to do in his discretion.

(5) Where an offence under this Act is committed by a body corporate, every person, who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body corporate shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(6) Any officer of the Excise Department, of a rank not below that of Commissioner of Excise may, with the written approvals of the Secretary to the Ministry of the Minister and the Commissioner General of Excise compound any offence under this Act for a sum of money not exceeding five hundred thousand rupees.

(7) The Commissioner-General of Excise shall take possession of any tobacco leaf or beedi tobacco, cigarettes, cigars, beedis, beedi tobacco or pipe tobacco forfeited to the State by an order made under subsection (2), and shall cause the same to be destroyed.

Evidence.

16.

(1) For the purposes of this Act, any tobacco leaf or beedi tobacco, cigarettes, cigars, beedies, or pipe tobacco on which no customs duty or excise duty has been paid shall be presumed to be Sri Lanka tobacco leaf or beedi tobacco or cigarettes, cigars, beedies, or pipe tobacco manufactured in Sri Lanka until the contrary is proved.

(2) Where in any prosecution instituted under this Act, a question arises as to whether any substance or article is tobacco leaf or beedi tobacco, a cigarette, cigar, beedi, cigarette substitute or pipe tobacco, a certificate under the hand of the Government Analyst or a tobacco officer of the Department of Agriculture or an Excise Officer of sufficient experience, to the effect that the substance or article described in the certificate is tobacco leaf or beedi tobacco, cigarette, cigar, beedi, cigarette substitute or pipe tobacco, as the case may be, shall be admissible in evidence and shall be prima facie proof of the facts stated therein.

Disbursement of forfeitures and penalties recovered under the Act.

17. The amount"

(a) of all sums received under subsection (6) of section 15 ;and

[8,9 of 2004]

(b) the proceeds of sale of the articles and vehicles forfeited under subsection (2) of section 15 excluding the sale of any tobacco leaf, cigarettes, cigars, beedis, beedi tobacco or pipe tobacco.

Payment to Excise Officers for special services and attendances.

18. Where any manufacturer registered for the purposes of this Act or other person requires"

(a) any service which is determined by the Minister as a special service ; or

(b) the attendance of any Excise officer at any factory or warehouse or premises other than his proper place of employment,

payment shall be made for such service or attendance, as the case may be, to the Commissioner-General of Excise by such manufacturer or person at such rates as may be specified by the Commissioner-General of Excise.

Delegation of powers to the Director-General of customs Director General of Excise.

19. The Commissioner-General of Excise may delegate in writing to the Director-General of Customs or Director- General of Excise any power, duty or function conferred or imposed on or assigned to him by this Act if he is of opinion that it is expedient to do so for the efficient administration of the provisions of this Act,

Protection of action.

20. No action shall lie against the Commissioner General of Excise, the Director General of Customs or the Director General of Excise or any excise officer, for damages in any civil court for any act done in good faith in pursuance or supposed pursuance of any provisions of this Act, or of any delegation made thereunder.

Regulations,

21.

(1) The Minister in charge of the subject of Finance may make regulations for the purpose of carrying out and giving effect to the provisions of this Act and for the prevention of the evasion of the tobacco tax imposed by this Act, and in respect of all matters which are required by this Act to be prescribed.

(2) Without prejudice to the generality of the powers conferred by subsection (1) regulations made under that subsection may provide for the maintenance, at any factory at which any tobacco leaf or beedi tobacco is used, of a separate warehouse or room for the storage of cigarettes, cigars, beedies, or pipe tobacco manufactured from such tobacco leaf or beedi tobacco prior to the payment of the tobacco tax payable thereon and for the measures that may be taken by the Commissioner General of Excise to supervise or control the removal of such cigarettes, cigars, beedies. or pipe tobacco from such warehouse or room prior to payment of the tobacco tax payable thereon, and the terms and conditions subject to which the exemption from (he tobacco tax, payable on cigarettes, cigars, beedies, and pipe tobacco intended for export shall be granted under section 4.

(3) Every regulation made under this section shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every regulation shall as soon as convenient after its publication in the Gazette be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation is deemed to be so rescinded shall be published in the Gazette.

Repeal and savings. **22.**

(1) Tobacco Tax Act, No. 27 of 1953 (Chapter 245) is hereby repealed.

(2) Notwithstanding the repeal of the Tobacco Tax Act, No. 27 of 1953"

(a) the regulations made under that Act, and in force on the day preceding the date of commencement of this Act shall, except where and insofar as they are not inconsistent with the provisions

Sinhala text to prevail in case of inconsistency. Interpretation. [9,9 of 2004]

of this Act be deemed to be regulations made under this Act and shall continue in force until altered, amended or resinded by regulations made under this Act;

(b) all persons registered as manufacturers for the purpose of that Act shall be deemed to be manufactures registered under section 5 of this Act.

23. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

24. In this Act"

"beedi" means tobacco specially grown for the manufacture of beedi whether cut, crushed, broken or powdered"

(i) rolled in a leaf of the tropical tree botanically known as Diasporas Melanoxylon or Diospyros Ehinum of the family of Ebenaneae or any of its substitutes ; and

(ii) intended for smoking ;

"cigar" means tobacco whether cut, crushed, broken or powdered"

(i) rolled in a tobacco leave ; and

(ii) intended for smoking ;

"beedi tobacco" means tobacco used for manufacturing beedi;

"cigarette" means tobacco specially grown for the manufacture of cigarettes whether cut, crushed, broken or powdered"

(i) rolled in any type of wrapper (other than tobacco leaf or beedi tobacco or leaf meant for the manufacture of beedi); and

(ii) intended for smoking ;

"cigarette substitute" means tobacco in any form rolled in any type of wrapper and intended for smoking, and does not include a beedi, cigar or cigarette ;

"Commissioner General of Excise" means the Commissioner General of Excise appointed under the Excise Ordinance ;

"Customs duty" means Customs duty charged and levied under the Customs Ordinance ;

"Director General of Customs" means the Director General of Customs appointed under the Customs Ordinance-;

"Director General of Excise" means the Director General of Excise appointed under the Excise (Special Provisions) Act, No. 13 of 1989 ;

"Excise Duty" means Excise Duty charged and levied under the Excise Duty (Special Provisions) Act, No. 13 of 1989;

"factory"-

(a) means any premises at which the manufacture of cigarettes, cigars, beedies, or pipe tobacco is carried on ; and

(b) includes any store or other place maintained in connection with any premises referred to in paragraph (a) ;

"import" means to bring into Sri Lanka, by sea or air, from any place outside or beyond the limits of Sri Lanka ;

"Minister" means the Minister appointed under Article 44 of the Constitution, to whom the subject of Finance is assigned ;

"pipe tobacco" means cut tobacco or tobacco compressed into slabs which can be used, or is intended for smoking in pipes ;

"prescribed" means prescribed by regulations made under this Act;

"Sale or purchase" with their grammatical variations and cognate expressions in relation to any cigarettes, cigars, beedies, or pipe tobacco means any transfer of the possession of the same by one person to another in the ordinary course of trade or business for cash or

deferred payment or for other valuable consideration ;

"Sri Lanka tobacco leaf or beedi tobacco" means the leaf of the tobacco plant grown in Sri Lanka and includes any tobacco leaf or beedi tobacco found in Sri Lanka the origin of which is not established otherwise ;

"transport" means to move from one place to another within Sri Lanka.