



## ANALYSIS

1.	Title	24.	New Securities may be required
2.	Short Title		
	Interpretation		
3.	<u>PART I - ADMINISTRATION</u> Act to be administered by the Customs Department	25.	<u>PART V - OFFENCES AND</u> <u>PENALTIES</u> Aiding and abetting offences
	<u>PART II - IMPOSITION</u> <u>AND COLLECTION</u>	26.	Attempts
4.	Private Import Tax	27.	General penalty
5.	Value of goods	28.	Defrauding the revenue
6.	Exemptions	29.	Erroneous returns or statements
7.	Disputes	30.	Erroneous refunds
8.	Private Import Tax	31.	Erroneous declaration
9.	a Crown Debt	32.	Wilfully false declarations
10.	"Importation" defined	33.	Production of false documents
11.	Private Import Tax declaration	34.	Failure to answer questions truly
12.	Form of Private Import Tax declaration	35.	Liability of officers of a company for offence by company
13.	Verification of declaration	36.	Offence punishable under different provision
14.	Liability of owners of vessels or aircraft for Private Import tax on mission goods	37.	Charge of intent to defraud the revenue
15.	Minimum tax payable	38.	Arrest of suspected offenders
16.	Warehousing of goods	39.	Source of information need not be disclosed
17.	Recovery of tax paid in error	40.	Burden of proof
18.	Recovery of Private Import tax refunded in error	41.	Offences presumed to have been committed with intent to defraud the revenue
19.	Drawback not allowed when goods exported	42.	Actions pending alterations of Private Import Tax
	<u>PART III - POWERS OF</u> <u>OFFICERS</u>		<u>PART VI MISCELLANEOUS</u>
20.	Power to impound documents	43.	Remission of fines by the Queen's Representative
21.	Power to question persons and require production of documents	44.	General power to make regulations
22.	Private Import tax warrants	45.	Orders in Executive Council to be laid before Parliament
	<u>PART IV - SECURITIES</u>	46.	Application of Act to the Crown
23.	Securities for payment of tax and compliance with Act	47.	Act deemed part of the Customs Acts
		48.	Repeals Schedules

1984, No. 10

An Act to impose Private Import Tax and to provide for  
assessment levy and collection

(26 June 1984)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled,  
and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Private Import Tax  
Act 1984.

2. Interpretation - In this Act, unless the context otherwise  
requires:

"Collector" means any officer appointed as Collector of  
Customs at any port and includes the Comptroller of  
Customs, and the chief officer of Customs at any port  
or other place and any proper officer acting for the  
time being in place of the Collector either generally  
or in respect of any of his powers or functions, and  
whether during any vacancy in the office of Collector  
or otherwise;

"Declaration" means a declaration made in accordance  
with the provisions of this Act;

"Documents" includes books;

"Goods" means all kinds of movable personal property;

"Intent to defraud the revenue" means:

- (a) An intent to evade, or to enable any other person  
to evade, payment of the Private Import tax; or  
any part of the Private Import tax payable or any  
goods; or
- (b) An intent to obtain, or to enable any other person  
to obtain, in respect of any goods, any refund of  
Private Import tax not authorised by law; or
- (c) An intent to evade, or to enable any other person  
to evade, payment of any money payable to the  
Crown under this Act.

"Minister" means the Minister of Customs;

"Officer" or "Officer of Customs" means any person employed  
in the service of the Customs;

"Private Import Tax" means the private import tax imposed  
by this Act;

"Registered Business" means the activity or activities for  
which registered under the Turnover Tax Act 1980;

"Taxable goods" means goods of a class or kind not for the  
time being exempted from Private Import tax.

PART I - ADMINISTRATION

3. Act to be administered by the Customs Department - This Act shall  
be administered by the Customs Department as constituted by the Customs  
Act 1913; and the Minister, the Comptroller and every Collector shall  
have and may exercise in respect of the collection of Private Import  
tax the like powers and authorities (so far as the same are applicable  
and with all necessary modifications) as if the Private Import tax were  
duty under the Customs Act 1913.

PART II - IMPOSITION AND COLLECTION

4. Private Import Tax - (1) Subject to the provisions of this Act, private import tax shall be levied, collected and paid on all goods imported into the Cook Islands for use in the Cook Islands at the rate of five percent of the value of those goods.

(2) Notwithstanding anything in subsection (1) of this section, nothing in this Act shall apply in respect of goods imported by any person registered under the Turnover Tax Act with the Inland Revenue Department where such goods are to be used solely in the registered business of that person whether for resale or otherwise.

(3) The Queens Representative may from time to time, by order in Executive Council reduce or increase the rate of private import tax imposed by this section.

5. Value of goods - For the purposes of this Act, the value of goods shall be the sum of the following amounts, namely:

(i) the equivalent in New Zealand currency of the value of these goods for Customs duty, such value being ascertained in accordance with the Customs Act in force at the time of importation;

(ii) the amount of Customs duty and import levy (if any) payable on the goods.

6. Exemptions - Subject to the provisions of this section, the following goods shall be exempt from Private Import tax:

(a) Goods of a class or kind specified in the first schedule to this Act;

(b) Goods of a class or kind exempted from Private Import tax by the Queens Representative by order in Executive Council provided that in a like manner any exemption made under this paragraph and any exemption listed in the Schedule to this Act may be revoked.

7. Disputes - (1) Where any dispute arises as to whether any class or kind of goods which are imported into the Cook Islands are subject to the provisions of section 4 of this Act, the Minister may determine such dispute in such manner as appears to him just.

(2) Where any person is dissatisfied with the Minister's determination pursuant to subsection (1) of this section, that person may within 2 weeks of receiving notice of that determination file with the Collector a written notice of objection which shall contain the grounds of his objection.

(3) No notice of objection given after the time as specified in subsection (2) of this section shall be of any force or effect unless the Collector in his discretion accepts the same and gives notice to the objector accordingly.

(4) Where the Collector receives a notice of objection pursuant to subsection (2) of this section the Collector shall prepare and file a case stated to be heard and determined by the purpose of hearing and determining the objection have all the power vested in it in its civil jurisdiction as if in an action between the objectors and the Collector.

(5) Every determination or order of the Judge in respect of or in connection with an objection shall be final and conclusive and without appeal whether to the Court of Appeal of the Cook Islands, or to Her Majesty the Queen in Council or otherwise and shall not be questioned in any way.

8. Private Import Tax a Crown debt - (1) The Private Import Tax payable on any goods shall immediately on the importation thereof constitute a debt owing to the Crown by the importer.

(2) Such debt shall be recoverable by action at the suit of the Comptroller on behalf of the Crown.

(3) The right to recover Private Import tax as a Crown debt shall not be affected by the fact that a bond or other security has been given for the payment of Private Import tax, or that no proper assessment of Private Import tax has been made in due course under this Act, or that a deficient assessment of import levy has been made.

9. "Importation" defined - (1) For all the purposes of this Act, goods shall, except where otherwise expressly provided, be deemed to be imported into the Cook Islands if and so soon as in any manner whatever, whether lawfully or unlawfully they are brought into the Cook Islands from parts beyond the seas.

(2) Goods whose destination is not of the Cook Islands shall not be deemed to have so imported unless they are removed in the Cook Islands from the vessel or aircraft in which they arrive there, but if so removed they shall for all the purposes of this Act be deemed to have been imported as soon as they were brought into the Cook Islands as aforesaid.

(3) All goods specified in the inward report of any vessel or aircraft or in any invoice produced in relation to any entry shall be presumed to have been actually imported unless the contrary is proved.

(4) For the purposes of this section the term "Cook Islands" shall be deemed to include not only all the waters comprised within the territorial waters of the Cook Islands but also the whole of the waters comprised within any part or landing place.

10. Private Import Tax declaration - (1) The importer of any goods shall, within fourteen days from the arrival in the Cook Islands of the vessel or aircraft on which the goods were imported, or such later time as the Collector may in any case permit make and deliver to the Collector a declaration (to be known as a Private Import Tax declaration) as to the importation of those goods.

(2) Any person making any Private Import tax declaration shall truly answer all questions asked by the Collector or other proper officer of Customs relating to the goods referred to in the declaration.

11. Form of Private Import Tax declaration - The Collector shall from time to time prescribe the form required as a Private Import Tax declaration.

12. Verification of declaration - The Collector may, if he thinks fit, require from any person making a Private Import tax declaration, the production of documents showing the description, quantity and value of the goods to which the declaration relates.

13. Liability of owners of vessels or aircraft for Private Import tax on missing goods - If any goods liable to Private Import tax are smuggled or unlawfully landed in the Cook Islands from any vessel or aircraft, the owner and the master of the vessel, or the owner and the pilot in command of the aircraft, as the case may be, shall (in addition to the liability of any other person) be jointly and severally liable for the payment of the Private Import tax on such goods, as if imported by them and entered for home consumption.

14. Minimum tax payable - The minimum amount of tax that need be collected on any goods shall be 25 cents.

15. Warehousing of goods - Private Import tax shall be paid at the time entry is made to remove any goods to a licensed warehouse.

16. Recovery of tax paid in error - (1) At any time within one year after the payment of any sum by way of Private Import tax the person by whom payment was so made may institute proceedings against the Crown for a refund of such tax, or of any part thereof, on the grounds that the Private Import tax was not lawfully chargeable or was charged in excess, and whether the error alleged is one of fact or of law.

(2) Nothing in this section shall be so construed as to entitle any person to take proceedings for a refund of Private Import tax on any ground on which the determination of the High Court is made final by this Act.

17. Refund of tax paid in error - If the Collector is satisfied that any Private Import tax has been paid in error, whether of fact or of law, he may refund the same on application made at any time within three years after the payment thereof.

18. Recovery of Private Import tax refunded in error - All moneys refunded by the Comptroller in error, whether of fact or of law, shall be recoverable by action at the suit of the Crown at any time within three years after the payment thereof, or without limit of time if the refund has been obtained by fraud.

19. Drawback not allowed when goods exported - Drawback of Private Import tax paid on goods that will be exported from the Cook Islands to any other country shall not be allowed.

#### PART III - POWERS OF OFFICERS

20. Power to impound documents - The Collector may impound and retain any document presented in connection with any return or required to be produced under this Act; but the person otherwise entitled to the document shall in lieu thereof, be entitled to a copy certified as correct by the Collector under the seal of the Customs, and the copy so certified shall be received in all Courts as evidence in lieu of the original.

21. Power to question persons and require production of documents -  
(1) The Collector may question any person as to the particulars shown in any return delivered to him by a taxpayer in accordance with this Act, and may if he thinks fit require from the taxpayer proof by declaration or the production of documents (in addition to any declaration or documents otherwise required by this Act) of the correctness of the return.

(2) If any taxpayer refuses or fails without reasonable cause to make any such declaration or to produce such documents as aforesaid he shall be liable to a fine of one hundred dollars, or to a fine of the amount of value of the goods in respect of which the return is made, whichever sum is the greater.

(3) The Comptroller or any Collector may by order under his hand require any person to produce for inspection by him or by any specified officer all or any receipts, records, other documents relative to any goods with reference to which any question has arisen under this Act; and to allow the Comptroller, Collector or such specified officer to make copies of or extracts from any such receipts, records or other documents and to appear before the Comptroller, Collector or such specified officer and to answer all questions put to him concerning any such goods, or such receipts, records or documents as aforesaid.

(4) Every person who fails or refuses to conform to any requisition under the last preceding sub-section shall be liable to a fine of one hundred dollars.

(5) An order under this section may be directed to any corporation or local authority, or to any member, officer, or servant of any such corporation or local authority.

22. Private Import Tax warrants - Any Customs Warrant or import levy warrant issued under the Customs Act 1913 or the Import Levy Act 1972 shall also be deemed to be a Private Import tax warrant and may be used in a like manner without further need.

#### PART IV - SECURITIES

23. Securities for payment of tax and compliance with Act -

(1) The Collector shall have the right to require and take securities for payment of Private Import tax and generally for compliance with this Act and for the protection of the revenue payable under this Act, and, pending the giving of the required security, he may refuse to do any act in the execution of his office in relation to any matter in respect of which the security is required.

(2) Any security under this Act may, as required by the Collector, be by bond (with or without sureties) or guarantee to the Queens Representative, or by a deposit of cash, or by all or any of those methods, to the satisfaction of the Collector.

(3) Any such security may be given either in relation to any particular transaction, or generally with respect to any class of transactions, or to all transactions, and for such period and amount as the Collector thinks fit, and under such conditions as to forfeiture, penalty or otherwise as the Minister may direct.

(4) Any security required or given under this Act may be taken with respect to matters arising under the Customs Act 1913 or the Import Levy Act 1972 in addition to matters arising under this Act.

(5) Regulations under this Act may prescribe forms of bonds, guarantees and other securities; and any security may be either in the prescribed form, or to the like effect, or in such other form as the Collector in any particular case approves.

24. New Securities may be required - If the Collector is at any time dissatisfied with the sufficiency of any security, he may require a new security in lieu thereof, or in addition thereto; and, in default of such new security being given, he may do or refuse to do any act in the execution of his office in relation to any matter in respect of which the new security is required.

#### PART V - OFFENCES AND PENALTIES

25. Aiding and abetting offences - Every person who aids, abets, counsels, or procures the commission of an offence against this Act shall be deemed to have committed that offence, and shall be liable accordingly.

26. Attempts - Every attempt to commit an offence against this Act shall be an offence punishable in like manner as if the offence so attempted has been actually committed.

27. General penalty - Every person who commits an offence against this Act for which no other penalty is provided shall be liable to a fine of fifty dollars.

28. Defrauding the revenue - Every person who commits any offence against this Act or does any other act, with intent, in either case to defraud the revenue -

- (a) By evading or enabling any other person to evade payment of the Private Import Tax or any part of the Private Import tax on any goods; or
- (b) By obtaining or enabling any other person to obtain any money by way of refund of Private Import tax on any goods; or
- (c) In any other manner whatsoever in relation to any goods;

or who conspires with any other person (whether that other person is in the Cook Islands or not) so to defraud the revenue in relation to any goods, shall be liable to a fine of two hundred dollars or to a fine of three times the value of those goods, whichever sum is the greater.

29. Erroneous returns or statements - Every person who for the purposes of this Act makes any return or statement which is erroneous or defective in any particular, shall be liable to a fine of two hundred dollars.

30. Erroneous refunds - Every person who obtains any refund or remission of Private Import tax by means of any erroneous or defective declaration or written statement, or by producing to an officer any declaration or other document of any kind whatsoever which is not genuine or which is in any respect erroneous or defective, shall be liable to a fine of two hundred dollars or to a fine of three times the amount of that refund or remission, whichever sum is the greater.

31. Erroneous declaration - Every person who makes any declaration under this Act which is erroneous in any particular shall be liable to a fine of two hundred dollars.

32. Willfully false declarations - Every person who knowingly makes any false declaration under this Act shall be guilty of an offence punishable by imprisonment for a term not exceeding two years.

33. Production of false documents - Every person who produces or delivers to an officer in the execution of his office any document as genuine which is not genuine, or any document as true which is in any respect erroneous, shall be liable to a fine of two hundred dollars.

34. Failure to answer questions truly - Every person is liable to a fine of one hundred dollars who, when required under this Act to answer any question put to him, fails or refuses to answer such question, or does not truly answer the same.

35. Liability of officers of a company for offence by company - Where a person convicted of an offence against this Act is a company, every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the Act constituting the offence took place without his knowledge or consent.

36. Offence punishable under different provision - When any offence is punishable under two or more different provisions of this Act the offender may be proceeded against under any of those two provisions, but he shall not be punished twice for the same offence.

37. Charge of intent to defraud the revenue - Whenever under this Act any act is an offence although done without intent to defraud the revenue, the offender may be convicted of that offence on an information charging him with doing the act with that intent, and shall not be acquitted on that information merely because the intent is not proved.

38. Arrest of suspected offenders - Any officer under this Act or any officer of police who has reasonable cause to believe or suspect that any person has committed any offence against this Act with intent to defraud the revenue, and is about to leave the Cook Islands, may arrest that person without warrant.

39. Source of information need not be disclosed - No officer of police, and no witness for the Crown, in any proceedings under this Act, shall be compellable to disclose the fact that he received any information, or the nature or source thereof or to produce or disclose the existence or nature of any reports made by or received by him in an official or confidential capacity.

40. Actions pending alterations of Private Import Tax - (1) When any resolution in favour of an alteration of the law relating to Private Import tax has in any session been passed by the Parliament or any Committee thereof no person shall be competent to commence, at any time before the end of the session, any proceedings of any description whatever against the Crown or the Minister, or any officer under this Act or any officer of police, or any other person, on any cause of action or on any ground which would not have been sufficient if the said resolution had possessed the force of law according to the tenor thereof as an amendment of this Act.

(2) For the purpose of any period of limitation established by this or any other Act, any cause of action which is subject to the last preceding subsection shall be deemed to have first arisen on the last day of the said session of the Parliament and no sooner.

(3) For the purpose of determining whether any act done by the Minister or any officer under this Act or any officer of police was done in the execution of his office under this Act, his office shall be deemed to include the duty of acting at all times during the said session of the Parliament in accordance with any such resolution as aforesaid as if it had the force of law according to its tenor.

#### PART VI - MISCELLANEOUS

41. Remission of fines by the Queens Representative - When any fine has been incurred by any person under this Act, the Queens Representative acting on the advice of the Minister, may, whether before or after the conviction of that person, remit the fine whether wholly or in part.

42. General power to make regulations - (1) The Queens Representative may by Order in Executive Council make regulations under this Act prescribing all matters which by this Act are required or permitted to be prescribed, or with respect to which regulations are necessary or convenient for giving effect to this Act.

(2) Whenever the term "prescribed" is used in this Act in respect of any matter, the Queens Representative may by Order in Executive Council make regulations in respect of that matter.

(3) Regulations made under this Act may prescribe for any breach thereof a fine not exceeding one hundred dollars and all the provisions of this Act relating to fines shall apply to fines imposed by any such regulations.

43. Orders in Executive Council to be laid before Parliament - (1) Every Order in Executive Council made under this Act shall be laid before the Parliament within fourteen days after the making thereof if the Parliament is then in session, and if not, then within fourteen days after the commencement of the next ensuing session.

(2) If the Parliament resolves that any such Order in Executive Council should be revoked or varied, it shall thereupon be revoked or varied in accordance with the terms of the resolution.

44. Application of Act to the Crown - Private Import Tax shall not be payable by the Crown or any agency or division thereof except as may be determined by the Minister by notice in the Gazette where the Minister considers that the non-application of the Private Import tax in any particular case is unfair to any Private Import tax payer.

45. Act deemed part of the Customs Acts - For purposes of section 3 of the Customs Act 1913, this Act shall be deemed to form part of the Customs Acts.

46. Repeals - The enactments specified in the second schedule to this Act are repealed.

---

This Act is administered by the Customs Department.

FIRST SCHEDULE

## Section 6

EXEMPTIONS FROM PRIVATE IMPORT TAX1. Goods Imported by:

- (a) any overseas government for use by it in the Cook Islands whether in an office established by it or in any approved aid project; or
- (b) the United Nations, South Pacific Bureau of Economic Co-operation or the South Pacific Commission or any agency of those organisations for an approved project in the Cook Islands; or
- (c) any other overseas agency for use in any approved project in the Cook Islands.

NOTE: "Approved aid project" or "approved project" means a project entered into with the consent of the Government of the Cook Islands.

- 2. Goods imported by the University of the South Pacific for use at its centre on Rarotonga.
- 3. Goods imported by any religious organisation for its own use or for use in any educational facility attached to it provided that the organisation is permitted to operate in the Cook Islands under the provisions of the Religious Organisations Restrictions Act of 1975.
- 4. Goods where the Collector is satisfied that the goods are a bona-fide unsolicited gift only and not intended for disposal by sale or otherwise.
- 5. Passengers baggage and personal effects, and household and other effects of persons arriving to take up residence in the Cook Islands but does not include alcohol, cigarettes or tobacco.
- 6. Goods-Machinery, implements, appliances and other articles respectively suited for use in agriculture and horticulture as the Minister may determine but not including vehicles for the carriage of passengers or goods;
- 7. Goods - Manure and other growth regulating and promoting substances and preparations for agricultural use as the Minister may determine.
- 8. Goods imported by any recognised sports organisation for that organisation's own use and not for resale;
- 9. Goods imported by such charitable or other organisations or groups of persons or Tere parties as the Minister may approve, and which the Minister is satisfied are for donation to any educational, health, or religious institutions or community projects, or other similar purposes.
- 10. Goods - Memorial Headstones.

1984, No. 10

Private Import Tax

11

SECOND SCHEDULE

Section 48

ENACTMENTS REPEALED

1980 No. 7 - Use Tax Act 1980.

\_\_\_\_\_