

Namibia

Export Levy Act, 2016

Act 2 of 2016

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Export Levy Act, 2016

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Republic of Namibia
Annotated Statutes

Export Levy Act, 2016

Act 2 of 2016

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ACT

To provide for the imposition of an export levy on certain goods, so as to improve Namibia's value share in its resource base, to encourage further processing or beneficiation of or value addition to such goods, to support national or regional industrial development, to promote the development of regional value chains and to meet revenue needs; and to provide for incidental matters.

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:

Chapter 1

INTRODUCTORY PROVISIONS (ss 1-3)

1. Definitions

In this Act, unless the context otherwise indicates-

"assessment" means a determination by the customs authority of-

- (a) whether goods are liable to an export levy; and
- (b) the amount of export levy payable on export levy goods;

"Commissioner" means the Commissioner for Customs and Excise referred to in section 1 of the Customs and Excise Act;

"customs authority" means-

- (a) the Commissioner; or
- (b) an officer, acting under the direction and control of the Commissioner;

"Customs and Excise Act" means the Customs and Excise Act, 1998 (Act 20 of 1998);

"customs declaration" means a statement, in which the exporter declares the export levy goods and other information required in respect of such a declaration;

"export levy" means a levy imposed on export levy goods destined for export from Namibia;

"export levy goods" means goods referred to in section 7 as goods subject to an export levy;

"export" means to take or cause to be taken out of Namibia;

"exporter" means a person who exports export levy goods including any person who, at the time of export-

- (a) owns goods to be exported;
- (b) carries the risk in respect of such goods exported;
- (c) represents that or acts as if he or she is the exporter or owner of such goods exported;
- (d) actually takes or attempts to take such goods from Namibia;
- (e) has a beneficial interest in any way in such goods exported; or
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e) above;

"goods" means merchandise, articles, products, supplies, commodities, substances, documents or any other things capable of being transported;

"Minister" means the Minister responsible for finance;

"officer" means an officer referred to in section 1 of the Customs and Excise Act;

"person" means a natural or juristic person;

"refund" means a refund of an export levy referred to in section 15;

"this Act" includes a regulation or a Schedule made or issued under this Act;

"time of export" means-

- (a) if the export levy goods are to be exported by vessel, air or rail, not later than one hour before the goods are delivered to-
 - (i) a container terminal, container or cargo depot, or goods shed to be loaded for export by vessel or air; or
 - (ii) container terminal where the goods will be loaded on board the cross-border railway carriage in which the goods are to be exported;
- (b) if the export levy goods are to be exported by road-
 - (i) at any time after the goods have been loaded on board the means of transport, but not later than the time the means of transport reaches the land border-post where the goods will be exported; or
 - (ii) before or at the time a person on foot or otherwise reaches the land border-post where the goods will be exported; or
- (c) if the export levy goods are to be exported through a cross-border pipeline or electric transmission line, within such period as may be determined by the customs authority.

2. Goods to which this Act applies

This Act applies to export levy goods exported or to be exported from Namibia.

3. Reference to export levy in other laws

A provision in any other law may not be construed as applying or referring to the export levy under this Act, unless the export levy is specifically mentioned in a provision in such law.

Chapter 2 COMMISSIONER TO ADMINISTER THIS ACT (s 4)

4. Commissioner to administer this Act

- (1) The Commissioner must administer this Act, subject to the direction and control of the Minister.
- (2) The provisions of the Customs and Excise Act, relating to-
 - (a) performance of duties and powers of Commissioner as set out in section 3 of the Customs and Excise Act;
 - (b) general duties and powers of officers as set out in section 4 of the Customs and Excise Act;
 - (c) entry, search and seizure in relation to premises and goods;
 - (d) destruction, detention and disposal in relation to goods;
 - (e) forfeiture;
 - (f) appointment and liability of agent;
 - (g) recovery of penalties by process of law;
 - (h) jurisdiction of courts; and
 - (i) notice of intended proceedings and period for instituting proceedings,apply with necessary changes, to this Act.

Chapter 3 LIABILITY FOR EXPORT LEVY (ss 5-6)

5. When liability for export levy starts and ends

- (1) The liability for export levy on export levy goods destined for export from Namibia, starts when-
 - (a) the exporter lodges a customs declaration, in accordance with section 9, with the customs authority; and
 - (b) the customs authority issues to the exporter a document that confers an export levy due status on the goods concerned.

[The word "the" appears to have been accidentally omitted before the phrase "customs authority". The phrase "a documents" should be either "a document" or "documents".]

- (2) The liability for export levy on export levy goods ends if the export levy as assessed or re-assessed in terms of this Act is paid in full.

6. Export levy is debt due to the State

An export levy payable under this Act is-

- (a) paid for the benefit of the State Revenue Fund; and

- (b) a debt due to the State.

Chapter 4

EXPORT LEVY GOODS AND RATES OF EXPORT LEVY (s 7)

7. Goods subject to export levy and rates of export levy

- (1) The goods specified in Column 1 of Schedules 1, 2 and 3 to this Act are subject to an export levy which is payable at the rates specified in Column 2 of Schedules 1, 2 and 3 to this Act.
- (2) The Minister may by notice in the Gazette-
 - (a) amend Schedule 1, 2 or 3 to this Act, by adding goods to be subject to an export levy and the export levy rate applicable to such goods;
 - (b) amend Schedule 1, 2 or 3 to this Act, by deleting goods which are subject to an export levy and the export levy rate applicable to such goods;
 - (c) insert or add a new Schedule to this Act, specifying goods subject to an export levy and the export levy rates applicable to such goods;
 - (d) substitute Schedule 1, 2 or 3 or a Schedule inserted or added in terms of paragraph (c) with another Schedule; or
 - (e) reduce or increase export levy rates applicable to export levy goods.

Chapter 5

VALUE OF EXPORT LEVY GOODS (s 8)

8. Value of export levy goods

- (1) For the purpose of this section, "free on board" in relation to export levy goods exported or to be exported from Namibia includes all profits, costs, charges and expenses up to the place where the goods leave Namibia, including any agents' commission calculated on such profits, costs, charges or expenses.
- (2) The export levy is payable on the value of export levy goods calculated in accordance with this section.
- (3) The value for export levy purposes of export levy goods at the time of export of such goods is the free on board price of such goods.
- (4) If there is no free on board price in respect of the export levy goods, the value in respect of such goods determined by the customs authority is for the purposes of this Act, considered to be the value of such goods.
- (5) If the value of any individual item of exported export levy goods is according to this section-
 - (a) in excess of N\$ One and includes a fraction of a N\$ One, such value must be calculated and approximated to the nearest N\$ One, an amount in excess of 50 cents being regarded as N\$ One; or
 - (b) less than N\$ One, such value must be calculated as N\$ One.

Chapter 6

CUSTOMS DECLARATION (s 9)

9. Customs declaration

- (1) If an export levy is payable in terms of this Act, the exporter must at the time of export submit a customs declaration to the customs authority.
- (2) The customs declaration referred to in subsection (1), must be made on the form determined by the Commissioner and be accompanied by such information as may be required.

Chapter 7

ASSESSMENT AND RE-ASSESSMENT (ss 10-13)

10. Assessment

- (1) On receipt of a customs declaration in terms of section 9, the customs authority must-
 - (a) determine whether goods indicated in the customs declaration are subject to an export levy; and
 - (b) if an export levy is payable, calculate the amount of export levy payable on the goods in accordance with section 8.
- (2) The customs authority must assess the export levy on the export levy goods, in terms of subsection (1), by-
 - (a) adopting the self-assessment of the export levy referred to in section 11 as its own assessment of the export levy; or
 - (b) making its own assessment of the export levy.

11. Assessment by exporter

- (1) An exporter may-
 - (a) self-assess the export levy before lodging the customs declaration in terms of section 9, by-
 - (i) determining the particulars required for the customs declaration; and
 - (ii) determining the export levy of the goods;
 - (b) declare on the customs declaration to be lodged in terms of section 9-
 - (i) the particulars required for the calculation of the amount of export levy payable on the export levy goods in accordance with the self-assessment; and
 - (ii) other particulars concerning the self-assessment as may be specified by the customs authority; and
 - (c) on request by the customs authority provide the customs authority with the details of self-assessment referred to in paragraph (b).
- (2) The exporter referred to in subsection (1) must on discovery of an inaccuracy in a self-assessment made in respect of the export levy goods immediately notify the customs authority of such inaccuracy.

12. Re-assessment by customs authority

- (1) The customs authority may at any time-
 - (a) make a re-assessment of the export levy on export levy goods as adopted or assessed by the customs authority in terms of section 11; or
 - (b) make a re-assessment of the export levy on export levy goods as re-assessed in terms of paragraph (a).
- (2) A re-assessment in terms of subsection (1) may be made whether or not-
 - (a) the export levy goods have been exported;
 - (b) the export levy goods are still subject to customs control; or
 - (c) an amount of export levy has been paid on the export levy goods.
- (3) When making a re-assessment in terms of subsection (1), the customs authority is not obliged to make the re-assessment with reference to each of the key assessment factors, but may for purposes of the re-assessment apply key assessment factors as applied in previous assessment.
- (4) If the amount of export levy as re-assessed in terms of subsection (1) exceeds the amount of levy as assessed in terms of section 10(2), the customs authority must recover the under-payment of levy.
- (5) If the amount of export levy as re-assessed in terms of subsection (1) is less than an amount of levy that has been paid, the person who paid that amount of levy is entitled to a refund of the excess.
- (6) If the customs authority has re-assessed an export levy in terms of this section the customs authority must give the exporter written notice of the re-assessment as well as the amount of under-payment or excess in respect of the export levy as contemplated in subsection (4) or (5).

13. Time limit on re-assessment

- (1) A re-assessment of export levy under section 12, may only be made within a period of five years from the date of liability for export levy.
- (2) Despite subsection (1), a re-assessment of an export levy may be made after the expiry of five years from the date of liability of export levy, if-
 - (a) the re-assessment is made to give effect to a court order or final court decision;
 - (b) it is necessary to rectify an under-payment or non-payment of export levy that occurred as a result of fraud, misrepresentation, false declaration or non-disclosure of material facts; or
 - (c) the customs authority and the exporter agree before the expiry of that period to the re-assessment.

Chapter 8

PAYMENT OF EXPORT LEVIES, INTEREST AND PENALTIES (s 14)

14. Payment of export levies, interest and penalties

- (1) Export levies, interest or penalties in terms of this Act must be paid in the currency that is legal tender in Namibia.
- (2) Despite subsection (1), the customs authority may accept payment for export levies, interest or penalties in a foreign currency that is the equivalent to an amount in Namibia Dollars.
- (3) Payment of export levies, interest or penalties in terms of this Act must be made to the customs authority by electronic funds transfer or by other electronic means, including credit and debit cards.

- (4) Cash payments may not be accepted, except when electronic means of payment are otherwise not available.

Chapter 9

REFUNDS (ss 15-17)

15. Refunds

- (1) A refund of an export levy paid in terms of this Act may be granted by the Commissioner on a written request submitted to the Commissioner by the person concerned, within five years from the date of liability of the export levy concerned.
- (2) The Commissioner may extend the period referred to in subsection (1), if the person concerned demonstrates to the satisfaction of the Commissioner that he or she was prevented from submitting his or her request within the time limit referred to in that subsection due to unforeseeable circumstances.
- (3) The Commissioner may not authorise a refund under this section, if the-
 - (a) export levy was paid in accordance with the assessment practice prevailing at the date of the payment; or
 - (b) exporter has failed to make a customs declaration as required by section 9.
- (4) If the amount to be refunded under subsection (1) is less than N\$100 or less than such amount as the Minister may determine by notice in the Gazette, the amount so determined may not be refunded.
- (5) If any refund in terms of this Act is due to an exporter who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under this Act or any other fiscal legislation administered by the Commissioner, the Commissioner may set off any amount which has become refundable to the exporter under this section against the amount which the exporter has failed to pay or is required to pay.
- (6) A refund of export levy, any interest or late payment collected at the time of payment of such levy, does not give rise to the payment of interest by the customs authority.

16. Considering refund request

The Commissioner must consider a request for a refund made under section 15 within 30 days of the date of submission of the request and may-

- (a) approve the request and pay the refund to the person concerned; or
- (b) refuse the request and in writing notify the person concerned of such refusal.

17. Refunds made in error

- (1) Where a refund is in terms of section 15 made in error the initial debt becomes due once more and the customs authority must in writing notify the exporter concerned of the-
 - (a) error;
 - (b) amount of export levy, interest or penalties due; and
 - (c) due date for payment.
- (2) If the customs authority refunded an export levy which was in excess of the amount due to be refunded, the person concerned must on the written demand by the Commissioner repay the excess amount.

Chapter 10

OBJECTIONS (s 18)

18. Objections

- (1) An exporter who is aggrieved by an assessment or re-assessment made in terms of section 10 or 12, may within 90 days of the date of assessment or re-assessment lodge an objection against the assessment or re-assessment, with the Commissioner.
- (2) The Commissioner may not consider an objection made under subsection (1) which is not sent to the Commissioner's office within the time period stated in that subsection, unless the Commissioner is satisfied that reasonable grounds exist for the delay in making the objection.
- (3) An objection made in terms of this section must be in writing and must specify in detail the grounds on which it is made.
- (4) On receipt of an objection under subsection (1), the Commissioner-
 - (a) must consider the objection and may reduce or alter the assessment or re-assessment concerned;
 - (b) may reject the objection and must send to the exporter a notice of such rejection; and
 - (c) must record any reduction, alteration or rejection made in respect of an assessment.
- (5) If no objection is made to an assessment or re-assessment in terms of this section or if an objection is rejected by the Commissioner under subsection (4)(b) or withdrawn by the exporter concerned, the assessment or re-assessment and the reduced or altered assessment is final.

Chapter 11

GENERAL PROVISIONS (ss 19-25)

19. Manner of conveying or sending decisions and documents

The customs authority may convey any decision taken or send any document issued in terms of this Act, to a person affected by that decision or to whom the document is issued by-

- (a) delivering the decision or document by hand;
- (b) sending the decision or document by registered post;
- (c) telefaxing the decision or document, if that person is equipped to receive telefax messages; or
- (d) transmitting the decision or document electronically, if that person is registered as an electronic user on the electronic system of Directorate of Namibia Customs and Excise.

20. Keeping of records, offences and penalties

- (1) The exporter must for a period of five years keep records of customs declarations and other related documents.
- (2) The exporter must on request by the customs authority, provide the records and documents referred to in subsection (1).

- (3) An exporter who fails to maintain records as contemplated in subsection (1) commits an offence and is liable on conviction-
- (a) if the failure was made knowingly or recklessly, to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; or
 - (b) in any other case, to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

21. Interest on unpaid export levies

A person who fails to pay an export levy payable under this Act is liable for the payment of interest at a rate of 20 per cent per annum on the amount of unpaid levy calculated from the first day after the date on which the payment becomes due until the date of payment of such unpaid amount.

22. Penalty for failure to pay export levy

A person who fails to pay any export levy payable under this Act is liable for the payment of a penalty equal to ten per cent of the amount of unpaid levy for each month or part of the unpaid levy calculated from the first day after the due date of payment of such unpaid amount.

23. Penalty for false or misleading statements or information

A person who-

- (a) makes a statement to the customs authority that is false or misleading in any material respect; or
- (b) omits from a statement made to the customs authority any matter or thing without which the statement is misleading in any material respect,

and the export levy payable by that person exceeds the export levy that would be payable if that person were assessed on the basis that the statement is true, is liable for the payment of a penalty equal to double the amount of excess.

24. Regulations

The Minister may make regulations, not inconsistent with this Act, relating to any matter necessary to administer this Act.

25. Short title and commencement

This Act is called the Export Levy Act, 2016 and comes into operation on a date determined by the Minister by notice in the Gazette.

Schedule 1

EXPORT LEVY GOODS AND EXPORT LEVY RATES FOR MINERALS, GAS AND CRUDE OIL PRODUCTS

[capitalisation of column headings replicated as in the Government Gazette]

Column 1		Column 2
Main product	Specific product	Export Levy Rate
Diamond	Pure unsorted rough diamonds	2.0%
	Sorted by size	1.50%
	Sorted & graded	1.00%
	Cut & polished	0.50%
	Products of jewellery etc	0%
Zinc	Crushed Ore	2%
	Zinc Concentrate	1.00%
	Zinc sheets	0.50%
	Zinc Ingots	0.25%
	Steel Products	0.00%
Lead, other metals	Lead Concentrate	1.00%
Uranium	Uranium oxide/yellow cake	0.25%
Copper	CU Concentrate	1.00%
Gold	Gold bullion	1.00%
Manganesse [The word "Manganese" is misspelt.]	Manganesse Concentrate [The word "Manganese" is misspelt.]	1.00%
Flourospar [The word "Fluorspar" is misspelt.]	Acid Grade Flourospar [The word "Fluorspar" is misspelt.]	0.25%

Other Metals, Precious and Semi-previous stones	Pure metal/stone	0.25%
Dimension stones	Stone blocks	2.00%
Marbles	Stone blocks	2.00%
Gas	Unrefined gas of all types	1.50%
	Refined gas of all types	0.00%
Crude Oil	Unrefined crude oil of all types	1.50%
	Refined oil of all types	0.00%

Schedule 2

EXPORT LEVY GOODS AND EXPORT LEVY RATES FOR FISH PRODUCTS

[capitalisation of column headings replicated as in the Government Gazette]

Column 1		Column 2
Main Product	Product form	Export Levy Rate
Fish of all type, except for line fish other than angel fish, fresh fish, horse mackerel, fresh tuna and tuna-like species, crustaceans, products of aquaculture and freshwater fish	Whole Round	1.50%
Fish of all type, except for line fish other than angel fish, fresh fish, horse mackerel, fresh tuna and tuna-like species, crustaceans, products of aquaculture and freshwater fish	Headed & Guttled	1.50%
	Mince blocks	1.50%
Angel fish	Whole Round or Guttled	1.50%
Pilchard Large Pelagic (frozen)	Frozen cutlets	1.50%
	ALBA CORE TUNA, Frozen WR, H&G or G&G	1.50%
	Big Eye TUNA, Frozen WR, H&G or G&G	1.50%
	Yellowtin TUNA, Frozen WR, H&G or G&G [The word "yellowtin" should probably be "yellowfin".]	1.50%
	WORDFISH, Frozen WR, H&G or G&G	1.50%
	SHARKS of all type, Frozen WR, H&G, G&G, Trunks skinless or with skin on	1.50%

Seals	Seal Fur	1.00%
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Schedule 3

EXPORT LEVY GOODS AND EXPORT LEVY RATES FOR FORESTRY PRODUCTS

Column 1		Column 2
Main Product	Specific Products	Export Levy Rate
Mopane roots	Mopane root, unsorted	2.00%
	Mopane root, unsorted	1.50%
	Sandblasted mopane root	0.00%
Devil's claw	Root tubers	1.50%
	Devil's Claw, sliced and dried	1.00%
	Chemicals extraction of Devil's Claw	1.00%
	pharmaceutical and other products of Devil's Claw	0.00%
Hoodia	Hoodia plant log	2.00%
	Hoodia, sliced and dried	1.00%
	Chemicals extraction of hoodia	0.25%
	Pharmaceutical and other products of hoodia	0.00%