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**WASTE MANAGEMENT (PLASTIC LEVY)  
REGULATIONS 2013**





## WASTE MANAGEMENT (PLASTIC LEVY) REGULATIONS 2013

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# WASTE MANAGEMENT (PLASTIC LEVY) REGULATIONS 2013

## WASTE MANAGEMENT ACT 2005

*IN EXERCISE of the powers conferred by section 27 of the Waste Management Act 2005, the Minister of Environment, with the consent of Cabinet, hereby makes the following Regulations and as amended by the Legislative Assembly on the 19th October 2011 by virtue of section 9 of the Government Act (Cap. 3):*

1<sup>st</sup> September 2014

## PART I - INTRODUCTION

### 1 Short title

These Regulations may be cited as the Waste Management (Plastic Levy) Regulations 2013.

### 2 Interpretation

(1) In these Regulations—

“**Act**” means the Waste Management Act 2005;

“**accounting period**” means the period commencing on 4 July 2013 and ending on the last day of September 2013 and thereafter each period of three months beginning on the first day of July, October, January or April;

“**authorised officer**” means an officer of the Waste Authority Limited authorised in writing under the Waste Management Act by the Waste Authority to exercise the powers conferred by these Regulations;

“**customs value**” has the meaning given in section 10 of the Customs Act 2007;

“**importer**” means a person who imports plastic bags and accountable under these Regulations;

“**Minister**” means the Minister of Environment; and

“**Waste Authority**” means Waste Authority Limited.

(2) In these Regulations -

“**plastic bag**” means a synthetic bag made from organic compounds for use in commerce, and includes plastic containers that the Waste Authority classifies as disposable containers, but does not include the following classes of plastic bags:

(a) plastic bags solely used at the point of importation to contain-

- (i) fresh fish and fresh fish products;
- (ii) fresh meat and fresh meat products;
- (iii) fresh poultry and fresh poultry products; or
- (iv) local crops to be exported,

Provided that such bags are not greater in dimension than 225mm in width (exclusive of any gussets), by 345mm in depth (inclusive of any gussets), by 450mm in length, (inclusive of any handles);

(b) plastic bags solely used to contain the products referred to in paragraph (a) where such products are contained in packaging, including plastic bags,

Provided that such plastic bags are not greater in dimension than the dimensions referred to in paragraph (a); and

(c) plastic bags used to contain goods or products sold:

- (i) on board a ship or aircraft used for carrying passengers for reward; or
- (ii) in an area of a port or airport to which intending passengers are denied access unless in possession of a valid ticket or boarding card, for the purpose of carrying the goods on board the ship or aircraft referred to in subparagraph (i).

(3) Subject to sub-regulation (1), a word or expression that is used in these Regulations and is also used in any provision of the Act has, except where the context otherwise requires, the same meaning in these Regulations as it has in that provision of the Act.

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## **PART II - IMPOSITION OF PLASTIC LEVY**

### **3 Imposition of levy, person liable, rate of levy and exceptions.**

- (1) On and from 4 July 2013 there shall be charged, levied and paid a levy (which shall be known as a “plastic levy”) in respect of plastic bag supplies at the point of importation.
- (2) An importer shall be accountable for and liable to pay the levy.

### **4 Levy amount.**

The amount of the levy shall be 10 percent of the customs value of each plastic bag upon importation.

### **5 Itemisation of levy**

Where a levy under these Regulations is imposed the levy shall be itemised on any invoice, receipt or docket issued to the importer.

## **PART III - COLLECTION AUTHORITY**

### **6 Collection Authority**

- (1) The Waste Authority shall be the collection authority to whom the levy shall be payable.
- (2) An importer shall pay the levy to the Waste Authority in accordance with these Regulations.
- (3) The Chief Executive Officer of Waste Authority may authorise officers for the purposes of these Regulations.

## **PART IV - RETURNS AND PAYMENT**

### **7 Returns and Payment**

An importer shall furnish to the Waste Authority a full and true return-

- (a) no later than the 19th day of the month following the end of an accounting period;
- (b) in such form as may be reasonably required by the Waste Authority; and

- (c) stating the amount of the levy which became payable by him during the said accounting period.

## **8 Linked Imports**

- (1) Two or more importers who are closely bound by financial, economic or organisational links may submit one return in respect of the levy due by all persons with the consent of the Waste Authority.
- (2) The consent given under sub-regulation (1) shall be –
  - (a) subject to specified conditions;
  - (b) be effective from the date specified in the notice of consent; and
  - (c) terminated by notice in writing to the importer or persons concerned and such termination shall take effect from the date specified in the notice of termination.

## **9 Records**

- (1) An importer shall keep in a permanent form a full and true record of the number of plastic bags, in stock before the commencement of business on the 4 July 2013.
- (2) An importer shall retain for 2 years the records referred to in sub-regulation (1), together with all other books and documents containing particulars on which the records are based.

# **PART V – NON-PAYMENT ESTIMATIONS**

## **10 Estimation in the case of non-payment**

- (1) If an importer fails to furnish a return in respect of any period, the Waste Authority may estimate the amount of levy payable by that person in respect of that period and serve notice on that person of the amount estimated.

Provided that where the Waste Authority is satisfied that the amount so estimated is excessive, they may reduce it and serve notice on the importer of the revised amount estimated and such notice shall supersede any previous notice issued.

- (2) A person served with a notice under sub-regulation (1) may by giving notice in writing to the Waste Authority, within fourteen days from date of service, appeal to the Minister whose decision shall be final and conclusive.
- (3) If there is no appeal or after the appeal is decided, the estimated levy shall be recoverable in the like manner and by the like proceedings as if the amount



specified in the notice were the amount of levy which the person was liable to pay for the period referred to in the notice.

- (4) If, at any time after the service of the notice the person makes the return required under these Regulations and, pays the levy due , together with costs incurred in connection with the default, the notice shall stand discharged and any excess of levy which may have been paid shall be repaid.
- (5) A notice given by the Waste Authority under sub-regulation (1) may extend to two or more consecutive accounting periods.

## **11 Estimation in the case of underpayment**

- (1) Where the Waste Authority have reason to believe that the total amount of levy payable by an importer under these Regulations have not been paid, they may make an estimate of the total amount of levy which in their opinion should have been paid in respect of the accounting period or periods comprised in such period and may serve a notice on the person specifying:
  - (a) the total amount of levy so estimated;
  - (b) the total amount of levy paid by the person in relation to the relevant period; and
  - (c) the balance of levy remaining unpaid.
- (2) Where notice is served on an importer under sub-regulation (1), the following provisions shall apply the importer may, appeal to the Minister within twenty-one days of the date of receipt of notice if he claims that the total amount of levy or the balance of levy remaining unpaid is excessive.
- (3) If there is no appeal or after the appeal is decided:
  - (a) the balance of levy remaining unpaid as specified in the notice or as determined in the appeal shall become due; and
  - (b) the amount is payable as if the person was liable to pay from the date of the service of the notice under sub-regulation (1) expired or the appeal was determined whichever period is the later.

## **12 Proof of notice in relation to estimation**

Where an authorised officer causes to be issued, manually or by any electronic, photographic or other process, and to be served, a notice bearing the name of the Waste Authority, the estimate to which the notice relates shall be deemed to have been made by the authorised officer on behalf of the Waste Authority.

## PART VI - MISCELLANEOUS

### 13 Recovery

- (1) Without prejudice to any other mode of recovery, the provisions of any enactment relating to the recovery of income tax and the provisions of any rule of court so relating shall apply to the recovery of any levy payable as they apply in relation to the recovery of income tax.
- (2) In proceedings for the recovery of any amount of levy, a certificate signed by an authorised officer which certifies that a stated amount of levy is due and payable by the defendant shall be:
  - (a) evidence, until the contrary is proved, that that amount is so due and payable; and
  - (b) tendered in evidence without proof and deemed, to have been signed by an authorised officer.

### 14 Appeals

- (1) There shall be a right of appeal against an estimate of non-payment and underpayment under these Regulations to the Minister and the decision of the Minister shall be final.
- (2) Subject to necessary modifications, an appeal against an estimate of non-payment and under payment under these regulations shall be treated as if the appeal were an appeal against an assessment to income tax.

## PART VII - POWERS OF AUTHORISED OFFICERS

### 15 Powers of officers

- (1) An importer or an employee of such importer shall on request by an authorised officer:
  - (a) produce all records, books and documents required to be retained under these Regulations; and
  - (b) furnish the authorised officer with all reasonable assistance, including the provision of information and explanations in relation to the acquisition, supply, disposal and stocks held of plastic bags.
- (2) An authorised officer may, at reasonable times, enter premises:
  - (a) in which plastic bags in respect of which the levy is or was chargeable are reasonably believed to be kept;
  - (b) inspect, carry out such search and investigation as such officer may consider to be proper and take particulars of:

- (i) any such plastic bags found there; or
  - (ii) any records, books or other documents found there and reasonably believed by the officer to relate to the acquisition and the supply of such plastic bags or plastic containers; and
  - (c) where an authorised officer gathers information under this regulation being in a non-legible form (including information in a computer), he shall require the person in charge of such premises to produce it to the officer in a permanent legible form.
- (3) An authorised officer may remove and retain all records, books and documents required to be retained under these Regulations for such period as may be reasonable for their further examination or for the purposes of any proceedings in relation to the levy.

## **16 Obstruction**

A person shall not resist, obstruct or impede an authorised officer in the exercise of a power conferred on that officer by these Regulations.

## **17 Information to be provided by importers**

A person who imports plastic bags and who has been required by notice in writing from an authorised officer shall:

- (a) not later than one month after the receipt of such notice, advise the authorised officer in writing of the number of plastic bags imported during the accounting period or periods specified in the notice; and
- (b) produce all records, books and documents in relation to such supply.

Made at Nuku'alofa on this 1<sup>st</sup> day of July 2013.

**Lord Ma'afu**  
**Minister for Environment**