



GOVERNMENT OF BERMUDA

Ministry of Finance

Customs Department

Public Notice 31

Customs Duty Deferment: Goods for Retail Sale

1 April 2009

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1 Introduction

1.1 Who should read this Notice?

This notice is relevant to any retailer in Bermuda. This notice does not apply to local suppliers to retailers.

1.2 What is this Notice about?

This notice is intended as a practical guide on how a retailer can defer payment of part of the import duty due on goods that they import for retail sale in Bermuda. This notice is given for information purposes, and in no way supersedes the relevant statutory provisions (refer to 1.3 below for the relevant law).

In the 2009-10 budget speech, the Minister of Finance stated, “...*HM Customs will work with retailers to defer part of their customs duty payments for up to three months with the anticipation that a significant proportion of merchandise will be sold within that timeframe.*”

This notice offers guidance on how a retailer can be approved to apply for such partial duty deferment and how to apply for duty deferment. This notice also describes the form and amount of security required, as well as other conditions of authorisation; and sets out liability to compliance checks and guidance on how to dispose of duty deferred goods otherwise than by retail sale.

This notice does not cover application for customs duty relief under the Retail Shops (Temporary Customs Duty Relief for Capital Investments) Act 2008. For guidance on duty relief for retail shops please refer to Public Notice 29.

1.3 What is the relevant law?

In general, the laws pertaining to the import and export of goods are the Revenue Act 1898 and the Customs Tariff Act 1970. More specifically, Part IIA of the Revenue Act gives the Collector of Customs the power to modify the application of certain provisions of that Act by way of simplified procedures. The Collector has modified the application of section 15 of the Revenue Act allowing the simplified procedure of partial deferment of duty payment for retailers.

In this notice “Act” means the Revenue Act 1898.

You may gain access to the above legislation and other Bermuda laws by visiting the Bermuda Laws Online website. www.bermudalaws.bm .

1.4 How do I obtain further information?

If you require further details or assistance regarding obtaining any duty deferment, please contact the Customs Department at the following locations:

Hamilton Commercial Operations
Custom House
40 Front Street
Hamilton HM 12
PO Box 2084
Hamilton HM HX

Airport Commercial Operations
L. F. Wade International Airport
3 Cahow Way
St. George's DD 03
Telephone: (441) 293-2424
Fax: (441) 293-1418

Telephone: (441) 295-4816
Fax: (441) 295-5392

You can access or download an electronic copy of this and other Customs Public Notices by visiting the Customs Department website, www.customs.gov.bm .

2 Partial duty deferment

2.1 What is a partial duty deferment?

A partial deferment of customs duty means that the payment of part of the duty due on imported goods may be made at some point in the future and not at the time of importation. Duty deferment is not the same as an exemption from customs duty or a duty relief. Where duty payment is deferred the full duty is still charged and payable on the imported goods - the full payment of the duty due is merely delayed.

2.2 What goods qualify for duty deferment under this scheme?

Qualifying goods include any goods imported by an approved retailer for retail sale from their retail shop.

2.3 How much duty can be deferred under this scheme?

Customs will permit approved retailers to defer 75% of the duty and wharfage due on goods imported for retail sale for up to 90 days from the date of entry of those goods. That means that only 25% of the duty and wharfage due will be payable at the time of entry of the relevant goods.

2.4 What is an “approved retailer”?

An “approved retailer” is a retailer who has been approved by the Collector of Customs to apply for duty deferment (refer to section 3 below for guidance on how to become an approved retailer).

2.5 What is a “retail sale”?

“Retail sale” means the sale of goods or merchandise in small parcels and not in gross.

2.6 What goods do not qualify for duty deferment under this scheme?

Duty deferment is not available in respect of—

- goods intended for wholesale distribution or sale in gross;
- goods for use in improving or renovating a retail shop; or
- normal operating supplies (e.g. replacement light bulbs, cleaning supplies, office supplies, stationery etc.)

2.7 Can a wholesaler or bonded warehouse operator selling goods to a retailer benefit from deferment?

No. Duty must be paid at the time of entry for any goods imported by a wholesaler for distribution or sale in gross in Bermuda. In the case of bonded goods, the duty will be payable at the time the relevant goods are taken out of bond from any bonded warehouse in Bermuda.

3 Approval to apply for duty deferment

3.1 Who can apply for approval?

Any retailer in Bermuda can ask for approval to apply for duty deferment for retail goods.

3.2 What is a “retailer”?

By “retailer” we mean a seller of goods or merchandise in small parcels and not in gross (as in wholesale transactions).

3.3 How does a retailer get approval to apply for duty deferment?

A retailer must apply in writing to the Collector of Customs in the form provided in the Appendix to this notice. In addition, the application for approval must be accompanied by—

- documentary evidence that the retailer is a fit and proper person to be authorized to use simplified procedures;
- a description of the range of goods that will be offered for sale in the retail shop;
- a plan of the premises of the retail shop;
- a description of the means that will enable the retailer to submit all documents and information required under the Revenue Act 1898 to be submitted to the Collector of Customs; and
- a description of the record-keeping systems and controls of the retail shop.

Failure to disclose the information listed above may result in the rejection of the application for approval to defer duty payment (refer to section 4 below for information on how to claim deferment from Customs).

3.4 Will security be required?

Approved retailers will not be required to provide monetary security for any duty deferred. However, an approved retailer will be required to furnish Customs with a letter of credit from a bank or other financial institution in Bermuda guaranteeing payment of a specified amount of duty that may be deferred by that retailer under the approval given by the Collector.

3.5 What if a retailer has a number of different retail shops?

A separate application is needed for each retail shop that will be offering duty deferred goods for sale.

3.6 How will a retailer demonstrate that they have been approved for duty deferment?

The Collector of Customs will issue approved retailers with an Approved Retailer Certificate. The Collector’s certificate will set out the conditions of duty deferment.

3.7 Can a retailer appeal if approval is refused or revoked?

Yes, any approved retailer or applicant for approval, as the case may be, may appeal any decision of the Collector of Customs relating to the grant of approval, the conditions of approval, or revocation of approval. For further guidance on Customs reviews and appeals please refer to Public Notice 15.

4 Applying for duty deferment

4.1 Who can apply?

A person can only apply for duty deferment if they are—

- an approved retailer (refer to section 3 above); or
- acting as the agent of an approved retailer.

4.2 When can an approved retailer apply for duty deferment?

Starting on 1st April 2009 an approved retailer will be able to claim duty deferment in respect of goods imported for retail sale from their retail shop. Any application for duty deferment must be made at the time of importation of the relevant goods.

4.3 How does an approved retailer apply for duty deferment?

Any approved retailer may apply for duty deferment by completing a Bermuda Customs Declaration ("BCD") and by specifying the customs procedure code ("CPC") 4414 in the appropriate place on that form.

Upon importation the approved retailer or their authorized agent must lodge with Customs the standard entry package in respect of the goods (refer to Public Notice No.17 - Guidelines for the Completion of the Bermuda Customs Declaration (BCD)), together with a copy of the retailer's certificate of approval from the Collector of Customs.

4.4 How should the BCD be completed when using CPC 4414?

The BCD must be completed in the usual fashion in accordance with the instructions in Public Notice No.17, with the following exceptions:

- **Box 2 on BCD ("Importer")** – Enter the CAPS Trader ID No. of the relevant approved retailer. The BCD will be rejected if an approved retailer uses the generic Customs trader ID number "999999" with CPC 4414.
- **Box 15 on BCD ("Record No.")** – Do not combine goods for duty deferment (CPC 4414) and duty paid goods (CPC 4000) on one Record. A separate Record must be completed per CPC code, per tariff number, by the declarant -
e.g. Approved retailer orders note pads. Some of the note pads are intended for retail sale and others are intended for operating supplies. When completing the BCD, the note pads for duty deferment must show on Record 001 and the note pads for back office use must show on Record 002; even though the same tariff number will be used on both Records.
- **Box 16 on BCD ("CPC")** – For duty deferred goods, enter CPC "4414";
- **Signature Box ("ID NO:")** – Enter the CAPS Trader ID No. of the relevant approved retailer. The BCD will be rejected if an approved retailer uses the generic customs trader ID number "999999" with CPC 4414. Similarly if an agent of an approved retailer uses their own CAPS Trader ID No. with CPC 4414 the BCD will be rejected.

4.5 Is there a limit on how often an approved retailer can use CPC 4414?

Besides the general restrictions pertaining to approved retailer and qualifying goods there is normally no limit on the number of times an approved retailer may use CPC 4414.

4.6 What happens if an approved retailer does not have sufficient information about their goods to apply for duty deferment?

If any authorized retailer does not have sufficient information to apply for duty deferment they may apply for the estimated duty to be paid on deposit (monetary security) and adjusted when the information becomes available.

A deposit entry is made on a full BDC form using CPC 1004. Short Form BCDs will not be accepted.

When goods are released on the strength of a deposit entry the authorized retailer will have 30 working days to adjust the deposit entry with a proper BCD using CPC 4414.

4.7 Is an approved retailer eligible for duty refund if they fail to apply for deferment and pay the full duty by mistake?

Yes. In order to claim a duty refund, an approved retailer must submit the following documentation to Customs within six months of the payment of duty on any goods qualifying for duty deferment—

- a letter addressed to the Collector of Customs claiming duty refund under Section 77(1) of the Revenue Act 1898. The letter should explain that duty was paid in error on goods ordinarily qualifying for duty deferment;
- a copy of the release note in respect of the goods;
- copies of the invoices for the goods in question.

Refund cheques will be made payable to the successful applicant.

5 Payment of outstanding duty

5.1 When is payment required?

An approved retailer must pay any outstanding duty in respect of their duty deferred retail goods at any time within 90 days of the date of entry for those goods.

5.2 Does payment have to be made as a lump sum?

No. An approved retailer may make part payments; provided that the outstanding balance is acquitted within 90 days of the date of entry.

5.3 How will an approved retailer know what to pay?

Upon release of any duty deferred goods, the Customs Department will send the relevant approved retailer a Government invoice for the outstanding duty in respect of every duty deferment BCD lodged with Customs. Customs will not make any further demand for payment within the deferment period. Approved retailers are expected to keep track of their own duty deferments and settle them in a timely fashion.

5.4 How should payment be effected?

An approved retailer must drop off their payment (cheque/cash) accompanied by a copy of the relevant invoice at the Customs Long Room where the deferment entry was made. An official receipt will be given for all monies received.

5.5 What will happen if outstanding duty is not paid within 90 days?

Should an approved retailer fail to pay any outstanding duty within 90 days of making the relevant BCD, Customs will initiate debt collection proceedings. In addition that retailer's Approved Retailer Certificate will be reviewed and may be revoked.

6 Record keeping

6.1 Does an approved retailer have to keep records?

Yes. The Collector of Customs requires approved retailers and their agents to comply with the provisions of Section 2 of the First Schedule to the Revenue Act 1898 with respect to customs trader's records.

6.2 What types of records have be kept and for how long?

If an approved retailer or their agent receives, prepares, maintains or issues any of the following records in relation to duty deferred goods, they must preserve that record at their place of business in Bermuda for six years from the time of importation of those goods:

- orders
- invoices
- delivery notes
- credit notes
- debit notes
- records relating to an importation or an exportation
- statements of account
- records of payment or of receipt
- journals or ledgers
- profit and loss accounts, trading accounts, management accounts, management reports or balance sheets
- internal or an external auditor's reports
- records relating to any drawback, remission, repayment or reimbursement of, or relief from, import or export duty
- records required, other than by virtue of this Schedule, by or under this Act or the Customs Tariff Act 1970
- stock records
- any other records maintained for trading or business purposes.

6.3 Will Customs check approved retailer's records?

It is likely that from time to time Customs will want to carry out routine compliance checks of the business records of approved retailers.

Note: All required records are subject to inspection by the Customs Department on 24 hours notice.

7 Inspections

7.1 Will Customs do site inspections?

It is likely that from time to time Customs will want to conduct routine compliance checks of duty deferred goods. Retail shop premises and any duty-deferred goods are subject to inspection by the Customs Department starting on the day the retailer was approved for duty deferment purposes and ending on the day such approval is revoked by the Collector, or upon payment of all relevant outstanding duty, whichever is the later time.

8 Diversion of duty deferred goods

8.1 If an approved retailer cannot sell duty deferred goods can the goods be used for another purpose?

Yes, but the outstanding duty must first be paid in respect of the goods.

If any approved retailer wishes to change the use of any duty-relieved goods, they must apply in writing to the Collector of Customs with a view to paying the outstanding duty in respect of the goods.

8.2 Are transfers of duty deferred goods permitted between approved retailers?

No, an approved retailer may only dispose of their duty deferred goods by way of retail sale from their own retail shop.

9 Offences

9.1 Are there specific offences that relate to duty deferment?

Yes. Any authorized retailer who fails to comply with a condition of duty deferment will be liable to a penalty of up to \$12,000.

Do you have any comments?

We would be pleased to receive any comments or suggestions you may have about this notice. Please write to:

**Collector of Customs
Customs Department
PO Box HM 2084
Hamilton HM HX
Bermuda**

Phone: (441) 295-4816

Fax: (441) 295-5392

E-mail: customs@gov.bm

Website: www.customs.gov.bm

Appendix

Approved Retailer Application Form

To the Collector of Customs:

I (1)

of (2)

operate the retail shop known as (3)

at the following address (4)

and I wish to be approved to apply for partial duty deferment on goods that I import for retail sale from the aforementioned retail shop.

I enclose herewith documentary evidence that I am a fit and proper person to be authorized to defer payment of customs duty, together with-

- (a) a description of the range of goods that will be offered for sale in my retail shop;
- (b) a plan of the premises of the retail shop;
- (c) a description of the means that will enable me to submit all documents and information required under the Revenue Act 1898 to be submitted to the Collector of Customs;
- (d) a description of the record-keeping systems and controls of the retail shop named herein; and
- (e) a letter of credit guaranteeing payment of duty deferred.

Dated this day of 20

.....
Signature of applicant or his duly
authorized representative.

Completion instructions:

In the spaces provided print:-

- (1) the full name of the applicant;
- (2) the full home address of the applicant;
- (3) the full name of relevant retail shop;
- (4) the full street address of relevant retail shop.

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Customs Department
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