



LRA GUIDE

VAT RELIEF AND REBATE OF DUTIES ON THE IMPORTATION OF ESSENTIAL GOODS IN THE FIGHT AGAINST COVID-19

[Operations Support Division]

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1.0 Abbreviations and Acronyms

The following abbreviations and acronyms shall, unless otherwise stated or required by necessary implication mean:

Customs Act	Customs and Excise Act no 10 of 1982,
“Essential goods”	Goods eligible for import vat exemption,
“Import VAT”	Value added tax payable on taxable imports,
“LRA or the Authority”	Lesotho Revenue Authority as established in terms of the Lesotho Revenue Authority Act 2001,
“the Act”	Value Added Tax Act no 9 of 2001,
“VAT”	Value Added Tax.

2.0 Background:

COVID-19 pandemic has wreaked havoc worldwide. The severity and swift impact of this pandemic has resulted into countries making declarations of emergency and national disasters. In Lesotho, COVID-19 was declared a national disaster warranting a state of emergency by the Prime Minister through Section 23 (1) of the Constitution¹. Where the Government has declared a national disaster, goods that are imported for the relief of distressed persons are rebated from customs duties² and are further exempted from value added tax (VAT).

What seemingly poses a challenge from VAT exemption and customs rebates point of view is the scope and type of goods that can be considered as imported for the relief of distressed persons hence eligible for exemption on importation.

3.0 Objective:

This guide seeks to provide clarity in terms of which goods are specifically regarded as being essential for the relief of distressed persons in the face of COVID-19 hence eligible for VAT exemption and rebate of duties on importation. Guidance will also be made around the issue of whether there is any selectivity on importers and circumstances of the essential goods.

4.0 The Law and its Application:

In terms of Section 5 of the Act, value added tax is payable on every taxable supply and every taxable import. However, section 6. (3) exempts import of goods prescribed in schedule II and goods imported for the relief of distressed persons in cases of famine or other national disasters on which no customs duty is payable are prescribed therein. A rebate from import duty is provided for under rebate item 412.11 of schedule 4 to the

¹ Constitution of Lesotho 1993.

²Section 6 (3) (a) read with Schedule II 1(f) (i) of Value Added Tax Act 2001 and rebate item 412.11 of Customs and Excise Act no 10 of 1982.

Customs Act. Exemption is awarded regardless of the status of an importer, that is, irrespective of whether the importer ordinarily has an exemption status or not.

4.1 Exemption on Import VAT:

4.1.1 Specific Type of Goods Eligible to Import VAT Exemption and Rebate of Duties (Essential goods):

To determine the specific type of goods that are eligible for import VAT exemption and rebate of customs duties, there has to be a close connection between the form or nature of the national disaster and the goods that will be critically instrumental in combating the disaster in question. As highlighted at the outset, the government of Lesotho has declared COVID-19 pandemic a national disaster. VAT import exemption and rebate of customs duties is therefore applicable to goods that are critically instrumental in the fight against the COVID-19 pandemic to the relief of distressed persons in the face of this national disaster. Goods that are critically instrumental in fight against COVID-19 are the following:

- COVID-19 Test kits/instruments and apparatus used in Diagnostic Test,
- Thermometers,
- Disinfectants/sterilisation products: This includes sanitizers and other disinfectants.
- Personal Protective Equipment (PPE). This includes face and eye protection equipment (e.g. face masks, surgical masks, facial shields, etc.), gloves and other protective equipment such protective garments.
- Other medical devices. These include oxygen therapy apparatus, medical ventilators and the likes.

4.1.2 Condition of Relief:

It is important to note that the relief under Section 6 (3) (a) read with Schedule II 1 (f) (i) of the Act and on rebate item 412.11 of Customs Act is available on the conditions that the goods so imported are not

- sold or disposed of to the parties not entitled to the relief, or
- removed from Lesotho without prior consultation or approval by the Commissioner General.

To acquire the relief, clients importing goods from outside SACU need to fill CE/MISC/3 and application for exemptions VAT forms, both available from LRA website on the following link; <http://www.lra.org.ls/forms>. Where goods are imported from within the SACU region, Client will only need to fill in VAT exemption application form.

5.0 Illustrative Examples:

Example 1

Mr. Winks, a Mosotho businessman received donation of personal protective equipment in the form of plastic facial shields and face masks from his business counterparts in China. The personal protective equipment will not be sold but will be utilized by employees in the business of Mr. Winks. Does Mr. Winks qualify for import VAT exemption and rebate of customs duties?

Answer:

Yes. Any importer who imports essential goods as described under paragraph 4.1.1 above without the intention to sell or dispose the same to the parties not entitled to the relief will qualify for the exemption. An importer who imports goods under Section 6 (3) (a) read with Schedule II 1 (f) (i) and under rebate item 412.11 qualifies for VAT exemption and rebate of customs duties regardless of the status of the said importer.

Example 2:

Save-Our-Tiny-Germs, an organisation constituted primarily to raise public awareness and fight early child marriages imports food parcels from Durban, South Africa, for the Mokhetsoaneng community during the current pandemic. There is an import VAT payable on the consignment. The organisation then lodges an application for tax exemption with the Authority and relies on Section 6 (3) (a) read with schedule II 1 (f) (i). Will the application succeed?

Answer:

No. The exemption under Section 6 (3) (a) and schedule II 1 (f) (i) only applies to essential goods that are critically instrumental in the fight of COVID-19 national disaster. National disaster has been declared on COVID-19 pandemic not on famine or food shortages.

Example 3

We Deliver Transportation (Pty) Ltd won a Lesotho government tender to transport PPE and other essential goods across the country from Maseru during COVID-19 pandemic. We Deliver Transportation wishes to apply for VAT exemption on motor vehicles and petrol imported from South Africa that it intends to use for the deliveries. Will the exemption application be successful?

Answer

No, motor vehicles and petrol do not fall within the category of essential goods for the COVID-19 purposes.

Example 4

Maseru Drillers bought PPE for its employees and for the purposes of COVID-19 from We Supply Lesotho Distributors located in Maseru during the pandemic and applies for VAT exemption on the purchase. Will the exemption be awarded?

Answer

No, tax relief is on essential goods imported from outside Lesotho.

Example 5

We Supply Lesotho Distributors imported PPE that it is going to sell in its store in Maseru for COVID-19 purposes. It wishes to apply for exemption on the import, will it be awarded?

Answer

We Supply Lesotho Distributors will not be awarded exemption on PPE that it is going to sell to its customers as this goes against one of the exemption conditions.

Example 6

Leribe Private Hospital has imported medical ventilators for use at its facility allegedly for COVID-19 purposes. The hospital wishes to apply for VAT exemption on the import, will the application be successful?

Answer

Yes, the hospital will be awarded VAT exemption on the ventilators as they fall within the exempt category as indicated in 4.1.1 above.

Example 7

Motse Moholo private hospital was granted an exemption on the importation of protective suits from South Africa for use at the hospital allegedly for COVID-19 purposes. The hospital's managing director decided to donate part of the suits to Likoili, a group of divers residing in a village next to one of the popular dams in Maseru for use in their diving and related activities. What will be the tax implication of the donation?

Answer

Motse Moholo private hospital will have to pay VAT on the fair market value of the donated protective suits as the suits will be used by a group of divers for purposes other than the fight against COVID-19 pandemic as intended.

6.0 Conclusion:

VAT import exemption and rebate of customs duties apply to goods as shown under paragraph 4.1.1 which goods are critically instrumental in the fight against the COVID-19 pandemic to the relief of distressed persons in the face of the devouring pandemic. As it has been discussed, the relief is available to all importers where it has been shown that the imported material will not be sold or disposed of to the parties not entitled to the relief, or removed from the country without prior consultation or approval by the Commissioner General.

Disclaimer:

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