

CHAPTER 8

REFUND PROCEDURES

1. Introduction:

This is a customs procedure which provides for the refund of import duties and taxes when goods are exported, or used for specific purposes.

2. Refund Program Manager

The Chief Accountant, Section Revenue Control is responsible for the overall management of the refund process and will either serve as or will designate a staff member to serve as the **refund program manager** at the Head office. He or she will be responsible for:-

- coordination with the Customs offices and the trade and for responding to all enquiries regarding the refund process;
- creating and maintaining refund application folders when applications are received;
- ensuring that necessary liaison is conducted with the applicable Regional Controllers;
- ensuring that copies of all requests and internal documents are securely filed in the appropriate refund file;
- serving as the principal advisor to the Director with respect to policies and procedures relating to the refund process; and
- Reviewing all proposed refund and actions for non-compliance and making any necessary recommendations to the Director.

3. Application

Where an application is made for a refund or drawback of customs duties, excise duties, value added tax (VAT) and or any other money paid to customs and excise, excluding provisional payments and overpayments on excise accounts, **form NA 66** must be completed by the applicant, plus supporting documents and submitted to the Controller where the money involved was paid, or in the case of duty remission incentive refunds or drawback, to the Controller of the area where duty remission trader operates. If the applicant is an agent other than one who paid the duty the application should also be supported by a letter from the paying agent stating that there is no objection to the applicant claiming refund.

4. Minimum amounts

The minimum amounts, which may be claimed, are as follows: -

- | | |
|--|----------|
| • Goods imported by post | N\$ 0.50 |
| • Goods imported in any other manner | N\$ 5.00 |
| • Excisable and ad valorem excise duty
On goods manufactured in Namibia | N\$ 2.00 |

(NB: The refund amounts as provided by Section 85 (7) need to reviewed)

5. Refunds under Section 85:-

- 5.1 Section 85 authorizes general refunds of duty in respect of imported or excisable goods.
- 5.2 Section 85(2) authorizes the Director to consider applications for a refund of payments received from any applicant who contends he has paid any duty or charge for which he was not liable.
- 5.3 Section 85(3) allows the Director to accept a single application for a refund of duty involving a number of entries (schedule refunds).
- 5.4 Section 85(4) provides that no application for a refund or payment in terms of Section 85 shall be considered unless it is in the prescribed form (Form NA 66) and received by the Controller duly completed to his satisfaction and supported by the necessary documents and other evidence necessary to prove that a refund is due.5.5 Note: Applications must be made within two years of the date on which the payment in question was made. In exceptional circumstances, the Director may consider any such application after expiration of the two-year period.

6. Overpayment in respect of excisable goods, Section 87:-

- 6.1 A licensee of a customs and excise warehouse who is permitted to pay excise duty and ad valorem excise duty on a monthly or quarterly basis may set off any excise duty or ad valorem excise duty paid by him for which he was not liable or which is refundable to him in terms of any item of Schedule No. 6, against any amount for which such licensee subsequently becomes liable in respect of excise duty are prescribed in Section 87(1)(a).
- 6.2 Such setting off must be effected within two years from the date on which such amount first becomes due. If such duty cannot be set off in terms of Section 87(1) (a) (e.g.) where ad valorem excise duty is removed from commodities and where no further accounts are rendered (but where an overpayment occurred previously) then the refund in question may be claimed under the provisions of Section 85.
- 6.3 Duty paid by the licensee for which he was not liable (i.e. overpayment) or duty which is refundable to him in terms of any item of Schedule No. 6 only may be set off in terms of Section 87(1)(a). This means that drawbacks in terms of item 605.00 (correct Rebate item to be established) may not be set off in this manner.

7. Over plus (Section 46(3))

7.1 Claims by owner: Section 46(3) of the Act provides that the net proceeds of the sale on un-cleared goods are payable to the owner of the goods. Where the surplus proceeds of sale are claimed by the owner, i.e. the person to whom the goods belonged at the time of their sale by the directorate (who in most cases will be the consignee shown on the bill of lading). The claim must contain:

- a. the negotiable copy of the bill of lading establishing ownership;
- b. A letter from the claimant indemnifying the directorate against any relative claim by any other party. This letter should be worded as follows: In consideration of your paying over to us the net proceeds of sale of the abovementioned goods we hereby indemnify the Directorate of Customs and Excise against any relative claim by any other party;
- c. a statement as to whether the claimant has been compensated, either wholly or partly, by any other person for the loss of the goods; and if so, the name and address of such person;
- d. the supplier's invoice for the goods;
- e. The relative import permits if importation of the goods could not have been legally effected without a permit. (If claims are lodged unsupported by such permit they are to be rejected forthwith. They are also to be rejected if supported by a permit having a balance insufficient to cover the invoiced fob price of goods. On the other hand claims supported by a permit having a sufficient balance should not be submitted to Head Office before the fob price of the goods is written off the permit, and the fact that such cost has so been written off should be incorporated in the officer's report on the claim.)

7.2 Claims by other persons: Customs may, in certain circumstances, pay surplus proceeds, or a portion thereof, to persons other than the consignee of the goods. In such cases the claimant must state in detail why he considers himself entitled to the surplus proceeds. If his claim is on the grounds that he has compensated the consignee for the loss of the goods, he must produce evidence to this effect and also of the amount of compensations paid out by him. Claims for overplus by persons other than the consignee of the goods must be supported by:

- a. a letter from the claimant indemnifying Customs against any relative claim by any other person;
- b. a letter from the consignee of the goods stating that he has no objection to the payment of surplus proceeds to the claimant;
- c. the negotiable copy of the bill of lading endorsed in favour of the claimant (if this is not available the reason should be stated); and
- d. The relative invoice, if available.

7.3 Seized goods: No over plus is payable in respect of goods seized by the Directorate. However, where goods have been seized due to the

noncompliance of the requirements of Sections 40(1) and 46(2) (i.e. the importer was called upon to clear un-entered goods or to remove the goods to the State warehouse within a stipulated period but failed to do so) and the goods are sold, a claim may be referred to Head Office for decision.

7.4 Time limit: Claims must be filed within two years of the date of the sale of goods. This condition is mandatory and no discretion is allowed by the Director in the application thereof.

7.5 Charges and expenses: Reporting officers must show gross amount realised, all charges and expenses deductible therefrom, and the net surplus. State warehouse rent covering the period as from acceptance to the date of the rummage sales should be deducted when arriving at the net proceeds of goods sold on rummage sales.

8. Lien for freight

Ship owners have the right to retain goods until freight is paid. Customs must pay freight before over plus. Before landing the lien is the first charge on the goods, but after landing the lien only operates after duties and taxes.

A lien for freight does not confer ownership of the goods on the shipping company; but they are entitled to claim against a surplus on the proceeds of a sale of the goods in terms of Section 46(3) of the Act. A notification of a lien for freight must specify the amount of the freight and charges unpaid and must refer to specific packages. A notification in general terms cannot be accepted. When a notification of a lien for freight on excess or unclaimed cargo is received from a shipping company, the fact that a lien exists and the amount involved must be entered in the respective State Warehouse registers in red ink and the release of such goods must be withheld until the lien is removed by the shipping company in question and duty and charges are paid.

8.1 Application: Applications from ship's agents for payment of unpaid freight out of over plus should be supported by at least the following:

a. a letter of indemnity worded as follows: "In consideration of your paying over to us, out of the net proceeds of sale of the abovementioned goods, the whole of portion of unpaid freight in respect of the same goods amounting to N\$. We hereby indemnify the Directorate of Customs and Excise against any relative claim by any other party." (Indemnities furnished by persons residing outside the Namibia are not accepted by the Directorate.);

b. Evidence of the amount of freight unpaid.

8.2 General average: General average means the contribution which cargo owners or importers are required to pay the ship owner toward loss or damage voluntarily incurred by him in order to save the ship and the cargo. This liability arises out of Maritime Law and the ship owner has a lien over

the cargo until he is reimbursed, unless he gives up possession of the cargo. Any claims for General Average should be referred to Head office.

9. Stamp labels

Section 59(3) of the Act provides for a refund of stamp duties in respect of damaged stamp labels or for the exchange of such labels.

10. Application for Refunds (other than Provisional Payment and Excise overpayments)

10.1 Single transaction and Schedule Refunds. Most claims will involve one entry or transaction; however, it is permissible for an applicant to file Schedule Refund claim that covers more than one entry. No specific permission is needed in order to file a Schedule Refund claim.

10.2 Documentation. It is the claimant's responsibility to provide all original documentation necessary to prove his claim for refund or drawback to be valid.

- a. All claims shall be filed in an original and two copies in the following sequence;
- b. form NA 66 Application for Refund or Drawback. This form will serve as the cover sheet of the refund or drawback claim and all relevant documentation must be attached to it.
- c. a typed itemised list of all original attachments.
- d. a typed detailed explanation of the particulars of the claim.
- e. If the claim involves a change to an entry, the next document in the claim package will be a draft SAD 503 providing the proposed changes to the entry in question.
- f. If a particular listed supporting document is not available it should be indicated why it is not available.

10.3 Incomplete applications: No useful purpose will be served by forwarding incomplete applications, i.e. without the required documents or evidence. Such applications should therefore, be rejected and also time-expired applications and those for less than the minimum amounts. Applications, which are not properly motivated, must be summarily refused.

10.4 Claims involving classification: Where classification is involved and a specific classification issued by Head Office cannot be furnished, the applicant should be informed to submit samples for tariff classification prior to submission of the claim.

10.5 Claims involving value: Where the value of the good is a consideration for duty purpose or for classification purpose, indisputable evidence must be produced that all dutiable charges and commission which the importer is obliged to pay in addition to the contract selling price are included in the free on board price. Covering statements, proof of payments for the goods will generally reveal whether or not further dutiable charges and commission are involved. The only type of invoice where further dutiable charges and commission cannot, as a rule be a consideration is a CIF & C Invoice.

11. Receipt and review by Regional Office

All refund applications must be submitted to the appropriate Regional Office where they will be reviewed and processed for transmission to and final approval by Head Office.

11.1 Cursory review. (Face Vet) The first action taken by the Regional Office will be a cursory review (face vet) of the claim to ensure that it is complete in all respects, that it is not less than the minimum amounts, which will be considered, and that it has been filed within acceptable time limits.

11.2 Reasons for rejection.

- a. **Incomplete application:** Incomplete claim applications will be returned to the claimant with an explanation of the deficiencies noted during this initial review.
- b. **Time –expired application:** If a claim is time-expired, it should be rejected and the applicant advised that he must submit a letter to the Director requesting authorisation to file a time-expired claim. Such letter shall include a copy of the reject NA 66, a copy of the detailed explanation and a copy of the itemised list of attachments, which the applicant is prepared to submit. The actual attachments themselves should not be attached. If approved for late filing, the Commissioner will indicate that approval on the applicant's request and return it to him. That written approval must be attached to the complete claim, which can then be submitted to the Regional Office.
- c. **Applications by other than owner:** Similarly, the owner or the original agent who paid the duty upon importation may only submit claims. Where another person is submitting the claim, permission from the Commissioner must be requested in the manner described above and the claim returned to the applicant until such time as that permission is granted and attached to the claim.

11.3 Date stamp and numbering: Accepted applications must be date-stamped and given a Customs reference number.

- a. The refund Register (CE 320) plays a very important role and every claim forwarded to Head Office must be reflected on this register.
- b. Claims are numbered in a yearly sequence, starting on 2 January of year e.g. 1/2013 20/2013, etc.
 - i. This number must be reflected on the Refund Register (CE 320).
 - ii. If the claim was previously numbered, the officer is to consult the Refund Register to endorse the new number in red ink against the number on the CE 320.

12. Refund Coordinator and reporting

Each Controller will designate a senior officer as Refund Coordinator in the Region. The Refund Coordinator will assign the appropriate office to review the claim in detail and to prepare a report to the Director. The Refund Coordinator will use a memo in duplicate to transmit claims to the responsible officers for reporting. These memos must be followed up to make sure that the refund claims are returned to the Refund Coordinator. On return of claims to the Refund Coordinator, he or she must review the report prepared by the reporting officer. The reporting officer's report shall be in the form of a memorandum to the Refund Coordinator. This memorandum will be attached to the claim and the reporting officer will sign and date the NA 66 in the appropriate block. The Refund Coordinator will review the report and either concur or disagree. If the Refund Coordinator concurs, he or she will so indicate on the bottom of the reporting officer's memorandum. If he or she disagrees, a separate memorandum will be prepared. The claim will be given to the Controller for review and approval or disapproval. Disapproved claims will be rejected back to the applicant. A copy of the reporting officer's memorandum and the Refund Coordinator's memorandum (if any) will be attached to the rejected claim.

13. Submission of claims to Head Office

Approved claims will be signed by the Controller and forward by Registered Post to Head Office refund program manager. The original and one copy of each fully checked and reported claim are forwarded weekly under cover of a register (CE 320) to Head Office. The second copy is maintained at the Regional Office in a suspense file.

14. Provisional payments.

14.1 Requests for refund: Requests for refund of provisional payments do not require an NA 66 refund claim application. These requests are made by completion of form NA 71. They are generally handled in the same manner

as NA 66 requests, except that in the case of provisional payment refund, the NA 70 is required.

Note: Before the amounts on provisional payments are refunded the officer concerned must ensure that all conditions under which the provisional payments were lodged, have been fully complied with and that revenue due is not prejudiced.

14.2 Time limits:

- i. Provisional Payments may be liquidated in the normal manner within two years of the date of lodgement. Provisional payments tendered in cash are not liquidated after a two year period (forfeited). Clear directives should be made on the liquidation of expired provisional payment bond.
- ii. All applications to liquidate provisional payments after two years of lodgement must be directed to Head Office.
- iii. Applications for refund of time-expired provisional payments of two years must be applied for within two years of the date of lodgement.
- iv. In the event of approval by Head Office of a time-expired provisional payment a new provisional payment must be lodged in the place of the old one. If approved by Head Office, the Head Office Authority must be attached to the original provisional payment apart from the usual report by the reporting officer.
- v. In case where lists, e.g. household effects imported temporarily, are attached to the original provisional payment the responsible officer accepting the new provisional payment must ensure that lists are detached from the original one and attached to the new one.
- vi. Head Office authority must also be quoted on the fresh provisional payment. The disposal instructions on the front side of the provisional payments approved for refund must be completed and signed by the Head of the Office.
- vii. In case of a portion of the amount of the provisional payment to remain in the account the following phrase must be made by the reporting officer: "The amount of N\$. Must remain in the account and the balance may be refunded" Liquidation of provisional payments must be done on the originals thereof.

14.3 Forwarding to Head Office: Provisional Payments approved for refund will be forwarded to Head Office on a weekly basis. Where the original provisional payment is lost, the Controller must attach an affidavit to the copy explaining why the original cannot be provided.

15. Return of claims by Head Office to Regions.

In cases where they are errors, incomplete and missing documents, the claim must be returned back to the Regional office for rectification.

16. NA 66/71 Refund Claims

The original and copy of the claim forwarded to the Head Office will be endorsed to indicate the action taken, date of approval and payment. The Chief Accountant shall provide feedback to the Coordinator at the originating office by

forwarding a copy of the processed NA 66/71 The Refund Register must, at this point, be brought up to date.





MINISTRY OF FINANCE – CUSTOMS AND EXCISE
APPLICATION FOR REFUND OR DRAWBACK



Name and Address of Claimant:	Claimant Reference Number:	Date:
	Customs Reference Number:	Date:

I request a ___ Refund or ___ Drawback (check one) of the following duties or taxes or charges paid to Customs and Excise. Provide Drawback Registration No.:

Customs Duty	Excise	Value Added Tax	Provisional Payment	Other-specify:	Total

JUSTIFICATION

Description if based on Rebate/Drawback item	Item	Tariff item	Code

Particulars of claim and grounds for claim, including whether goods are being re-exported in same condition, or after processing or repair, etc. (Your explanation must provide sufficient justification to warrant a refund. You should attach a separate page if necessary):

All claims for Refunds or Drawback must include, as attachments, copies of the documents on which the original duties, taxes or other charges were paid (import entry, invoice, etc.) If the claim is based on exportation, a copy of the relevant export document and proof of exportation must be attached. Drawback claim particulars must be reflected on an attached schedule. If the request is based on an overpayment of duty, then a copy of the original entry and receipt and a corrected entry must be provided. If based on provisional payment, then a copy of the NA 70, Application to Make Provisional payment must be attached with proof that its provisions have been complied with. It is the responsibility of the claimant to provide sufficient documentation and explanation to justify the request. Please list all documents attached:

In consideration of this claim being paid, I/we _____ hereby agree and undertake to hold harmless and keep indemnified the Office of the Director of Customs and Excise against any claim, loss or damage, costs and expenses arising from any cause whatsoever which may be made against, or sustained or incurred by the said office as a result of payment of this claim. I/we attest that all statements made in this claim are true and correct:

Signature:	Date:	
Report by Reviewing Customs Officer:		
Signature:Office:	Date:	
Recommendation of Regional Controller:		
Signature:	Office:	Date:
Recommendation by Controller, Revenue Control: Approved / Disapproved (Give reasons):		
Signature: Date:		
Director: – Approved / Disapproved		
Signature: Date:		
Deputy Director: - Approved / Disapproved		
Signature:		Date:

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