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**CTO – Customs Law and
Clearance Procedures
T158
Monday, 26/11/2018
08:30 – 11:30 AM**

WORKFORCE DEVELOPMENT AUTHORITY



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**ADVANCED LEVEL NATIONAL EXAMINATIONS, 2018,
TECHNICAL AND PROFESSIONAL STUDIES**

EXAM TITLE:

CUSTOMS LAW AND CLEARANCE PROCEDURES

OPTION: CUSTOMS AND TAX OPERATIONS (CTO)

DURATION: 3 hours

INSTRUCTIONS

The paper is composed of **three (3) main Sections** as follows:

Section I: Attempt **all the twelve (12)** questions. **55 marks**

Section II: Attempt **any THREE (3)** out of FIVE questions. **30 marks**

Section II: Attempt **any ONE (1)** out of THREE questions. **15 marks**

Note:

Every candidate is required to carefully comply with the above instructions. Penalty measures will be applied on their strict consideration.

Section I. Attempt all the twelve (12) questions

55 marks

- 01.** World Customs Organization (WCO) is one of institutions that are involved in the regulation and management of customs operations worldwide. Please provide objectives of WCO? **(4 marks)**

Answer:

Objectives of WCO are:

- i. Promote partnership and cooperation amongst member administrations and with other relevant organizations; **(1mark)**
- ii. Modernization and capacity building; **(1mark)**
- iii. Security and enforcement; **(1mark)**
- iv. Harmonization and simplification of Customs procedures. **(1mark)**

Reference: E.A.C PUBLICATIONS, July 2012, Page 15.

- 02.** Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports. In this regard:

- a) Define the rules of origin as per The Kyoto convention;
- b) Rules of origin are divided into two categories. What are they? Please explain them. **(5 marks)**

Answer:

- a) The Kyoto convention, defines the rules of origin as “the specific provisions, developed by principles established by National legislation or International Agreements applied by a country to determine the origin of goods”. **(1mark)**

b) Rules of origin:

- i. Rules relating to preferential treatment: preferential rules of origin are used for giving preferential treatment to imported goods. These rules are applied to determine whether particular products are exported from countries that are given preferential treatment. **(1mark)**
- ii. Rules relating to non-preferential treatment:**(1mark)**

Rules of origin relating to non-preferential treatment will be used as follows, except for the application of preferential tariffs for:

1. Selecting items in enforcing trade-related measures that specify exporting countries (i.e. quantitative restrictions); **(1mark)**
2. Compiling trade statistics; and **(0.5mark)**
3. Determining the country of origin in marking the origin of certain goods (some countries have purpose-oriented sets of rules whose contents are different and thus there may be several kinds of rules of origin in one country). **(0.5mark)**

Reference: E.A.C PUBLICATIONS, July 2012, Page 14.

- 03.** In valuation of imported goods, the basis for valuation of goods for Customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued. If the transaction value of the goods is not accepted by Customs, there are other valuation methods to use for Customs to provide the value to imported goods. Please outline those valuation methods. **(5 marks)**

Answer

The alternative methods include 2 to 6 outlined as follows:

1. Method 2 (Transaction Value of Identical Goods); **(1mark)**
2. Method 3 (Transaction Value of Similar Goods); **(1mark)**
3. Method 4 (Deductive Method); **(1mark)**
4. Method 5 (Computed Value Method); **(1mark)**
5. Method 6 (Fallback Method). **(1mark)**

Reference: E.A.C PUBLICATIONS, July 2012, Page 42.

- 04.** As per the enforcement Committee of the World Customs Organization (WCO), what do you understand about commercial fraud and how commercial fraud is committed? **(5 marks)**

Answer:

The enforcement Committee of the WCO defines commercial fraud as any offence against statutory or regulatory provisions which Customs are responsible for enforcing. **(1mark)**

The commercial fraud is committed in order to:

- Evade, or attempt to evade, payment of duties/levies/taxes on movement of commercial goods; and or **(1mark)**

- Evade or attempt to evade, any prohibitions or restrictions applicable to commercial goods; and or **(1mark)**
- Receive, or attempt to receive any repayments, subsidies or other disbursements to which there is no proper entitlement; and or **(1mark)**
- Obtain, or attempt to obtain illicit commercial advantage injurious to the principle and practice of legitimate business competition. **(1mark)**

Reference: E.A.C PUBLICATIONS, July 2012, Page 144.

05. Transit fraud is one of forms of commercial fraud. Transit fraud takes place when importer or his clearing agent contravenes any of the section or regulations governing the movement of transit goods. In most cases transit goods are converted into home use without payment of taxes or fulfilling normal importation procedures. What methods are commonly used by importers in transit fraud? **(5 marks)**

Answer:

Notice: A student is required to provide 5 methods from below examples and each method will be marked **1 point**.

There is no static method used by importers in transit fraud. The following methods are the one commonly reported by the customs administrations:

- Misdeclaration of goods with intent to avoid escort or close monitoring
- Concealment of goods within genuine transit goods
- Under valuation so that they execute less bond and in case of diversion less duty and taxes is paid.
- Use of fake bonds to cover goods in transit.
- Compromising government officials/ revenue officials i.e. involvement of corruption practices.
- Using fake registration numbers for trucks and unlicensed motor vehicle to carry goods in transit. This is made possible through networking of customs officers, customs agent and importers.
- Falsification of transit documents.

Reference: E.A.C PUBLICATIONS, July 2012, Page 145 – 146.

06. What do you understand about counterfeit and what is the intention of the counterfeiter? Please provide 3 examples of goods that can be counterfeited.

(5 marks)

Answer:

Notice: A student is free to provide any product as an example of goods subject to counterfeit. Each example will be marked 1 point.

1. Counterfeit means to illegally imitate something. **(1mark)**
2. Counterfeit products are often produced with the intent to take advantage of the superior value of the imitated. It may be applicable to currencies, documents, works or art, logo, brands e.t.c. In the case of goods, it results in patent infringement or trademark infringement. **(1mark)**
3. Examples: Everything can be counterfeited. Here are a few examples;
 - i. Branded clothing
 - ii. Spirits
 - iii. Cigarettes
 - iv. Toys
 - v. Computer games
 - vi. DVD
 - vii. CD
 - viii. Car parts
 - ix. Electrical items etc

(1mark x 3 =3 marks)

Reference: E.A.C PUBLICATIONS, July 2012, Page 149.

07. In fraud control, physical examination of goods is one of main control techniques. How physical examination of imported or exported goods is undertaken and what kind of discrepancies can be found? **(5 marks)**

Answer:

Physical examination of a shipment is undertaken to verify the nature and/or quantity of the goods and to establish the relationship between the goods and the documents presented. **(1mark)**

Discrepancies that may be established by physical examination are: **(Notice: (4 marks)** if the candidate has provided 4 correct answers with **(1mark)** for each)

- Undervaluation
- Overvaluation
- Mis-description
- Abuse of origin/preference regimes
- Smuggling/non-reporting
- False declarations of quality/quantity/weight
- Counterfeit goods.

Reference: E.A.C PUBLICATIONS, July 2012, Page 151.

08. K9 (Canine) is used as a method employed by law enforcement bodies or persons for the detection of drugs, bombs people etc using dogs. There are five basic principles that apply to almost all methods of canine. What are they?

(5 marks)

Answer:

Five basic principles that apply to almost all methods of canine are the following:

- i. Know-How; **(1mark)**
- ii. Repetition; **(1mark)**
- iii. Patience; **(1mark)**
- iv. Praise; and **(1mark)**
- v. Correction. **(1mark)**

Reference: E.A.C PUBLICATIONS, July 2012, Page 163.

09. What is money laundering? Money laundering is not a single act but is in fact a process that is accomplished in three basic steps. Please provide three steps of money laundering process.

(5 marks)

Answer:

Money laundering is also defined as the process by which large amounts of illegally obtained money (from drug trafficking, terrorist activity or other serious crimes) is given the appearance of having originated from a legitimate source. **2 marks**

Steps of money laundering process:

- 1. Placement; **(1mark)**
- 2. Layering; **(1mark)** and
- 3. Integration. **(1mark)**

Reference: E.A.C PUBLICATIONS, July 2012, Page 174.

10. While preparing the offence report, the offence procedures require that the offence report be accompanied by relevant information or supporting documents. What are those documents?

(5 marks)

Answer:

The offence report shall be accompanied by:

- i. Relevant documents and samples of the goods involved in the commission of the offence. **(1mark)**
- ii. Proper officers' report and section of the law believed to have been contravened. **(1mark)**
- iii. Offender's written explanation. **(1mark)**
- iv. Request for settlement of case (standard form) dully signed by the offender in presence of the proper officer. **(1mark)**
- v. Copy of seizure notice. **(1mark)**

Reference: E.A.C PUBLICATIONS, July 2012, Page 193.

11. What are the Characteristics of a private company? **(5 marks)**

Answer:

A private company shall have the following characteristics:

- 1° restricting the right to transfer its shares and debentures; **(1mark)**
- 2° limiting the number of its shareholders to one hundred, persons employed or formerly employed by the company not included; **(1mark)**
- 3° prohibiting any invitation to the public to subscribe for any shares or debentures of the company. **(1mark)**

Where two or more persons jointly hold one or more shares in a company, they shall be treated as a single shareholder. **(1mark)**

A company with one single shareholder shall be taken to be a private company. **(1mark)**

Reference: Law N°07/2009 of 27/04/2009; Page 54-55.

12. What do you think about sole proprietorship? **(1mark)**

Answer:

Sole proprietorship: private company in which the only shareholder is also the sole director of the company.

Reference: Law N°07/2009 of 27/04/2009; Page 48.

Section II. Choose and Answer any THREE (3) questions 30 marks

13. What challenges modern Customs Administrations are facing today?

(10 marks)

Answer:

Some of the challenges facing a modern Customs Administration include:-

- i. Globalization and continued growth and development of international trade
- ii. Increased international competition for foreign direct investment (FDI); **(1mark)**
- iii. Increased workload of Customs services and government expectations, with budgets and human resource allocation which are often static or sometimes decreasing; **(1mark)**

- iv. Heightened international awareness of the costs associated with complying with inefficient and out dated border formalities; **(1mark)**
- v. Increased investment by the private sector in modern logistics, inventory control, manufacturing and information systems; **(1mark)**
- vi. Increased use of Information Technology (ICT); **(1mark)**
- vii. Greater policy and procedural requirements directly associated with meeting international commitments and standards; **(1mark)**
- viii. Proliferation of regional trading agreements (Spaghetti Bowl) that increases complexity of administering border formality and controls; **(1mark)**
- ix. Increased realization of the importance of Customs as a key vehicle for economic growth; **(1mark)**
- x. Increased awareness of the importance of good governance and sound integrity within Customs administration. **(1mark)**

Reference: E.A.C PUBLICATIONS, July 2012, Page 10.

- 14.** Customs activities are directed towards objectives related to their government priorities. What areas Customs activities are focusing on? **(10 marks)**

Answer:

Notice: A student is required to provide 5 correct statements from bellow answers where each answer will be marked 2 points ((1mark) for a highlight and (1mark) for its explanation).

- i. **Collection of Customs duties and taxes;** Government expenditure is financed first from taxes which include Customs duties and taxes collected in the country before Governments undertakes borrowing to finance any budget deficits.
- ii. **Protection of society;** this is where Customs is involved in the enforcement of any prohibitions and restrictions of goods across borders.
- iii. **Environmental protection;** this is where Customs is involved in enforcing international conventions that protect the environment such as Convention in International Trade of endangered species (CITES) and The Montreal Protocol on prohibition of trade in Ozone depleting substances.
- iv. **Collection of trade statistics;** this involves the collection, compilation and analysis of trade data for Government planning.

- v. **Trade compliance;** this involves customs enforcement of best international trade practices.
- vi. **Trade facilitation;** this is where Customs expedites clearance of legitimate trade across international frontiers.
- vii. **Protection of cultural heritage;** this is where Customs enforces provisions of International trade agreements such as those of United Nations Educational Scientific and Cultural Organization (UNESCO).

Reference: E.A.C PUBLICATIONS, July 2012, Page 4.

15. In determination of rules of origin, there are processes and operations that do not confer the origin of processed goods/products in EAC Partner States.

What are those processes/operations? **(10 marks)**

Answer:

Notice: A student is required to provide 10 examples from below answers and each correct answer will be marked **1 point**.

Processes not conferring origin: The following operations and processes shall not support a claim that goods originate from a Partner State:

- (a) Packaging, bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packaging operations;
- (b) Simple mixing of ingredients imported from outside the Partner State;
- (c) Simple assembly of components and parts imported from outside the Partner State to constitute a complete product;
- (d) Operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilating, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions and removal of damaged parts and similar operations;
- (e) Change of packing and breaking up or assembly of consignments;
- (f) Marking, labeling or affixing distinguishing sign on products or their packages;
- (g) Simple operations consisting of removal of dust, sifting or screening, sorting, classifying or matching, including the making up of sets of goods, washing, planting or cutting up;

- (h) Ironing or pressing of textiles;
- (i) Simple painting or polishing operations;
- (j) Husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (k) Operations to colour sugar or form sugar lumps or partial or total milling of crystal sugar;
- (l) Peeling, stoning or shelling of fruits, nuts or vegetables;
- (m) Sharpening, simple grinding or simple cutting operations; or
- (n) The slaughter of animals.

Reference: E.A.C PUBLICATIONS, rules, 2015, Page 10- 11.

- 16.** In enforcement of prohibitions and restrictions, Narcotic drugs and other psychotropic substances may be classified according to their effect upon a person's mental activity and psychic state, or according to the material from which they originate. As a Customs officer in charge of enforcement, what kind of drugs do you know and how can you differentiate them based on their effect and nature? **(10 marks)**

Answer:

In accordance with the first method, drugs are divisible into:

- i. Depressants – of the central nervous system, under which it slow down mental activity. **(1.5mark)**
- ii. Stimulants – of the central nervous system, which cause states of excitement. **(1.5mark)**
- iii. Hallucinogens – which produce hallucinations or illusions i.e. distortions of the senses. **(1.5mark)**
- iv. Cannabis – which in small amounts acts as a depressant, but in larger doses has effects similar to those of a hallucinogen. **(1.5mark)**

In accordance with the second method, drugs may be divided into:

- a) Natural-drugs, which are either still in their natural state or derived comparatively simply from plant material; and **2 marks**
- b) Synthetic- drugs, which are made in laboratories by chemical processes. **2 marks**

Reference: E.A.C PUBLICATIONS, July 2012, Page 155.

17. Assume that you are the Registrar General in RDB and you are verifying documents submitted by people in application for company registration. While cross-checking the application form and the accompanied documents, you have realized that there is no memorandum of association attached. If you would advise them to develop the memorandum of association, what is the content of memorandum of association? **(10 marks)**

Answer:

The memorandum of association shall state the following:

- 1° the name of the company; **(1mark)**
- 2° the head office of the company; **(1mark)**
- 3° particulars of any business occupation; **(1mark)**

A memorandum of association for a company limited by guarantee shall indicate that liability is limited. **(1.5mark)**

A memorandum of association for a company limited by guarantee shall also state that every member shall undertake to contribute to the assets of the company in the event of its being wound up. **(1.5mark)**

For the case of a company with share capital, the memorandum of association shall state the following:

- 1° the amount of share capital; **(1.5mark)**
- 2° the number of shares making the share capital unless where the company is an unlimited company; **(1.5mark)**
- 3° the full name and the number of shares of every shareholder. **(1mark)**

Reference: Law N°07/2009 of 27/04/2009, Page 57-58.

Section III. Choose and Answer any ONE (1) questions **15 marks**

18. In East African Community (EAC) rules of origin criteria, goods shall be accepted as originating in a Partner State where the goods are wholly produced in the Partner State among others. For the purposes of rules of origin, what products that shall be regarded as wholly produced in a Partner State? **(15marks)**

Answer:

Notice: A student is required to provide products from below elements. **Each correct answer will be marked 1.5 point.**

- (a) Mineral products extracted from the ground or sea-bed of the Partner State;
- (b) Vegetable products including plant and plant products harvested, gathered or picked within the Partner State;
- (c) Live animals born and raised within the Partner State;
- (d) Products obtained from live animals within the Partner State;
- (e) Products from slaughtered animals born and raised within the Partner State;
- (f) Products obtained by hunting or fishing conducted within the Partner State;
- (g) Products of aquaculture, including mariculture, obtained within the Partner State where the fish is born and raised;
- (h) Products of sea fishing and other products taken from the exclusive economic zone of the Partner State;
- (i) Products of sea fishing and other products taken from the waters in the high seas by a vessel of a Partner State;
- (j) Products manufactured in a factory ship of a Partner State exclusively from the products referred to in sub-paragraph (i);
- (k) Products extracted from marine soil or subsoil outside the territorial waters of a Partner State provided that the Partner State has the sole right to work on that soil or subsoil;
- (l) Used articles fit only for the recovery of materials, provided that such articles have been collected from users within the Partner State;
- (m) Scrap and waste resulting from manufacturing operations within the Partner State; and
- (n) Goods produced within the Partner State exclusively or mainly from the following— (i) products referred to in this paragraph; and (ii) materials which do not contain elements imported from outside the Partner State or which are of undetermined origin.

Reference: E.A.C PUBLICATIONS, rules, 2015, Page 7- 8.

19. Assume that you are a secretary of a company and you should ensure that the company's records are well kept. What records the company should keep at the company's head office? **(15 marks)**

Answer:

A company shall keep at its registered office the following records:

- 1° the Articles of association; **(1.5mark)**
- 2° minutes of all meetings and resolutions of shareholders within the last ten (10) years; **(1.5mark)**
- 3° an interests register for directors; **(1.5mark)**
- 4° minutes of all meetings and resolutions of directors and directors' committees within the last ten (10) years; **(1.5mark)**
- 5° certificates given by directors under this Law within the last ten (10) years; **(1.5mark)**
- 6° the full names and addresses of the current directors; **(1.5mark)**
- 7° copies of all written communications to all shareholders or all holders of the same class of shares during the last ten (10) years, including annual reports; **(1.5mark)**
- 8° copies of all financial statements, for the last ten (10) years completed accounting periods; **(1.5mark)**
- 9° the accounting records for the last ten (10) years; **(1.5mark)**
- 10° the shares register; **(1.5mark)**
- 11° the copies of instruments creating or evidencing charges required to be registered under this Law.

Reference: Law N°07/2009 of 27/04/2009, Page 176-177.

20. Assume that you are an auditor of a company and you should prepare an auditing report and submit it to the company's shareholders. What the auditor's report should state? **(15 marks)**

Answer:

The auditor's report shall state the following:

- 1° the work done by the auditor; **(1.5mark)**
- 2° the scope and limitations of the audit; **(1.5mark)**

- 3° the proof that there is no relationship, no interests and debt which the auditor has in the company; **2 marks**
- 4° whether the auditor has obtained all information and explanations he/she needed; **(1.5mark)**
- 5° whether, proper accounting records have been well kept by the company; **(1.5mark)**
- 6° whether, in the auditor's opinion, the financial statements give a true and fair view of the matters to which they relate, and where they do not, shortcomings are identified; **2 marks**
- 7° whether, the financial statements comply with the international accounting standards; **(1.5mark)**
- 8° the auditor's opinion and problems that are linked with the company's management; **2 marks**
- 9° the auditor makes recommendations with regard to the identified problems. **(1.5mark)**

Reference: Law N°07/2009 of 27/04/2009, Page 183.

List of references

- East African Community, Directorate of Customs, (2012), East African Community Customs Training Materials, certificate in Customs Administration programme, Customs (Level I), pages 324.
- *East African Community Customs Training Materials, Post – Graduate Diploma in Customs Administration, Customs (Level II), a publication of the East African Community, July 2012, Pages 419.*
- *The East African Community Customs Union (Rules of Origin) rules, 2015, Pages 97*
- The East African Community Customs Management Act, 2004.
- Law N°07/2009 Of 27/04/2009 Relating to Companies