

**IN THE SECOND SESSION OF THE SIXTH PARLIAMENT OF
THE FOURTH REPUBLIC OF GHANA**



REPORT OF THE

FINANCE COMMITTEE

ON THE

EXCISE DUTY BILL, 2013

FEBRUARY, 2014

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1.0 INTRODUCTION

The Excise Duty Bill, 2013 was presented to Parliament by the Hon. Minister for Finance, Mr. Seth E. Terkper and read for the first time on Wednesday, 18th December, 2013. The Rt. Hon. Speaker referred the Bill to the Finance Committee for consideration and report in accordance with Article 174(1) of the 1992 Constitution and Order 169 of the Standing Orders of the Parliament of Ghana.

The Committee was assisted in its deliberations by the Hon. Minister for Finance, Mr. Seth E. Terkper, the Hon. Deputy Minister Mr. Cassiel Ato Baah Forson, the Commissioner-General of the Ghana Revenue Authority (GRA) and Officials from the Ministry of Finance, Attorney-General's Department and GRA. The Committee is grateful to the Hon. Minister, the Deputy Minister, Commissioner-General and Officials from the Ministry of Finance, Attorney-General's Department and the GRA for the assistance.

2.0 REFERENCE

The Committee referred to the following additional documents during its deliberations:

- The 1992 Constitution of Ghana;
- The Standing Orders of the Parliament of Ghana; and
- The Customs, Excise and Preventive Service management Law, 1993 (PNDCL330)

3.0 BACKGROUND

With the coming into force of the Ghana Revenue Authority Act, 2009 (Act 791) which integrated the three main revenue collecting agencies as Divisions of the Authority, it become necessary to pool together, harmonise and consolidate the administrative provisions in the various tax legislations into a single legislation and to organize and

streamline the other residual operational and charging provisions into other separate legislation to respectively govern the operations of the of the three Divisions. Thus, this Bill seeks to provide a separate legislation in respect of excise duty.

4.0 PURPOSE OF THE BILL

The purpose of the Bill is to revise and consolidate existing provisions for the imposition and collection of excise duty on selected imported and locally manufactured goods.

5.0 DIVISIONS OF THE BILL

The Excise Duty Bill has been divided into five (5) sections with thirty-five (35) Clauses and two (2) Schedules.

Clause 1 of the Bill provides for the payment of excise duty.

Clause 2 deals with exemption and specifies goods on which excise duty is not payable.

Clause 3 provides for the temporary importation of goods.

Clause 4 deals with goods not accounted for whilst *clause 5* provides for the quality, quantity and value of excisable goods.

The time for payment of excise duty is specified under *clause 6*.

Excise duty payable by a manufacturer in relation to excisable goods entered for home use from a warehouse by the manufacturer during a calendar month is catered for under *clause 7*.

Clause 8 deals with payment of excise duty by importers.

Under *clause 9*, a registered manufacturer of excisable goods is mandated to file an excise duty return for each calendar month .

Clause 10 deals with credit and refund for excise duty paid on raw materials.

Clause 11 provides for a refund of excise duty paid on imported excisable goods as well as manufactured excisable goods entered for home use.

Clause 12 deals with the application for a refund of excise duty.

Under *clause 13* a person is prohibited from carrying on a business of manufacturing excisable goods in the country unless that person is registered by the Commissioner-General and the excisable goods are manufactured in a warehouse approved by the Commissioner-General.

Clause 14 mandates a person who intends to carry on a business of manufacturing excisable goods in the country to apply to the Commissioner-General for registration.

Clause 15 provides for compulsory registration by the Commissioner-General.

The effective date of registration is provided for in clause 16.

Clause 17 deals with a change in relevant events or goods.

Clause 18 provides for disqualification for the grant or transfer of a certificate of registration whilst *clause 19* deals with the death of a holder of a certificate of registration.

The process for the cancellation of registration is catered for under *clause 20*.

Clause 21 provides for notice to the Commissioner-General.

Clause 22 deals with warehousing of excisable goods whilst *Clause 23* is on approved warehouse.

Clause 24 deals with common provisions relating to offences and penalties.

Clause 25, 26 and 27 provides for penalties for failure to register.

The failure to provide notice is dealt with in clause 28, whilst clause 29 deals with failure to provide accommodation.

Clause 30 provides for the application of new laws.

Clause 31 deals with security.

Clause 32 provides for excise duty in relation to liquor.

The enabling power of the Minister responsible for Finance to make Regulations is provided for under *clause 33*.

Clause 34 is on interpretation whilst *clause 35* deals with transitional provisions.

The First and Second Schedules specifies goods that are liable to excise duty as well as exempt goods.

6.0 OBSERVATIONS

Rationale for the Bill

The Committee was informed during its deliberations that the introduction of the Bill is part of the reforms being implemented for effective revenue mobilisation and tax administration in the country. According to the Minister, the provisions on excise operations are currently scattered in the Customs, Excise and Preventive Service (Management) Law, 1993 (PNDCL 330) and there is the need to put all the provisions into a single legislation for effective administration. Minister of Finance also indicated to the Committee that, the Bill also has introduced new clauses and modified existing ones to help bring clarity to some issues that create implementation challenges to the tax authorities.

Excise Duty on Petroleum Products

The Committee observed that, the proposed Excise Duty Bill has not made provision for the imposition of Excise Duty on Petroleum Products. The Minister informed the Committee that, excise duty on petroleum products is provided for in the Customs and Excise (Petroleum Taxes and Petroleum Related Levies) Act 2005 (Act 685) which was amended in December, 2013 as part of the broad policy measures outlined in the 2014 Budget Statement and Economic Policy of Government. He further explained that Duties and Levies on petroleum products undergo regular reviews hence the need to separate them from the main Excise Duty Bill. Further, the inclusion of the Customs and Excise Duty on Petroleum products in the Bill will expose the subsequent Act to frequent reviews and amendments.

7.0 AMENDMENTS

The Committee after a clause by clause examination of the Bill proposes the following amendments for the consideration of the House:

1. **Clause 2 - Amendment proposed** - Sub-clause (b) (i) , line 1; delete “fire or other”

2. **Clause 3 – Amendments proposed –**

a). Sub-clause (1) (b), line 2, delete all words after “:permission”

b). Sub-clause 4, delete

3. **Clause 5 – Amendment proposed –** Sub-clause (2) (a) (i) line 2, delete “Customs Act, 2013, (Act.....) and wherever it appears in the Bill delete same and insert “Customs, Excise and Preventive Service (Management) Act, 1993 (P.N.D.C.L. 330)”

4. **Clause 7 – Amendment proposed –** Sub-clause (1) (b) line 1, delete ”approved” and insert “unapproved”

5. **Clause 11 – Amendment proposed –** Head note – Delete “imported”

6. **Clause 12 – Amendment proposed –**

a) Sub-clause (1) line 2, insert after “Commissioner-General “ within 12 months after the month to which the refund relates”

b) Sub-clause (2) (a) delete all words after “Act”

c) Sub-clause (3) line 4, delete “thirty” and insert “sixty”.

d) Sub-clause (4) line 2 and 3, delete all words after “amount” and before “within” and line 4 delete “fourteen” and insert “thirty”.

e) Sub-clause (5) line 1, delete “and the interest”

f) Add the following as sub clause (6)

“(6) Where a person is not entitled to a refund but makes a claim for refund, the person shall repay the amount within fourteen days and is liable to a penalty of twice the amount of the refund.”

7. **Clause 15 – Amendment proposed –**

a) Headnote delete and insert “Compulsory registration”.

b) Sub-clause (b) insert “within 30 days” after “registration”.

8. Clause 17 – Amendment proposed – sub-clause (a) line 2, after “constitution” insert “directors”

9. Clause 18 – Amendment proposed –

a). sub-clause (c) delete “or” in line 2

b). sub-clause (d), delete

10. Clause 20 – Amendment proposed – sub-clause (b) line 1 and 2, delete all words after “Act”

11. Clause 21- Amendment proposed - sub-clause 2 (a) line 1, delete “may” and insert “shall”

12. Clause 23 - Amendment proposed – sub-clause 4 line 2, insert “office” before “accommodation”

13. Clause 25 - Amendment proposed – delete and insert the following

Failure to register

25. (1) A person who carries on a business of manufacturing excisable goods in the country without registering as a manufacturer commits an offence and is liable on summary conviction to excise duty payable in relation to the excisable goods or to term of imprisonment of not more than one year or to both.

(2) In addition to the penalty provided under subsection (1)

(a) the person shall pay a penalty of not more than two times the amount of excise duty payable in relation to the excisable goods; or an amount of not less than five hundred currency points and not more than one thousand currency points, whichever is higher; and

(b) the Commissioner-General may authorise the forfeiture of goods, raw materials, apparatus, utensils and other materials which in the opinion of the Commissioner-General can be used in the manufacture of excisable goods.”

14. Clause 26 – Amendment proposed - Delete 'or' in line 3 of closing statement and substitute “and in addition”. And delete “warehouse” in paragraphs (a), (b) and (c) and insert “premises”

15. Clause 27 – Amendment proposed - delete and insert the following:

"Failure to enter into bond or lodge security

- 27 (1) A person who
- (a) manufactures excisable goods in the country or enters excisable goods for home use without having entered into a bond or lodge a security with the Commissioner-General; or
 - (b) enters for home use excisable goods manufactured in the country without complying with section 7 (4) commits an offence and is liable on summary conviction to a fine of not more than two times the amount of excise duty referred to in paragraph (a) or (b) or to a term of imprisonment of not more than one year or to both.
- (2) In addition to the penalty provided under subsection (1) the person shall pay a penalty equal to
- (a) two times the amount of excise duty payable on the excisable goods entered for home use during the time when the person did not enter into the bond or lodge a security as required, or
 - (b) two times the amount of excise duty payable by the person on each non-complaint entry of excisable goods for home use where subsection (1) (b) apply.

16. Clause 28 - Amendment proposed - delete and insert the following:

Failure to give notice

28 (1) A manufacturer who fails to give notice to the Commissioner-General as required under this Act commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units for each failure or to a term of imprisonment of not more than six months or to both.

(2) In addition to the penalty provided under subsection (1) a manufacturer shall pay a penalty of not more than five hundred currency points for each failure.

17. Clause 29 – Amendment proposed -

- a) Headnote after “provide” insert “office”
- b) line 3; delete “ one hundred penalty units” and insert “five hundred currency points”

18. Clause 30 – Amendment proposed – Sub-clause (3) line 2; delete “(Act)” and insert “(Act 870)”

19. Clause 32 – Amendment proposed – Delete and insert the following
“Liquor

32. For the purpose of excise duty

- (a) liquor containing more than 24.5 percent of pure alcohol by volume shall not be considered as wine, and liquor containing more than 10 percent of pure alcohol by volume shall not be considered as ale, beer, cider, perry or stout;
- (b) liquor containing more than 24.5 percent of pure alcohol by volume, liquor other than wine, containing more than 10 percent of pure alcohol by volume, and liquor other wine, ale, beer, cider, perry or stout containing more than 1 percent of pure alcohol by volume shall be considered as spirits.”

20. Clause 33 – Amendment proposed –

- (a) line 2, delete “under the Revenue Administration Act, 2013 (Act)”
- (b) sub-clause (a) line 2, delete “and”
- (c) insert a new (b) as follows:
“(b) provide for matters relating to excise duty returns”

21. Clause 34 – Amendment proposed – Interpretation for

- a) “entered” delete and insert the following:

“entered” means

- (a) In relation to excisable goods, goods imported, warehoused, put on board an aircraft or ship as stored or excisable goods exported,
 - (i) that the prescribed declaration has been filed and accepted by proper officer; or

- (ii) that the filing has been electronically validated and any duties, taxes, levies, fees and charges due have been paid or security for any duties, taxes, levies, fees and charges due has been deposited; and
 - (b) in relation to a removal of goods manufactured in the country, the removal of the excisable goods under security;
- b) Insert the following new interpretations to read:
 - (i) **“person”** includes an individual, a partnership, a company, a trust, the estate of a deceased individual, a government or a body that is a society, a union, a club, an association, a commission or another organization of any kind;
 - (ii) **“fair market value”** means the consideration in money which a similar supply would generally fetch if supplied in similar circumstances at that date in Ghana, being a supply freely offered and made between persons who are not associates;
 - (iii) **“similar supply”** in relation to a taxable supply, means a supply that is identical to, or closely or substantially resembles, the taxable supply, having regard to the characteristics, quality, quantity supplied, functional components, reputation of, and materials comprising the goods and services which are the subject of the taxable supply.
 - a. **“ship”** means floating craft of every description, but does not include aircraft;
 - b. **“spirits”** means spirits of any description and includes all liquors mixed with spirits and all mixtures, compounds or preparations made with spirits;

- c. **"aircraft"** means any apparatus, whether or not mechanically propelled, which is used for the transport by air of human beings or goods.

22. Clause 35 – Amendment proposed –

- (a) sub-clause (2) line 3, insert “but has not been registered under the Customs, Excise and Preventive Service (Management) Act, 1993 (PNDCL 330) after “business”
- (b) sub-clause (3) line 1, delete all words before “person” and insert “A”, line 4, delete all words after “Act” and insert “is deemed to have been registered”.

23. First Schedule – Amendment proposed –

- (a) Item 1,
i. (a) line 1; delete “water” and insert “waters”
ii. Add a new item “sachet water 0%” after “Distilled, bottled water”
- (b) Item 2, add “70 per centum of local raw material”
- (c) Item 3, delete “70 per centum of local raw material”
- (d) Item 7, rate of duty delete “150%” and insert “10%”.

24. Add the following new clauses.

Official currency

32. (1) The cedi is the official currency of this Act and, subject to any provision in a tax law to the contrary, amounts taken into account under a tax law shall be denominated in or converted into cedis.

(2) Conversion of a foreign currency amount into cedis shall be at the Bank of Ghana inter-bank exchange rate applicable on the date the amount is to be taken into account.

(3) Despite subsection (1), the Commissioner-General may, on written application or otherwise, require a person to take a foreign currency amount into account for the purposes of this Act.

(4) A requirement of the Commissioner-General under subsection (3)

- (a) shall be in writing and may be by way of practice note;

- (b) may apply for one or more periods; and
- (c) may be subject to other conditions determined by the Commissioner General

(5) The Commissioner-General shall take into consideration the volume of foreign currency activities conducted by the person in exercising a discretion under subsection (3).

(6) The Commissioner-General may, by notice in writing and for reasonable cause, revoke a requirement under subsection (3).

(7) For the purposes of In this section, the date an amount is to be taken into account is the date the amount accrues, or is received, derived, incurred, paid or otherwise to be taken into account for the purposes of this Act.

Assessment of excise duty and correction of return

10. (1) where the Commissioner-General has reason to believe that
- (a) a person shall become liable for the payment of an amount of excise duty but that person is unlikely to pay the amount;
 - (b) a person, other than a manufacturer, enters for home use goods that are excisable and represents that excise duty is charged on the goods entered;
 - (c) a manufacturer wrongly enters for exports or home use excisable goods; or applies the excise duty rates;
 - (d) a manufacturer fails to submit a tax return specified in this Act or Regulations;
 - (e) a return is incorrect or that any lawful excise duty has not been paid; or
 - (f) section 15 applies to a person,

the Commissioner-General, based on any information available, may make an assessment of the amount of excise duty payable by the person or of the amount of excise duty claimed by the person as payable in respect of the supply.

- (2) The person assessed
- (a) under paragraph (a) of subsection (1), is the person required to account for the excise duty under this Act;
 - (b) under paragraphs (b) or (c) of subsection (1), is the person making the entry;
 - (c) under paragraphs (d) or (e) of subsection (1), is the person required to submit the return or required to pay the excise duty; or
 - (d) under paragraph (f) is the person to whom section 15 applies.

- (3) The Commissioner-General may make the assessment at any time.
- (4) The Commissioner-General may, based on the information available, estimate the excise duty payable by a person for the purposes of making the assessment.
- (5) A person who is not satisfied with a return submitted by that person may apply to the Commissioner-General in writing for authority to make an addition to or alteration to the return.
- (6) For purposes of subsection (5), the application shall
- (a) state in detail the grounds on which the application is made, and
 - (b) be submitted not more than three months after the submission of the original return.
- (7) The Commissioner-General may, after considering an application under subsection (5),
- (a) approve or refuse to approve the application; and
 - (b) make an assessment of the amount that, in the opinion of the Commissioner-General, is the amount of excise duty payable under this Act.
- (8) Where an assessment has been made under this section, the Commissioner-General shall serve a notice of the assessment on the person assessed, and the notice shall state
- (a) the excise duty payable;
 - (b) the date that the excise duty is due and payable;
 - (c) the place for payment of the excise duty; and
 - (d) the manner of objecting to the assessment.
- (9) An amount assessed under paragraphs (b), (c) or (e) of subsection (1) is for the purposes of this Act, an excise duty charged under this Act.

25. Add the following new clauses under offences and penalties as follows:

(a) Failure to submit a return

A manufacturer who fails to submit to the Commissioner-General an excise duty return by the due date is liable to a penalty of five hundred

currency points and a further penalty of ten currency points for each day the failure continues

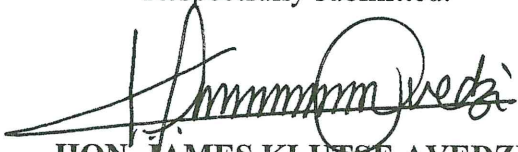
(b) **Failure to pay tax on due date**

A manufacturer who fails to make a payment required under this Act to the Commissioner-General by the due date is liable to pay a penalty of fifteen percent of the amount due and an interest of five percent of the amount due for each day the failure continues

8.0 CONCLUSION

The Committee having thoroughly examined the Bill recommends to the House to adopt its report and take the Excise Duty Bill, 2013 through a second reading and passed subject to the proposed amendments.

Respectfully submitted.



HON. JAMES KLUTSE AVEDZI
(CHAIRMAN, FINANCE COMMITTEE)



ROSEMARY ARTHUR SARKODIE (MRS)
(CLERK, FINANCE COMMITTEE)

