

TAX EXEMPTIONS BILL, 2022

MEMORANDUM

The object of the Bill is to provide for an exemptions regime including variation or limitation of the scope; set clear eligibility criteria for exemptions; provide for the administration of exemptions and provide for the monitoring, evaluation, reporting and enforcement of exemptions.

Tax Exemptions in Ghana are embedded in statutory legislation and exemptions approved by resolutions by the Parliament of Ghana. These include Income Tax exemptions, tax holidays, rebates, and concessions, Import exemptions, Value Added Tax reliefs, and Excise Tax.

The rationale for granting these exemptions include attracting foreign direct investment, alleviating the tax burden on the vulnerable in society, encouraging business start-ups, attracting investment into specified sectors or locations and supporting the development agenda of Government.

In the last ten years, tax exemptions namely Import Duty, Import Value Added Tax, Import National Health Insurance Levy, Import Ghana Education Trust Fund, Export-Import Levy, Special Import Levy and Domestic Value Added Tax in the economy have grown even though there has been a remarkable improvement to curtail the growth.

The total amount of exemptions granted in 2020 was one point seventy-one billion Ghana Cedis, compared to two point forty-three billion Ghana Cedis, two point twenty-five billion Ghana Cedis and three point eight billion Ghana Cedis in 2019, 2018 and 2017 respectively. The total amount of exemptions granted between 2012 to 2016 and 2017 to 2020 was four point fifty-six billion Ghana Cedis and nine point forty-seven billion Ghana Cedis respectively.

These figures do not include exemptions from the payment of corporate and individual income taxes, concessions on tax rates, petroleum tax reliefs and customs tax exemptions enjoyed by diplomatic missions.

Exemptions distort fair competition among businesses in the same industry where private projects are granted exemptions to improve their profitability or viability, which are not available to other players of the same industry. Additionally, where exemptions are granted on items that are available locally, unfair competition is created for local manufacturers of those goods.

The current challenges of the exemptions regime are sustained by the existence of pre-determined tax exemptions in various legislation for future projects the financials of which cannot be determined. The situation is aggravated by an entrenched policy mindset on the part of both Government entities and private suppliers that, by default, businesses that supply

goods, services and projects to the public sector should be exempted from payments of customs and some domestic taxes.

Unfortunately, even where tax exemptions are necessary, they invariably create opportunities for abuse and irregularities. Together with the abuses, exemptions deny the country the much-needed revenue, the consequence being low revenue reporting, which translates into a generally low overall tax effort represented by a tax to Gross Domestic Product ratio of about thirteen per cent as at the end of 2020.

Exemptions when granted without the prior knowledge of the Minister for Finance, disrupt budgeted revenue estimates and invariably lead to an increase in tax expenditure and higher than planned deficits.

These, amongst others, are the challenges that the Bill seeks to address.

Monitoring plays a crucial part in ensuring that exemptions and concessions are utilised by beneficiaries for the intended purposes. The Bill thus provides for additional reporting requirements and mechanisms to ensure the efficient and effective use of exemptions.

It has also been observed that some exemptions continue to exist on our Statute books though they have become obsolete. The Bill seeks to provide sunset clauses and a formal framework for reviewing these exemptions.

The Addis Ababa Action Agenda which was endorsed by the United Nations General Assembly in its Third International Conference on Financing for Development (Addis Ababa, Ethiopia, 13–16 July 2015), includes a comprehensive set of measures aimed at addressing the challenges of financing the 2030 Sustainable Development Goals. Inherent in these measures is a commitment to “consider not requesting tax exemptions on goods and services delivered as government-to-government aid, beginning with renouncing repayments of value-added taxes and import levies.” (Clause 58 of United Nations Resolution A/RES/69/313 of July 27, 2015).

The commitment is based on the recognition that tax exemptions create significant difficulties for developing countries and run counter to the objective of strengthening domestic resource mobilisation. In line with this, the Committee of Experts on International Cooperation in Tax Matters in 2020 provided some guidelines with regards to exemptions. The Bill incorporates some of the measures enshrined in the United Nations Resolution and the Guidelines issued by the Committee of Experts.

The projected exemptions for the year 2022 are expected to be lowered by about five hundred million Ghana Cedis when the Bill is passed by Parliament.

Clause 1 states the object of the Bill.

Clause 2 states the application of the Bill and resolves the conflict between the Bill and other exemptions-related legislation by providing that the Bill will prevail in case of any conflict or inconsistency with other exemptions-related legislation.

Clause 3 defines an exemption for the purposes of the Bill.

Clauses 4 and 5 provide for general responsibilities and the responsibility of the Minister responsible for Finance.

Clause 6 deals with negotiation and approval of exemption and prohibits persons from negotiating or entering into an agreement to grant an exemption except with the prior written approval of the Minister.

Clause 7 provides the procedure for granting exemptions to Ministries, Departments and Agencies.

Clauses 8 to 12 provide for exemptions to privileged persons. These are the President, diplomats and diplomatic missions, persons with disability, religious organisations and donor and charity organisations.

Clause 13 provides for exemptions to free zone enterprises and seeks to address the existence of licensed free zone enterprises that are not export-oriented.

Clause 14 provides for general tax incentives available to all businesses in particular industries or programmes.

Clauses 15 and 16 provide for special tax incentives for strategic investments and the procedure for granting special tax incentives respectively.

Clause 17 deals with exemptions for executed treaties, agreements or Conventions and *clause 18* deals with exemptions for technical cooperation programmes.

Clauses 19 and 20 provide for exemptions for programmes and projects funded by grants and for concessional facility projects.

Clause 21 seeks to restrict exemptions granted to private suppliers or contractors of goods, works and services to Government and State entities.

Clause 22 provides for exemptions in transactions by security agencies.

Clause 23 deals with administrative fees and other charges and *clause 24* deals with transnational levies.

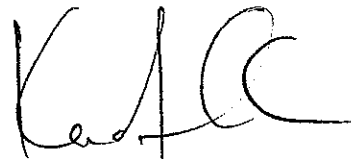
Clause 25 deals with the monitoring and reporting of exemptions. The Minister is mandated to establish a schedule to review tax expenditures at least once every five years, *clause 26*.

Clause 27 deals with the transfer of ownership of an exempt item by the holder of an exemption and *clause 28* deals with local content.

Clause 29 provides for offences and penalties while clauses 30 and 31 provide for Regulations and interpretation respectively.

Clause 32 provides for consequential amendments to the Ghana Investment Promotion Centre Act, 2013 (Act 865) and the Customs Act, 2015 (Act 891).

Repeals, savings and transitional provisions are dealt with in clause 33.



KEN OFORI-ATTA

Minister responsible for Finance

Date: JULY 1, 2022.

TAX EXEMPTIONS BILL, 2022

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General Exemptions

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BILL

ENTITLED

TAX EXEMPTIONS ACT, 2022

AN ACT to regulate the application of tax exemptions and other exemptions and to provide for related matters.

PASSED by Parliament and assented to by the President:

Preliminary Provisions

Object of this Act

1. The object of this Act is to

- (a) provide for an exemptions regime including variation or limitation of the scope, where necessary;
- (b) set clear eligibility criteria for exemptions;
- (c) provide for the administration of exemptions; and
- (d) provide for monitoring, evaluation, reporting and enforcement of exemptions.

Application

2. (1) This Act applies to all exemptions.

(2) This Act shall be read together with any other enactment relevant to taxation, levies, fees and charges and public financial management.

(3) Where there is a conflict or inconsistency between the provisions of this Act and any other enactment related to exemptions, the provisions of this Act shall prevail.

(4) This Act is a "tax law" for purposes of the Revenue Administration Act, 2016 (Act 915).

Definition of exemption

3. (1) For the purposes of this Act, an exemption is

- (a) a waiver or variation of a tax, levy, fee or charge provided for under an enactment, or
- (b) a variation of the timing of the payment of a tax, levy, fee or charge which results in a reduction in the effective liability of the payer.

(2) Despite subsection (1), the power of the Commissioner-General to remit assessed tax or extend the date on which a tax is payable shall continue to apply.

General Provisions

General responsibility

4. (1) A person shall not be granted an exemption unless the person is entitled to the exemption under this Act.

(2) A person shall not grant an exemption to another person unless the person is authorised to grant the exemption under this Act.

(3) A person shall not enter into an agreement to waive or vary a domestic indirect tax unless expressly provided for in this Act or the relevant tax law.

(4) A person who is granted an exemption under this Act shall not transfer the exemption to another person.

Responsibility of the Minister

5. (1) The power to

- (a) submit a request for an exemption to Cabinet or Parliament, or
- (b) seek executive approval for an exemption is vested in the Minister.

(2) The Minister shall, on receipt of a request for an exemption,

- (a) vet the request for the exemption; and

(b) ensure that the exemption is consistent with the economic management priorities of Government and the general policy of the Government on exemptions.

(3) The Minister shall issue administrative guidelines on

(a) the modalities for the vetting and granting of exemptions; and

(b) the procedure for an application for an exemption by a person.

(4) The Minister shall, subject to Cabinet or Executive approval, seek the approval of Parliament by resolution for a request for exemption in accordance with article 174 of the Constitution.

(5) The Minister shall

(a) monitor the use of an exemption as an economic management tool; and

(b) report on the impact of an exemption in the annual national budget presented to Parliament.

(6) The Minister shall advise Cabinet on matters relating to exemptions.

(7) The Minister shall ensure that Ministries, Departments and Agencies and other relevant stakeholders are sensitised on any new law or requirement instituted to

(a) improve the effectiveness of the exemptions regime; or

(b) ensure compliance with this Act.

Negotiation and approval of exemption

6. (1) A person shall not negotiate or enter into an agreement to grant an exemption except with the prior written approval of the Minister.

(2) An agreement reached between parties to grant an exemption is of no effect and is not enforceable against the State unless subsection (1) has been complied with.

(3) Where an exemption is contained in a contract to be placed before Parliament for approval, the contract shall be accompanied with

- (a) a detailed assessment of the value of the anticipated exemptions contained in the contract;
- (b) the list of items and taxes to which the exemptions are applicable;
- (c) a limit on the total value of the exemptions to be granted under that contract;
- (d) a time limit on the exemption to ensure that the exemption does not exceed the duration of the contract;
- (e) the implications of the exemption on programmed revenue; and
- (f) the details of the beneficial owners of the entities involved in the contract.

(4) A contract that contains an exemption shall not be submitted to Parliament unless subsections (1) and (3) have been complied with.

(5) An exemption vetted by the Minister and placed before Parliament for approval may be varied by Parliament and the Minister shall, within twenty-eight days from the date of the variation, notify the person concerned and give effect to the variation.

Ministries, Departments and Agencies

Procedure for granting exemptions to Ministries, Departments and Agencies

7. (1) An application for an exemption by a Ministry, Department or Agency shall be made to the Minister.

(2) The Minister shall assess the application.

(3) The Minister may make a recommendation to Cabinet for consideration.

(4) The recommendation referred to in subsection (3) shall state clearly the basis for the recommendation.

(5) Where the Minister makes a positive recommendation to Cabinet on an application for an exemption by a Ministry, Department or Agency and Cabinet approves the recommendation, Cabinet shall direct the Minister to submit the application to Parliament for the necessary approval.

(6) Where Cabinet does not approve of the recommendation, the Minister shall inform the Ministry, Department or Agency of the decision of Cabinet within fourteen days on receipt of the decision.

(7) Where the Minister does not make a recommendation to Cabinet for an exemption, the Minister shall inform the Ministry, Department or Agency of the decision within fourteen days on receipt of the application.

Privileged Persons

The President

8. (1) In accordance with clause (5) of article 68 of the Constitution, the salary, allowances, facilities, pensions and gratuity of the President are exempt from tax.

(2) Goods procured for the use of the President by the Office of the President or a Ministry, Department or Agency are exempt from customs tax in accordance with the procedure under section 7.

(3) A person who makes an application for an exemption in the name of the President which is not for the use of the President commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than two thousand five hundred penalty units or to a term of imprisonment of not less than six months and not more than five years or to both.

(4) Where an application for an exemption made under subsection (3) results in a loss of revenue, the person who makes the application is liable to pay three hundred per cent of the applicable taxes.

Diplomats and diplomatic missions

9. (1) A diplomat shall be granted an exemption where a similar exemption is granted to a Ghanaian diplomat in the country of that diplomat.

(2) Goods and vehicles imported by or for the official use of a body of the United Nations, the African Union, the Economic Community of West African States, the Commonwealth, a diplomatic mission or a consulate are exempt from the payment of customs duties and customs taxes.

(3) On the first arrival in Ghana of an employee of the United Nations, the African Union, the Economic Community of West African States, the Commonwealth, a diplomatic mission or a consulate, the household or personal effects of that employee, if that employee is not engaged in any other business or profession in Ghana, are exempt from the payment of customs duties and customs taxes.

(4) Goods and vehicles imported by or for the use of a permanent member of the United Nations, the African Union, the Economic Community of West African States, the Commonwealth, a diplomatic mission or a consulate are exempt from the payment of customs duties and customs taxes.

(5) For the purposes of this section, the Minister responsible for Foreign Affairs shall submit to the Minister responsible for Finance on an annual basis, a list of the diplomats and diplomatic missions that qualify for exemption.

(6) A diplomat or a diplomatic mission shall be granted an exemption based on the list submitted under subsection (5).

Persons with disability

10. The following disability-related items are exempt from the payment of customs duties and customs taxes:

- (a) books, publications and documents specially designed for the use of persons with disability on the recommendation of the Minister responsible for Social Welfare;
- (b) other items specially designed for the education, scientific or cultural advancement of persons with disability, imported by institutions or organisations recommended by the Minister responsible for Social Welfare and approved by the Minister;
- (c) vehicles specially designed, adapted and modified for use by persons with

disability certified by the relevant licensing authority and approved by the Minister; and

- (d) specially designed items imported by persons with disability for their educational, scientific or cultural advancement.

Religious organisations

11. (1) The following items imported for religious purposes are exempt from the payment of customs duties and customs taxes:

- (a) altar bread;
- (b) communion wafer;
- (c) altar wine;
- (d) Catholic rosary;
- (e) altar frontal;
- (f) altar linen and vestments excluding choir robes and pulpit gowns;
- (g) *Zamzam*;
- (h) *Tasbi*; and
- (i) other similar items imported for religious purposes used exclusively for worship recommended by the Minister responsible for Religious Affairs and approved by the Minister.

(2) For the purposes of subsection (1),

"*Tasbi*" means an Islamic rosary; and

"*Zamzam*" means holy water imported from Mecca.

Donor and charity organisations

12. (1) An item for
- (a) educational purposes, and
 - (b) health purposes

imported by a development partner, a charity organisation, a philanthropist or any other not-for-profit organisation as a gift for charitable purposes is, subject to subsection (2), exempt from customs duties and customs taxes where the application is supported by a recommendation by the relevant sector Minister and approved by the Minister.

(2) An application for the exemption referred to in subsection (1) shall not be processed unless the application

- (a) is made by the official head of the identifiable group that benefits from the gift; and
- (b) spells out in detail the specific items and the quantity of each item expected in the donation.

(3) An application for the exemption referred to in subsection (1) shall be accompanied with

- (a) the background information of the donor or charity organization where the donor or charity organisation is new; or
- (b) a report of the activities of the donor or charity organisation in the beneficiary social, educational or health institution in the past twenty-four months, where the donor or charity organisation is already in existence.

Private Businesses

Free zone enterprises

13. (1) A free zone enterprise that imports items into a free zone or single factory zone is exempt from customs duties and customs taxes.

(2) A company that is licensed as a free zone enterprise in accordance with the Free Zone Act, 1995 (Act 504) but that does not export

(a) a minimum of seventy per cent of the output of the company, or

(b) the relevant percentage as specified in the licence of the Free Zone Enterprise

shall pay three hundred per cent of all taxes due.

(3) The Ghana Revenue Authority shall recover the taxes due from a free zone enterprise under subsection (3).

(4) A free zone enterprise shall submit an annual report to the Ministry for each year of operations to ensure continuing eligibility.

(5) The annual report referred to in subsection (4) includes

(a) the number of employees;

(b) employee taxes;

(c) annual turnover;

(d) the percentage of goods exported with full export documentation and destination; and

(e) exemptions granted to the free zone enterprise during the period.

General tax incentives

14. (1) The Minister may, on the recommendation of the relevant sector Minister and with the approval of Cabinet, by legislative instrument, make Regulations to grant an industry-specific or programme-specific tax concession for an industry or investment programme.

(2) Where the tax concession is on customs duties and customs taxes, the list of the items to which the concession applies and the exact concessional rate for each item shall be provided in the Regulations made under this Act.

(3) Where the State seeks to take up a reciprocal carried interest in a business that accesses general tax incentives, the particulars of the carried interest shall be specified in the Regulations made under this Act.

Special tax incentives for strategic investments

15. (1) The State may, in addition to granting a general tax incentive to a sector in accordance with an enactment, grant a specially-negotiated tax exemption for investment where the State takes a commensurate equity stake in the investment project.

(2) An entity that cedes an equity stake to the State in return for a tax incentive shall have an unqualified right to buy back the equity stake of the State at the prevailing market price.

Procedure for granting special tax incentives

16. (1) Cabinet shall, for the purpose of granting special tax incentives and promoting major investments, determine the priority areas of economic investments.

(2) The Ghana Investment Promotion Centre shall, within thirty days after the determination of the priority areas referred to in subsection (1), publish the priority areas

(a) in the *Gazette*;

(b) on the website of the Ghana Investment Promotion Centre; and

(c) in a daily newspaper of nationwide circulation.

(3) An investor that seeks to invest in a priority sector may apply to the Ghana Investment Promotion Centre stating clearly the cost details of the investment and the exemptions required.

(4) The Ghana Investment Promotion Centre shall, upon receipt of an application in subsection (3) and in consultation with the relevant Ministry, Department or Agency,

(a) make a determination whether the investment is within the priority areas of economic investment; and

(b) communicate the decision of the Ghana Investment Promotion Centre to the applicant within thirty days after the receipt of the application.

(5) Where the Centre determines that the investment project for which the tax exemptions are being requested is in the priority area of economic investment, the Chief Executive Officer of the Centre shall, within five days of making the decision, forward the application to the Minister.

(6) The Minister shall, on receipt of the request from the Centre, enter into negotiations with the prospective investor to arrive at the

- (a) cost details of the investment;
- (b) exact scope and details of the exemptions to be granted; and
- (c) commensurate equity stake that the State may take in the investment in return for the revenue forgone in granting the exemptions.

(7) The Minister shall, on a successful conclusion of the negotiations in subsection (6), take immediate steps to procure the necessary approvals from Cabinet and Parliament for the investment incentives agreement to be signed between the Ministry and the prospective investor.

Development Partner Projects

Executed treaties, agreements or Conventions

17. (1) An exemption from the payment of customs duties and customs taxes may be granted under an executed treaty, agreement or convention after ratification by Parliament.

(2) Each exemption under subsection (1) shall be considered on a case by case basis.

(3) The Minister shall secure approval from Cabinet and Parliament for the exemption referred to in subsection (1) before the exemption takes effect.

(4) Where an item to which an executed treaty, agreement or Convention applies is produced in or can be found in Ghana, a contractor under the executed treaty, agreement or Convention shall procure the item from the local market and the Minister shall not grant an exemption in respect of the executed treaty, agreement or Convention.

Technical cooperation programmes

18. (1) Goods imported for the use of an International Agency for purposes of a technical cooperation programme or project, shall be granted the exemption required by the agreement governing the particular programme or project.

(2) Household goods imported for the use of personnel engaged by an International Agency under a Technical Assistance Scheme may be exempt from payment of customs duties and customs taxes on first arrival in Ghana of that personnel.

(3) For purposes of this section, the International Agency shall submit to the Minister responsible for Finance a list of key officers and positions that qualify for exemption.

(4) The International Agency shall be granted an exemption based on the list submitted under subsection (1).

(5) The Minister shall secure approval from Cabinet and Parliament for the agreement referred to in subsection (1) before the exemption takes effect.

Programmes and projects funded by grants

19. (1) A programme or a project fully funded by a grant may be granted an exemption from the payment of customs duties and customs taxes in the agreement governing the particular programme or project.

(2) Each exemption under subsection (1) shall be considered on a case by case basis.

(3) The Minister shall secure approval from Cabinet and Parliament for the exemption referred to in subsection (1) before the exemption takes effect.

(4) Where an item to be used for the programme or project is produced in or can be found in Ghana, the contractor shall procure the item from the local market and the Minister shall not grant an exemption in respect of the programme or project.

Concessional facility projects

20. (1) The Minister shall not grant an exemption for a project funded by a concessional facility unless the concessional facility agreement requires the exemption.

(2) Each exemption under subsection (1) shall be considered on a case by case basis.

(3) The Minister shall secure approval from Cabinet and Parliament for the exemption referred to in subsection (1) before the exemption takes effect.

(4) Where an item to be used for the project funded by the concessional facility is produced in or can be found in Ghana, a contractor under the project funded by the concessional facility shall procure the item from the local market and the Minister shall not grant an exemption in respect of the project funded by the concessional facility.

Commercial Government projects

21. (1) Goods, works or services imported or procured by Government or a State entity from a private supplier or contractor are subject to the payment of all customs duties and customs taxes and domestic taxes.

(2) A private supplier or contractor who supplies goods, works or services to a State entity shall not be relieved of the obligation of that private supplier or contractor to charge value added tax or any other tax on a taxable supply.

(3) A person who acts on behalf of Government or a State entity who signs a contract that

(a) exempts a private supplier or contractor from the payment of customs duties and customs taxes or the payment of domestic taxes, or

(b) relieves a private supplier or contractor from the obligation of that private supplier or contractor to charge value added tax on a taxable supply

commits an offence and is liable on summary conviction to a fine equivalent to the value of the unpaid customs duties and customs taxes, uncharged value added tax and other unpaid domestic taxes or to a term of imprisonment of not less than six months or to both.

(4) Without limiting the sanction applied in accordance with subsection (3), a supplier or contractor that is unlawfully exempted from the payment of customs duties and customs taxes, or domestic taxes or that is unlawfully relieved of the obligation to charge value added tax on a taxable supply, shall pay to the State in full the unpaid customs duties, value added tax, other domestic taxes and the applicable interest and penalties.

(5) A private supplier or contractor that pays to Government or a State entity unpaid customs duties and customs taxes, unpaid value added tax and unpaid domestic taxes shall not have a right to recover the amount paid or any part of the amount paid from Government, the State entity or the individual that procured the supply.

Security Transactions, Administrative Fees and Transnational Levies

Security transactions

22. (1) A security agency shall, for the purpose of this Act, be considered a "State entity" and the provisions on exemptions in the procurement of goods, works or services apply.

(2) Despite subsection (1), the following items are exempt from customs duties and customs taxes and other fees and charges:

- (a) arms, ammunitions, uniforms, accoutrements and equipment including vehicles and musical instruments certified by the relevant sector Minister and approved by the Minister to be imported by the security agencies for the use of the security agencies or in cooperation with other States for
 - (i) defending the territorial integrity of the State; or
 - (ii) participating in international peace-keeping;
- (b) parts, components or sub-assemblies of an item specified in paragraph (a) to be imported for incorporation in or fitting into that item;
- (c) parts, components or sub-assemblies of an item, specified in paragraph (a) for the repair, refurbishment or maintenance of that item;
- (d) goods imported for training or testing of an item specified in paragraph (a);
- (e) articles, arms, ammunition, uniforms, accoutrements and equipment including vehicles donated for the use of the security agencies by
 - (i) a foreign Government, or
 - (ii) an international organisation or under a Technical Cooperation Agreement; and
- (f) goods, excluding vehicles, that are imported by an officer of the security agencies returning to the country to resume residence after participating in international peacekeeping or an exchange programme.

(3) Despite subclauses (1) and (2), a resident person that supplies goods, works and services to a security agency is not exempt from the payment of import taxes.

- (4) For purposes of this section, "goods" mean goods
- (a) acquired by an officer of the security agencies for personal use or household use,
 - (b) owned, possessed and used by an officer of the security agencies abroad for at least six months before the return of that officer to the country, and
 - (c) accompanying an officer of the security agencies at the time of return of that officer to the country

but does not include goods imported by that officer for sale or otherwise disposed of within twelve months from the date of importation.

Administrative fees and other charges

23. (1) An administrative fee or other charge charged by a service provider for the provision of a service shall be paid for by a person that uses the service.

(2) A person shall not use a service for which an administrative fee or other charge is chargeable and be exempted from the payment of the associated administrative fee and other charge.

Transnational levies

24. (1) A person shall not be exempted from a levy imposed as an obligation to a regional organisation in the nature of the African Union Levy or the Economic Community of West African States Levy unless the exemption is sanctioned by the relevant regional organisation.

(2) Subsection (1) does not apply to a diplomat or a diplomatic mission.

Miscellaneous Provisions

Monitoring and reporting of exemptions

25. (1) A person that is granted an exemption shall submit to the Commissioner-General a statement of exemptions utilised in a year of assessment

(a) at the end of each quarter; and

(b) when the person files a tax return for the year.

(2) The statement of exemptions utilised referred to in subsection (1) shall indicate

- (a) the total value of exemptions utilised;
- (b) the tax types of the exemptions utilised;
- (c) the legal basis for the exemptions utilised; and
- (d) the aggregate amount of the total exemptions value utilised to date and the remainder to be used up in future.

(3) The Commissioner-General shall submit to the Minister an annual report on

- (a) the categories of exemptions granted; and
- (b) the total amount of exemptions utilised by taxpayers.

(4) The Minister shall, as part of the presentation of the annual budget statement to Parliament, submit an annual report to Parliament on

- (a) all exemptions granted;
- (b) the revenue forgone;
- (c) explanations on how the exemptions granted are consistent with the economic management priorities of the Government; and
- (d) any other matter that affects the exemptions regime.

Review of tax expenditure

26. (1) The Minister shall establish a schedule to review tax expenditures at least once every five years.

(2) The schedule to review tax expenditures referred to in subsection (1) may group the expenditures into

- (a) the persons that will benefit from the tax expenditure;

- (b) the objective of the tax expenditure; or
- (c) the policy rationale for the tax expenditure.

(3) The review of each tax expenditure item includes

- (a) the date the tax expenditure was created and the statutory or legal citation;
- (b) the purpose, intent and goal of the tax expenditure and whether the tax expenditure is an effective means of accomplishing the purpose, intent and goal of the tax expenditure;
- (c) the fiscal impact of the tax expenditure including past fiscal impacts and expected future fiscal impacts;
- (d) the economic impact of the tax expenditure including revenue loss compared to economic gain and jobs created, retained or lost as a result of the tax expenditure;
- (e) the return on the investment made by the tax expenditure and the extent to which the tax expenditure is a cost effective use of resources; and
- (f) similar tax expenditures, if any, offered by other States and the impact of the tax expenditure on national and regional economic competitiveness.

(4) The schedule to review a tax expenditure referred to in subsection (1) may provide for a public hearing on the tax expenditure being reviewed.

Transfer of ownership of exempt item by holder of an exemption

27. (1) Where a holder of an exemption seeks to transfer ownership of an item exempted under this Act, the holder of the exempt item shall seek approval from the Ghana Revenue Authority.

(2) Where goods and vehicles at the time of clearance for home consumption have been relieved from the payment of duties and taxes and are subsequently, upon application to be used contrary to the condition for the relief, the tax liability at the time of the entry shall be depreciated as set out in the First Schedule.

Local Content

28. (1) Where an item to be used for a contract is produced in or can be found in Ghana, the contractor shall procure the item from the local market in the absence of which the Minister shall not grant an exemption in respect of the item.

(2) This section applies to skills and technical know-how with the necessary modifications.

Offences and penalties

29. (1) A person acting on behalf of the Government who

- (a) makes an unauthorised commitment for the grant of an exemption,
- (b) provides false information to influence a decision for the grant of an exemption,
- (c) in relation to the management or administration of an exemption, willfully makes or signs a false documentation, false return or false entry into records,
- (d) fails to report knowledge or information in respect of an exemption-related fraud committed by a person against the State to the appropriate authority or law enforcement authority, or
- (e) by wilful act or omission, fails to take action on an exemption-related fraud reported to that person

commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than two thousand five hundred penalty units or to a term of imprisonment of not less than six months and not more than five years or to both.

(2) A payer of tax, levy, fee or charge who provides false information to influence a decision relating to an exemption, commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than three hundred per cent

of the value of the exemption granted or to a term of imprisonment of not less than six months and not more than five years or to both.

(3) Except as otherwise provided in this Act, a person who fails to comply with a provision of this Act commits an offence and where a specific penalty is not provided, is liable on summary conviction to a fine of not less than one hundred penalty units and not more than three hundred per cent of the value of the exemption granted or to a term of imprisonment of not less than six months and not more than three years or to both.

Regulations

30. The Minister shall, within twelve months after the coming into force of this Act, by legislative instrument, make Regulations

- (a) to provide for a list of items to which a tax concession on customs duties and customs taxes apply and the exact concessional rate for each item;
- (b) to specify the particulars of carried interest where the State seeks to take up a reciprocal carried interest in a business that accesses general tax incentives; and
- (c) generally for the effective and efficient implementation of this Act.

Interpretation

31. In this Act, unless the context otherwise requires,

- “accoutrements” mean additional items of clothing or equipment to be used by security agencies;
- “charitable purposes” means the non-commercial transfer of items donated for the use of an identifiable group in need;
- “Commissioner-General” means the person appointed under section 13 of the Ghana Revenue Authority Act, 2009 (Act 791);
- “concessional facility” means a loan that has a grant element of thirty-five per cent and above;
- “customs duties and customs taxes” includes import duty, excise duty, import value added tax, import National Health Insurance Levy, import Ghana Education Trust Fund, Special Import Levy; COVID-19 Health Recovery Levy and other charges collectible on imported or exported goods;

“development partners” includes International Monetary Fund, World Bank, other bilateral partners or institutions, other multilateral institutions, and aid coordinating groups;

“fee or charge” includes rates or any monies charged or levied under any enactment;

“goods” means objects of every kind and description such as raw materials, products, equipment and objects in solid, liquid or gaseous form and electricity as well as services incidental to the supply of the goods if the value of those incidental services does not exceed the value of the goods, and may be in the nature of movable tangible property, thermal and electrical energy, heating, gas refrigeration, air conditioning and water, excluding money;

“grant” means transfers made in cash, goods or services for which no repayment is required;

“Harmonised Commodity Description and Coding System” means the Harmonised System referred to in the Customs Act, 2015 (Act 891);

“identifiable group” includes a community, a religious body, a health facility, a training centre, an educational institution, a registered association or a relevant government entity;

“import” means to bring or cause goods to be brought into the country;

“international agency” means a formal, continuous structure with a global mandate funded by contributions from national governments and established to pursue the objectives of common interest, economic relations or development cooperation;

“levy” includes any imposition payable under an enactment;

“manufacture” means to make, produce or cause to be made or produced, goods;

“Minister” means the Minister responsible for Finance;

“Ministry” means the Ministry responsible for Finance;

“persons with disability” means individuals with a physical, mental, or sensory impairment, including a visual, hearing, or speech functional disability which gives rise to physical, cultural or social barriers that substantially limits one or more of the major life activities of those individuals;

“private supplier or contractor” means an entity, person or institution that is not publicly-owned or employed under the Public Services in Ghana;

“privileged persons” means the President, diplomats, diplomatic missions, persons with disability or any other person or entity recognised under this Act;

“security agency” includes

- (a) the Ghana Armed Forces;
- (b) the Internal Intelligence Agency;
- (c) the External Intelligence Agency;
- (d) the Police Service;
- (e) the Prisons Service;
- (f) the Ghana National Fire Service;
- (g) the Immigration Service; and
- (h) the Customs Division of the Ghana Revenue Authority;

“services” means the furnishing of labour, time or effort not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance and may be in the nature of consulting and professional and technical services excluding employment agreements or collective bargaining agreements;

“State entity” includes a Ministry, Department or Agency, a local government authority, a state enterprise or public corporation;

“technical cooperation programme” means a technical support related to development, manufacturing, assembling, testing maintenance or technical service in the forms of instruction, training, transmission of knowledge or skills by a development partner or international organisation or agency;

“vehicle” means a conveyance for the transport by land of goods or persons; and

“works” include work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or surface and may be in the nature of site preparation, excavation, erection including erection of a mast for telecommunication business, assembly, installation of a plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract.

Consequential amendments

32. (1) The Ghana Investment Promotion Centre Act, 2013 (Act 865) is amended by the substitution for section 26 of section 16 of this Act.

(2) The Customs Act, 2015 (Act 891) is amended by the substitution for Part A and Part B of the Third Schedule to Act 891 of Part A and Part B of the Second Schedule to this Act.

Repeals, savings and transitional provisions

33. (1) A provision in

- (a) any legislation other than
 - (i) the Value Added Tax Act, 2013 (Act 870),
 - (ii) the Income Tax Act, 2015 (Act 896), and
 - (iii) the Excise Duty Act, 2014 (Act 878),
- (b) a treaty, agreement or Convention, or
- (c) a document

that provides for the grant of an exemption is repealed.

(2) Despite subsection (1),

- (a) an exemption-related agreement signed between the Government and a person on the basis of a provision repealed by this Act, or
- (b) an exemption-related resolution of Parliament passed on the basis of a provision repealed by this Act

shall continue to be valid for the term of the agreement or resolution.

(3) Within six months after the coming into force of this Act, a person that is the holder of an exemption shall apply to the Minister in order to continue to benefit from the exemption.

(4) Despite subsection (1), existing provisions in the Customs Act, 2015 (Act 891) and the Schedules to Act 891, not specifically repealed by this Act, shall continue to apply until the Customs Act, 2015 (Act 891) is revised.

FIRST SCHEDULE

(section 27 (2))

DEPRECIATION OF TAX LIABILITY

No.	Time	Rate
1	Not exceeding two years of usage from time of entry	10%
2	Above two years but not exceeding five years of usage from time of entry	20%
3	Above five years but not exceeding seven years of usage from time of entry	50%
4	Above seven years but not exceeding ten years of usage from time of entry	60%
5	Above ten years of usage from time of entry	70%”

SECOND SCHEDULE

(section 32 (2))

PART A. – EXEMPTIONS FOR GOVERNMENT, PRIVILEGED PERSONS, ORGANISATIONS AND INSTITUTIONS

The items in Part A are exempt from import duties and taxes.

Tariff No.	Description
3AF.8	<p>Volta Aluminium Company Limited:</p> <p>(a) Materials, machinery and equipment including accessories and parts imported by the Volta Aluminium Company Limited for construction of the smelter to be erected at Tema by the company and thereafter for the maintenance of the smelter.</p> <p>(b) Alumina and other materials, machinery and equipment, including accessories and spare parts imported by the company after construction of the smelter referred to in (a) above for the operation by the company.</p> <p>(c) Materials, machinery and equipment, including accessories and parts imported by the company for the use of any mines operated by the company.</p>
3AF.9	<p>Volta River Authority:</p> <p>Machinery and plant for power stations, transmission lines imported for the official use of the Volta River Authority.</p>
3AF.10	<p>Bui Power Authority:</p> <p>Machinery and plant for power stations, transmission lines imported for the official use of the Bui Power Authority.</p>

PART B. – GENERAL EXEMPTIONS

The items in Part B are exempt from import duties.

Tariff No.	Commodity Description
3BF.53	<p>Baggage and effects:</p> <p>(1) Baggage of passenger, the property of and accompanying a passenger but not including goods for sale, barter, exchange or as gift;</p> <p>Provided that if a passenger on arrival in Ghana reports in writing in the prescribed form to the proper officer that part of the baggage of the passenger, stating the nature thereof, has been sent in advance or left behind, duty shall not be charged thereon if it is imported into Ghana within two months of the arrival of the passenger (or within a further period as the Commissioner-General may allow) and is such that it will have been free of duty had it been brought with the passenger:</p> <p>The word "baggage", for the purpose of this item shall comprise the following goods in such quantities and of such kind as are, in the opinion of the Commissioner-General, appropriate to the passenger:</p> <ul style="list-style-type: none"> (a) Wearing apparel and personal effects; (b) Binoculars, sports requisites, toys, and articles for household use (such as perambulators, pictures, glassware, linen, cutlery, crockery and plates) which are shown to have been in personal or household use of the passenger for a reasonable period. (c) Photographic film and plates and sound recording media but not including such materials if imported for the purpose of commercial photography or sound recording; (d) Instruments and tools for the personal use of the passenger in the profession or trade of the passenger, but not including arms, ammunition, motor-vehicles, fabrics in the piece, provisions, stationery, potable and perfumed spirits, tobacco, wine, saddlery or any goods imported for the purposes of trade:

	<p>A passenger over the age of eighteen years shall be granted duty-free allowance on the following:</p> <p>(a) an amount of not more than two litres of potable spirits, perfumed spirits, mineral water, soft drink or wine; and</p> <p>(b) tobacco goods including cigars, cheroots, cigarettes, snuff or tobacco of not more than five kilogrammes in weight or one carton of twenty packets.</p> <p>(2) Personal effects, not being merchandise, of Ghanaians dying in places outside the limits of the Administration.</p>
3BF.55	<p>Foodstuffs:</p> <p>(a) West African raw foodstuffs and gari.</p> <p>(b) Fish, fresh, chilled or frozen, caught by Ghanaian owned vessels, trawlers or canoes; fish, salted, in brine, dried or smoked of West African or Ghanaian origin.</p>
3BF.56	<p>Infant foods: Foods specially prepared and put up for the feeding of infants.</p>
3BF.57*	Fishing gear admitted as such by the Commissioner-General upon recommendation by the Minister for Fisheries
3BF.59	<p>Machinery, plant, apparatus and spare part: Machinery, plant, apparatus and spare parts solely for Agricultural purposes, upon recommendation by the Minister for Agriculture.</p>
3BF.60	<p>Agro chemicals, drugs and feed ingredients:</p> <p>(a) Chemicals imported solely for agricultural purposes;</p> <p>(b) Veterinary drugs; and</p> <p>(c) Ingredients for the manufacture of poultry and fish feed certified as such by the Minister for Agriculture.</p>
3BF.61	<p>Jute Bags and seals: Jute bags imported by COCOBOD or any of its approved agents.</p>
3BF.63	<p>Packaging Materials: Packaging materials bearing the logo of the Company, solely for packing local produce for export</p>
3BF.64	<p>1. Machinery, plant, equipment and parts: Machinery, plant, equipment, replacement parts for equipment and kits for production trials imported by the automotive manufacturers or assemblers registered under the Ghana Automotive Development Programme, and</p> <p>(a) recommended by the Minister responsible for Trade; and</p> <p>(b) approved by the Minister.</p>