

BILL

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No.



2019

Sierra Leone

A BILL ENTITLED

THE FINANCE ACT, 2019

Short title.

Being an Act to provide for the imposition and alteration of taxes, to give effect to the financial proposals of the Government and to provide for other related matters for the financial year 2019

[

] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

commence-
ment.

1. Unless otherwise provided, this Act shall be deemed to come into operation on the 1st day of January, 2019

PART 1-PROVISIONS RELATING TO REVENUE

THE CUSTOMS TARIFF ACT, 1978

Amendment
of Section 2
of Act No 16
of 1968

2. The Customs Tariff Act 1978 is amended in section 2 by

(a) repealing and replacing the definition of "raw materials" with the following new definition -
"raw materials" mean

(a) basic materials which are needed for the manufacture of goods, but which are still in a raw, natural, unrefined or unmanufactured state; and

(b) in the case of a manufacturer means any material or goods which are required for its manufacturing process whether they have actually been previously manufactured or processed or are still in a raw or natural state and are concealed or labeled with the name of the local manufacturing company.

(b) repealing and replacing the definition of "packaging materials" with the following new definition -

"packaging materials" mean all products made of any material of any nature to be used for the containment, protection, handling, delivery and preservation of goods from the producer to the user or consumer, labeled with the name of the local manufacturing company and include-

(a) 'primary' or 'sales' packaging which is packaging that forms a sales unit for the user of final consumer such as a box containing soap powder;

(b) "secondary" or "grouped" packaging which is packaging that contains a number of sales unit such as a cardboard outer containing a number of boxes of soap powder'

(c) 'tertiary' or "transport " packaging which is packaging used for group secondary packaging to aid handling, transportation and prevent damage to the products such as the pallet and shrink wrap used to transport a number of cardboard outers containing boxes of soap powder;

(d) "wood packaging ; and

(e) Packaging made from other materials such as hessian, jute, cork, and ceramics

(c) inserting the following new section immediately after section 2-

Exclusion
of certain
containers

2 A. For the purposes of this Act containers referred to under the definition of packaging materials shall not include road, ship, rail or air containers

THE EXCISE ACT, 1982

Amendment of Section 3A of Act No 6 of 1982

3. Section 3A of the Excise Act 1982 is amended by repealing and replacing that section with the following new section-

Luxury vehicles

3A (1) An excise duty of 20% shall be imposed on luxury vehicles valued at least US \$50,000 or its equivalent in Leones

(2) For the purposes of this section luxury vehicles

(a) mean the vehicles set out in the First Schedule;

(b) shall not include any vehicle designed to be used or used for mining, construction, industrial or agricultural operations and special purpose vehicles.

Amendment of First Schedule to Act No 6 of 1982

4. The First Schedule to the Excise Act 1982 is amended by-

(a) deleting the corresponding rate under tariff item No 24.02 and inserting the following

Tariff item No	Description	Rate
24.02	Cigars, cheroots, cigarillos and cigarettes of tobacco or of tobacco substitutes	30% on cost, insurance and freight (CIF)

(b) deleting the corresponding rate under tariff item No 24.03 and inserting the following -

Tariff item No	Description	Rate
24.03	Other manufactured tobacco and manufactured tobacco substitutes, including water pipe tobacco, "homogenised" or "reconstituted " tobacco, tobacco extracts and essences	30% on cost, insurance and freight (CIF)

INCOME TAX ACT, 2000

5. Section 23 of the Income Tax Act 2000 is amended in sub-section (1) by inserting the following new paragraph immediately after paragraph (r)-

Amendment of Section 23 of Act No 8 2000

"(s) any leave allowance in excess of the gross monthly salary shall be subject to income tax at the existing highest marginal tax rate for individual income tax"

6. Section 32 of the Income Tax Act 2000 is amended in sub-section (2) by inserting the following new paragraph immediately after paragraph (s)-

Amendment of Section 32 of Act No 8 2000

"(t) expenses arising from the assignment of use or the right to use rights, such as copyrights and industrial property rights, in trade and banking services, technical, scientific and similar know-how, knowledge, and skills such as plans, designs, processes to the extent that

- (i) the recipient of the income from the assignment of rights is a related party, vis-à-vis the debtor;
- (ii) the payer or recipient (direct or indirect) is already subject to a special preferential tax regime in Sierra Leone."

Amendment
of Section
110 of Act
No 8 2000

7. Section 110 of the Income Tax Act 2000 is amended by repealing and replacing subsection (5) with the following new subsection -

"(5) Where the Commissioner is satisfied that the beneficiary owner of an account held by any bank or other financial intermediary has failed to pay tax without lawful reason, the Commissioner-General may by notice in writing order to suspend the operation of the account until the tax is paid ."

Amendment
of Section
117 of Act
No 8 2000

8. Section 117 of the Income Tax Act 2000 is amended in subsection (3) by -

- (a) renumbering the subsections immediately after subsection (5) as "sub-sections (6) and (7)" respectively;
- (b) inserting the following new subsections immediately after sub-section (7)

(8) "A taxpayer that engages the services of a sub-contractor exclusively shall ensure that evidence of full compliance of the tax obligations of his contractors are provided prior to the conclusion or termination of a contract with such contractors.

(9) "A taxpayer shall be held liable for all unpaid taxes including interest and penalties of his contractors that are exclusively engaged by them upon failure to ensure that evidence of payment and compliance of the tax obligations of such contractor are provided and ascertained upon conclusion or termination of the contract.

9. Section 120 of the Income Tax Act 2000 is amended in subsection (3) by -

Amendment
of Section
120 of Act
No 8 2000

- (a) substituting "60 days" with "30" days in paragraph (j)
- (b) inserting the following new paragraph immediately after paragraph (l)

"(m)the individual tenant referred to in paragraph (c) of this sub-section shall submit a copy of the rent or lease agreement to the Commissioner-General for the purpose of determining the rental income tax of the property"

(c) inserting the following new paragraph immediately after paragraph (m)

"(n) Whether or not there is a rent or lease agreement if the Commissioner-General is of the opinion that the rental value of the property is grossly understated, he may undertake an assessment of the rental value of such property by using best judgment, including comparing the rental value of similar properties within the same locality in the tax district where the property is situated to calculate the rent payable for such property"

10. Section 152A of the Income Tax Act 2000 is amended by repealing and replacing subsection (1) with the following new subsection-

Amendment
of Section
152A of Act
No 8 2000

"(1) Subject to section 149 a person who fails to pay income tax after payment is due under this Act shall be liable to a penalty where the failure is for a period of -

- (a) not more than thirty days to a sum equal to 10 % of the tax payable in addition to the unpaid tax;
- (b) more than thirty days and up to 90 days, to a sum equal to 15 % of the tax payable ;
- (c) more than 90 days, to a sum equal to 25% of the tax payable."

Amendment
of Schedule
to Act No 8
2000

11. The First Schedule to the Income Tax Act 2000 is amended by repealing and replacing Part I with the following formula

if chargeable income is	The tax is
Less or equal to 6,000,000	Nil
>Le6,000,000 but not >Le12,000,000	15%
>Le12,000,000 but not >Le18,000,000	20%
>Le18,000,000 but not >Le24,000,000	25%
Over Le 24,000,000	30%

NATIONAL REVENUE AUTHORITY ACT, 2002

Amendment
of Section 12
of Act No 11
of 2002

12. Section 12 of the National Revenue Authority Act, 2002 is amended in subsection (3A) by inserting the following new paragraphs immediately after paragraph (d)-

- "(e) collect all non-tax revenue debts owing to the Government of Sierra Leone, including license payments that are due on a yearly basis, as they become due;
- (f) seal the premises of a non-tax revenue debtor; and

- (g) order a third-party including banks holding money for a non-tax revenue debtor to pay to the National Revenue Authority all of the debt of the non-tax revenue debtor or any amount that is sufficient to discharge the non-tax revenue debt".

13. Section 24 of the National Revenue Authority Act, 2002 is amended -

Amendment
of Section 24
of Act No 11
of 2002

- (a) in subsection (1) by repealing and replacing paragraph (a) with the following new paragraph -

(a) "two percent of actual revenue collected by the Authority shall be allocated for recurrent expenditure and one percent of the actual revenue collected shall be allocated for capital expenditure;

- (b) by repealing and replacing subsection (2) with the following new subsection-

"(2) The funds specified in paragraph (a) of subsection (1) shall be payable to a designated account of the Authority at the Bank of Sierra Leone through electronic funds transfer and

- (a) the actual revenue collected shall be deposited into the Consolidated Revenue Fund;
- (b) the Bank of Sierra Leone shall every first working day of the week debit the Consolidated Revenue Fund and

credit the Authority's designated account with the amount due for the previous week's actual cash collection recorded by the Bank of Sierra Leone; and

(c) the balance of non-cash collection shall be reconciled and paid on or before the 15th of the following month for the previous month's collection."

FINANCE ACT 2006

Amendment
of Section
26A of Act
No 9 of
2006

14. Section 4 of the Finance Act, 2006 is amended by repealing and replacing that section with the following new section-

"Liabilities of import duty, GST and other taxes and levies 4 (1) No tax and import duty exemptions shall be granted on any import of a contract awarded by a Government Ministry, Department or Agency.

(2) Any new contract entered into by a Ministry, Department or Agency shall be inclusive of the basic cost of the contract and all applicable tax payments due shall be paid by the contractor

(3) For the purposes of subsections (1) and (2) fiscal incentives in any contract, contrary to prohibited tax and duty exemptions, awarded by a Government Ministry, Department or Agency shall be declared null and void.

(4) A Ministry, Department or Agency shall be liable to pay through budgetary provisions import duty, Goods and Services Tax (GST) and other taxes and levies on their imports and contracts that are subject to these payments. "

THE TELECOMMUNICATIONS ACT, 2006

15. Section 26A of the Finance Act, 2006 is amended by inserting the following new subsections immediately after subsection (5)- Amendment
of Section 4
of Act No 7
of 2006

"(6) Telecommunications operators shall submit to the National Revenue Authority a telecommunications royalty return as prescribed by the Commissioner-General of the National Revenue Authority".

"(7) The telecommunications royalty return referred to in subsection (6) and accompanying payment shall be due on or before 20 days after the end of the tax and accounting year of the telecommunications operator".

THE GOOD AND SERVICES TAX ACT, 2009

16. Section 37 of the Goods and Services Tax Act 2009 is amended by inserting the following new subsection immediately after sub-section (4) Amendment
of section 37
of Act No 7
of 2009

"(5) A taxable person shall be describe as a non-filer of Goods and Services Tax (GST) return if a return is not filed after the end of the month following the taxable period for which a penalty of Le 5,000,000 shall be imposed for each return not filed on the due date".

17. The Second Schedule to the Goods and Services Tax Act 2009 is amended by repealing and replacing paragraph (16) with the following new paragraph - Amendment
of schedule to
Act No 7 of
2009

EXEMPT SUPPLIES

16:"Supply: local agricultural produce for manufacturing
Description: supply of following local agricultural produce to local industries for exclusively local manufacturing"

- (a) rubber, palm oil, coffee, cashew and similar cash and crops;
- (b) tubers such as cassava, potato and yam
- (c) fruits of all kinds such as pineapples, bananas and plantains
- (d) others, such as sorghum, cotton, beans, groundnuts, sesame seeds and vegetables".

THE ROAD MAINTENANCE FUND ADMINISTRATION ACT
2010

Amendment of section 3 of Act No 3 of 2010

18. Section 3 of the Road Maintenance Fund Administration Act 2010 is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (g)

"(h) the Financial Secretary or his representative."

CUSTOMS ACT, 2011

Amendment of section 11 of Act No 9 of 2011

19. Section 11 of the Customs Act, 2011 is amended by repealing and replacing that section with the following new section -

Goods declaration and custom release

11 (1) No goods shall be released from customs control until -

- (a) the importer, exporter or agent acting on behalf of an importer or exporter has lodged a customs goods declaration pertaining to the goods by giving, sending or transmitting electronically such declaration to a customs officer in the form and manner prescribed and all duties and taxes payable thereon, if any have been paid;
- (b) the importer or exporter has made prior arrangements to post security in accordance with section 27 and lodge a goods declaration and pay all duties and taxes if any on the goods, subsequent release from customs control in the form and manner prescribed ;and

(c) if the importation or exportation of the goods is subject to restriction, until the conditions pertaining to the restriction have been satisfied.

(2) The goods declaration provided for in subsection (1) shall be sent given or transmitted electronically to the designated customs office in the English language and in the form and manner prescribed by a statutory instrument

(3) A goods declaration may be lodged orally to an officer by passengers and travellers arriving in or departing Sierra Leone.

(4) Imported or exported goods may be released from customs control

(a) prior to their arrival in or departure from Sierra Leone ;

(b) upon their arrival in or departure from Sierra Leone .

(5) The goods declaration shall be the legal undertaking by the importer or exporter which shall indicate the customs procedure to be applied to the goods and shall furnish the particulars regarding the goods required by an officer for the application of the procedure and the importer or exporter shall provide customs with all the mandatory customs clearing documents relating to the goods

(6) A goods declaration shall be lodged under this section when goods are for -

- (a) use in Sierra Leone ;if so eligible;
- (b) re-importation n;
- (c) exportation;

- (d) transit or transshipment;
- (e) warehousing or duty free shops;
- (f) inward processing; or
- (g) temporary admission in Sierra Leone with the declared intention by the importer of subsequent re-exportation.

(7) The person lodging a goods declaration under this section shall, when lodging it, answer all questions relating to the goods as may be put to him by an officer.

(8) Mandatory customs clearing documents referred to in subsection (5) mean -

- (a) commercial invoice;
- (b) packing list;
- (c) classification and valuation certificate ;
- (d) bill of lading ;
- (e) delivery order;
- (f) bank payment receipt;
- (g) permit clearance approval (where applicable
- (h) fumigation and health certificate (where applicable;)
- (i) any other document prescribed by the Commissioner-General to be a mandatory customs clearing document.

(9) Mandatory customs clearing documents shall be submitted or transmitted electronically

(10) Total or partial exclusion as the case may be from payment of import duties and taxes shall be granted in respect of goods damaged, destroyed or irrecoverably lost by accident or force majeure during the accomplishment of the customs formalities prior to the judgment of the goods declaration under this section, if the facts are duly established to the satisfaction of an officer.

(11) At the request of the importer, remnants of goods referred to under subsection (10) may be -

- (a) declared for use in Sierra Leone as if they had been imported in that state;
- (b) re-exported;
- (c) rendered commercially valueless under customs control without expense to customs; or
- (d) abandoned free of all expenses or obligations to Customs

(12) The exportation of goods shall not be delayed on the grounds that the goods declaration is incomplete or minor irregularities are found in mandatory customs clearing documents if customs control or any export prohibition or restrictions in force are not compromised.

(13) The Commissioner-General may prescribe the classes of goods which and the persons who are exempted from the requirements under this section to lodge a goods declaration for the importation or exportation of goods.

(14) While not responsible for the accuracy of a goods declaration under this Act, postal authorities in Sierra Leone shall verify that declarations on postal items are, where appropriate present and as far as possible take steps to ensure that they are correctly and fully completed but where a goods declaration for exportation is obviously incomplete, postal authorities shall draw the attention of senders to the relevant customs obligations and may refuse to accept the postal items in question.

(15) When a postal consignment consists of a number of items, particularly in the case of commercial consignments, postal authorities shall advise the sender of the practical need to attach separate documents to each item.

(16) The exportation of goods in postal items shall be allowed regardless of whether they are in free circulation in Sierra Leone or are under a customs procedure such as warehousing or temporary admission but when they are under a customs procedure all the formalities prescribed for that procedure shall be complied with.

(17) The Commissioner-General may prescribe regulations concerning the postal items which shall be produced to an officer at exportation for the purposes of customs control and in the prescribed circumstances, the goods declaration under subsection (1) shall be lodged at a custom office in the prescribed form and contain the prescribed information in accordance with regulations under this Act.

(18) The Commissioner-General may maintain a register of importers and issue a numeric or alpha-numeric code to any importer for the purpose of identifying such importer where a written goods declaration is required under this section .

(19) In such circumstances as may be prescribed, mail may be released prior to lodgment of the goods declaration required under subsection (1) and prior to the payment of duties and taxes thereon.

(20) Where mail is released under subsection (19) the importer or consignee of the mail shall within fourteen days lodge a goods declaration for the mail in the manner described in section 12”

20. Section 26 of the Customs Act 2011 is amended by repealing and replacing that section with the following new section -

Amendment
of section 26
of Act No 9
of 2011

payment
and recovery
of duty and
other levies

26 (1) An importer may aggregate import duties and taxes owed on more than one consignment and may lodge a goods declaration on a periodic basis for all consignments in that period provided that sufficient amount is prepaid for the period in question or security is posted as prescribed by statutory instrument under section 27;

(2) An importer may prepay import duties and taxes owed on any import consignment prior to arrival of the goods in Sierra Leone in order to expedite the subsequent release of the goods from customs control

(3) Customs clearing agents may aggregate import duties and taxes owed under more than one person's account and instead of paying duties and taxes at the time of lodgment of a goods declaration may account for and pay those duties on or before closing time for the receipt for funds at the designated customs office or into the centralized customs account on the day the goods were so declared as prescribed in the regulation .

(4) All payments of duties , taxes and other levies exceeding Le500,000 by importers, exporters, customs clearing agents and other persons shall be made-

- (a) electronically;
- (b) by bank cheque
- (c) debit card or credit card at a designated Commercial Bank in Freetown or elsewhere in Sierra Leone; or
- (d) at any Customs office prescribed by the Commissioner-General

(5) The first installment of payment referred to under subsection (4) shall not be less than 40% of the aggregate duties, taxes and other payment owed.

(6) Upon written application by a tax-payer, the Commissioner-General may enter into a time-to-pay agreement specifying installment payment in respect of any duties, taxes and levies.

(7) The Commissioner-General may recover any duty, interest or penalty imposed under this Act by exercising the enforcement powers of the Commissioner under the Income Tax Act, 2000

(8) Any amount of duty interest or penalty payable under this Act shall when it becomes due or is payable, be a debt due to the State and shall be recoverable by the Commissioner-General in the following manner -

- (a) if any person fails to pay any duty, interest or penalty payable when it becomes due or payable and notice was duly given to such person the Commissioner-General may
 - (i) subject to any goods imported or reported for exportation on behalf of that person to a lien for the amount payable and detain those goods at the expense of that person until such amount is paid;
 - (ii) on giving thirty days notice by registered mail or by electronic transmission to that person, direct that any

goods imported or reported for exportation by or on behalf of that person which have been detained under paragraph (i) or have been otherwise abandoned, seized or confiscated pursuant to this Act or any other applicable Act, be sold by public auction or public tender subject to such regulations as may be prescribed; or

(iii) file with the Clerk or Registrar of the High Court a statement certified by him as correct and setting forth the amount due or payable by that person and such statement shall have all effects and any proceedings may be taken as if it were a civil judgment lawfully given in that court in favour of the Commissioner-General for a liquid debt of the amount specified the statement

(b) the Commissioner-General may by notice in writing addressed to the Registrar of the High Court withdraw the statement referred to in sub-paragraph (iii) of paragraph (a) of this section and such statement shall cease to have any effect

provided that the Commissioner-General may institute proceedings afresh under that paragraph in respect of any duty, interest or penalty referred to in the withdrawn statement;

- (c) where the Commissioner-General directs that the sale of any abandoned, seized, forfeited or confiscated goods by auction under this Act and the regulations -
- (i) the goods shall be sold by auction or by tender after such public notice as is prescribed or in the absence of such prescription after reasonable public notice;
 - (ii) the goods may be sold free or subject to duty and charges
 - (iii) the purchase certified cheque or by electronic transfer on the acceptance of a bid or tender ;
 - (iv) no bid or tender need be accepted ; and
 - (v) the goods may be re-offered until sold at a price satisfactory to the Commissioner-General
- (d) proceeds of any goods sold by the Commissioner-General by auction shall be applied -
- (i) firstly in the payment of the expenses of the sale ;
 - (ii) secondly, in payment of any duty and tax payable;

- (iii) thirdly in payment of any warehouse rent and charges; and
 - (iv) fourthly if written notice of the harbor dues, wharfage dues or freight has been given to the Commissioner-General in payment of any harbor dues, wharfage dues or freight due on the goods and the balance if any shall be paid into the Consolidated Fund.
- (e) the Commissioner-General may institute proceedings for the sequestration of the estate of any person and shall for the purposes of such proceedings be deemed to be the creditor in respect of any duty, interest or penalty payable by such person under this Act

(9) Notwithstanding anything contained in the National Revenue Authority Act, 2002 pertaining to the Courts Act, 1965 a statement for any amount whatsoever may be filed under paragraph (a) of subsection (8) with the Clerk of the Magistrate's Court having jurisdiction in respect of the person by whom such amount is payable in accordance with the Act;

(10) Where a person receives a repayment of duty by way of refund, remission or drawback to which that person is not entitled under this Act, the amount repaid shall immediately become a debt due to the State in accordance with subsection (3)