

# 2019 Finance Act - Key Changes

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The President of the Republic of Sierra Leone passed into law the 2019 Finance Act ('the Act, or FA 2019). The said Act was published as a supplement to the Sierra Leone Gazette on the 31<sup>st</sup> day of October, 2018. The Act is deemed to come into effect on the 1<sup>st</sup> day of January, 2019. The Act amends and/or repeals certain provisions of the Customs Tariff Act 1978, The Excise Act 1982, Income Tax Act (ITA)2000, The National Revenue Authority Act 2002, Finance Act 2006, The Goods and Services Act 2009, The Anti-Money Laundering and Combatting of Financing of Terrorism Act 2012, Finance Act 2016, The Fiscal Management and Control Act 2017, The National Commission for Privatization Act 2002, The Public Procurement Act 2016, The Public Finance Management Act 2016 and further legislated on general provisions.

Finance Act refers to headline fiscal(budgetary) legislations enacted by the Sierra Leone Parliament, containing multiple provisions on taxes, duties, exemptions and reliefs at least once yearly, and in particular setting out the principal tax rates for each fiscal year.

In Sierra Leone, the Minister of Finance delivers a Budget outlining changes in spending, as well as tax and duty. The changes to tax and duty are passed as law and each year form the respective Finance Act. It is also common for a Finance Act to be promulgated as a result of a change in government due to a general election, a pressing loophole or defect in the existing taxation law or a backtrack with regard to government spending or taxation.

The 2019 Finance Act grants certain duties, alters other duties and amends the law relating to taxation and make further general provisions in connection with Finance.

## Key Provisions

### AMENDMENT TO SECTION 1 OF THE CUSTOMS TARIFF ACT 1978

The Act amended the above mentioned Act by providing a new definition of the term 'raw materials' which means '(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) any material or goods required for manufacturing, whether or not they have actually been previously manufactured, processed or are still in a raw state or natural state and are concealed or labeled with the name of the local manufacturing company.'

The Act further provides a new definition for the term "Packaging materials" and further breaks down the term 'Packaging materials' into various components such as 'primary or sales packaging', 'secondary or grouped packaging', 'tertiary or transport packaging' and 'wood packaging'.

'Packaging materials' now means 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 consumer, labeled with the name of the local manufacturing company and include 'primary or sales packaging', 'secondary or grouped packaging', 'tertiary or transport packaging', 'wood packaging' and packaging made from other materials such as 'hessian, jute, cork and ceramics'

The Act defines (a) 'primary or sales packaging' as packaging that forms a sales unit for the user or final consumer. (b) 'secondary or grouped packaging' as packaging that contains a number of sales units. (c) 'tertiary and transport packaging' as packaging as secondary or group packaging that aids handling, transportation and prevent damage to the product.

It is worthy to note that 'containers' referred to in relation to packaging materials excludes road, ship, rail or air containers.

### AMENDMENT TO SECTION 3A OF THE EXCISE ACT 1982

The Act now imposes a 20% excise duty on luxury vehicles valued at least US \$50,000 or its equivalent in Leones. Luxury vehicles are defined as vehicles set out in the first schedule but exclude those designed to be used or used for mining, construction, industrial or agricultural operations and special purpose vehicles.

The first schedule to the Excise Act 1982 is amended by deleting the corresponding rate under tariff item No. 24.02 and No 24.03 respectively, 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)
24.03	Other manufactured tobacco and manufactured tobacco substitutes, including water pipe tobacco 'homogenized or reconstituted' tobacco, tobacco extracts and essences	30% on cost, insurance and freight (CIF)

### AMENDMENT OF THE INCOME TAX ACT 2000

#### Leave Allowance

The Act amended Section 23(1) of the Income Tax Act by inserting a new paragraph immediately after (r) which provides that 'any leave allowance in excess of the gross monthly salary shall be subject to income tax at the existing highest marginal tax rate (30% effective January 2019) for individual income tax'.

#### Non-Deductions

The Act amended section 32(2) of the ITA 2000 by including a new paragraph after paragraph (s) including as non-deductions '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, process to the extent that the recipient of the income from the assignment of rights is a related party Vis-à-vis the debtor or the payer or recipient is already subject to a special preferential tax regime in Sierra Leone.

#### Recovery of tax from person owing money to the tax authority

The Act amended section 110 of the ITA 2000 by repealing and replacing sub-section 5 with a new subsection which gives the Commissioner-General reserves the right to write and order the financial institution or intermediary to suspend the operation of the account of a taxpayer who is defaulting in payment of taxes until the tax is paid Prior to this provision, the Commissioner-General had to apply for an order from a court of competent jurisdiction to suspend the operation of the account of a defaulting taxpayer.



## AMENDMENT TO THE FINANCE ACT 2006

### Liabilities of Import Duty, GST and other Taxes and Levies.

Section 4 of the Finance Act 2006 is repealed in its entirety and replaced with a new section which provides the following: -

- No tax and import duty exemptions shall be granted on any import of a contract awarded by a Government Ministry, Department or Agency.
- Any 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.
- For purposes of subsections 1 & 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.
- 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.

### Annual Royalty Returns by Telecommunications operators

The Act amends section 26A of the Finance Act, 2006 by inserting some new subsections which provides that telecommunications operator shall submit to the National Revenue Authority a royalty returns as prescribed by the Commissioner-General, which would be accompanied by payment which is due on or before 20 days after the end of the tax and accounting year of the telecommunications operator.

### AMENDMENT TO THE GOODS AND SERVICES TAX ACT 2009

The Finance Act 2019 amended Section 34 of the GST Act 2009 by imposing a penalty of Le5, 000,000 for each return not filed on the due date.

#### Exempt Supplies

Paragraph 16 of the second schedule to the GST Act is repealed and replaced with a new paragraph which provides that the supply of local agricultural produce to local industries for exclusively local manufacturing are exempt from GST. Local produce are described as goods such as rubber, palm oil, coffee, cashew and similar cash crops; tubers such as cassava , potato, and yam ; fruits of all kinds and others such as sorghum, cotton, beans, groundnuts, sesame seeds and vegetables.



### AMENDMENT TO THE CUSTOMS ACT 2011

The Act repealed Section 11 of the Customs Act,2011 and replaced with a new Section. Key amongst the changes are the following:

- a) Goods shall not be released from Customs control until 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 must have made prior arrangement to post security as provided under section 27 of the same Act.
- c) Goods declaration may be lodged orally to an officer by passengers and travelers arriving in or departing Sierra Leone.
- d) Mandatory customs clearing documents shall be submitted or transmitted electronically and shall include commercial invoice, packaging list, classification and valuation certificate, bill of lading, delivery order, bank payment receipt, permit clearance approval (if applicable) fumigation and health certificate (where applicable) and any other document prescribed by the Commissioner-General

### Payments to Contractors

The Act amended section 117 of the ITA 2000 by inserting two new subsections immediately after sub-section (7) to read subsections 8 and 9 respectively. Key amongst the amendment, is holding a taxpayer liable for the unpaid taxes, interest and penalties of his contractors that are exclusively engaged by him 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.

### Payments of royalties

The Act amended subsection 3 of Section 120 of the ITA 2000 by providing that the Commissioner- General may take or authorize an officer to take other enforcement measures, including sealing of the premises for which rental income tax remain unpaid after the grace period of 60 days.

The Act inserted two new paragraphs after paragraph (l) which provides that 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 and in cases wherein the Commissioner- General is of the conviction that the rental property is grossly undervalued, he may use best judgement to ascertain the actual value. The same applies in cases where there is no rent or lease agreement or they were not provided.

### Penalty for failure to pay after due date

Subsection (1) of Section 152A of the ITA 2000 is repealed and replaced with a new sub-section which provides that 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 of;

- 10% of the tax payable in addition to the unpaid tax, where the period is not more than 30 days
- 15% of the tax payable in addition to the unpaid tax, where the defaulting period is more than 30 days and up to 90 days
- 25% where the period is more than 90 days.

### The First Schedule

The First schedule to the Income Tax Act 2000 is repealed and replaced with the following formula for PAYE taxes:

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 >Le 18,000,000	20%
>Le18,000,000 but not > Le 24,000,000	25%
Over Le 24,000,000	30%

### AMMENDMENT TO THE NATIONAL REVENUE ACT, 2002

#### Functions of Authority

The Act amends subsection 3A of the above Act by inserting three new paragraphs immediately after paragraph (d) which extends the mandate of the National Revenue Authority (NRA) to collect all non-tax revenue debts owing to the Government of Sierra Leone, including license payments that are due on a yearly basis, as and when they become due. It further gives the NRA powers to seal the premises of a non-tax revenue debtor and orders a third-party including banks holding monies for a non –tax revenue debtor to pay to the NRA all of the debt owed by the non-tax revenue debtor or such amount that is sufficient to discharge the non-tax revenue debt.

- e) Total or partial exemptions from duties may apply in cases where goods are damaged, destroyed or irrecoverably lost by accident or force majeure when processing customs formalities, if facts are established to the satisfaction of a custom officer.
- f) 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.
- g) 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.
- h) 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 and security posted as provided by section 27.
- i) 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.
- j) All payments of duties, taxes and other levies exceeding Le500,000 by importers, exporters, customs clearing agents and other persons shall be made electronically, bank cheque, debit or credit card and at any Customs office prescribed by the Commissioner-General.
- k) 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.
- l) Importers of petroleum products shall pay a minimum of 50% duty and taxes assessed upon submission of goods declaration to the Customs Department at the point of entry prior for warehousing.

Any amount of duty interest or penalty payable under this Act will be deemed as a debt due to the state and the Commissioner –General has enforcement powers as that of the Income Tax Commissioner to recover any such duty, interest or penalty. The Commissioner- General may detain, seize and sell goods imported or reported for exportation belonging to a defaulter by public tender or auction subject to regulations that may be prescribed.

In addition, the Commissioner- General may institute proceedings for sequestration of the estate of any person who defaults in paying taxes, duties, interest and penalties and for purposes of the proceedings be deemed as the creditor.

The Commissioner- General shall have powers to file a statement certified by him in the High Court Registry and such statement shall have effect and taken as a civil judgement lawfully given in that court in favor of the Commissioner for a liquid debt of the stipulated amount. The Commissioner-General may by notice in writing addressed to the Registrar of the High Court withdraw such statement filed aforesaid and such statement will cease to have effect.

Regardless of the monetary jurisdiction of the Magistrate court, the commission –General can file a statement for any amount whatsoever with the clerk of the Magistrate Court having jurisdiction in respect of the person by whom such amount is payable.



## **AMENDMENT OF THE ANTI-MONEY LAUNDERING AND COMBATING OF FINANCING OF TERRORISM ACT 2012**

### **Offences Relating to Laundering and Financing of Terrorism**

The Act amends subsection 6 of Section 15 of the above Act by repealing and replacing paragraph (b) with a new paragraph which increased the fine of a corporate body convicted of a money laundering offense from Le 30,000,000 to Le 87,000,000 or \$10,000 or an order to revoke the license of the corporate body or organization.

### **AMENDMENT OF THE FINANCE ACT 2016 – Management and Technical Fees**

Section 37 of the Finance Act 2016 is repealed and replaced with a new section which increases withholding tax rate on Management and Technical fees from 15% to 20% of the value of such services.

It further explains that management and technical services mean providing a taxpayer with professional, managerial, scientific or engineering advisory and other support services.

### **AMENDMENT TO THE NATIONAL COMMISSION FOR PRIVATISATION ACT 2002**

This Act is amended by repealing and replacing subsection 1 of Section 13 with a new paragraph (b) which states that Ministries and Governmental departments who are currently members of a Board of a public enterprise shall cease their membership with exception to the Ministry of Finance which shall be represented on the Boards of Sierra Leone Commercial Bank, Rokel Commercial Bank by the Financial Secretary or his representative.

### **THE AMENDMENT TO THE PUBLIC FINANCIAL MANAGEMENT ACT 2016**

The Act amends the Public Procurement Act 2016 by inserting a new section which establishes a Procurement Directorate within the Ministry which shall be responsible for ‘managing procurement personnel in the public sector, coordinating the preparation of Ministries, Departments and Agency’s annual procurement plans for review and approval by the Minister and Minister responsible for local government, preparing and reporting on quarterly procurement activities of Ministries, Departments, Agencies and Local Councils.

### **GENERAL PROVISIONS**

The Act makes provisions on general laws that cut across board. Below are the key provisions that stand out;

#### **Limitation on salary advances**

It provides that Eligible Government employees who received salary advances shall not receive such advances in excess of 30% of their annual basic salary or in excess of their accrued end of service benefits at the time of application for such salary advance.

#### **Imposition of Taxes on Board Members of MDAs**

Monthly remuneration and sitting fees for all Board Chairmen and members of Ministries, Department and Agencies, state-owned enterprises, state-owned banks, extra-budgetary agencies, treasury single account agencies, sub –vented agencies and Commissions, in excess of Le500, 000 per month is subjected to tax as provided under the ITA 2000.

#### **End of Service Benefits for Public Servants**

Public servants and other employees of government are entitled to end of service benefits on disengagement from Government services and the amount of such benefit shall be one month’s gross salary for every year served computed on the basis of the last paid salary.



## Establishment of a National Monitoring and Evaluation Agency

The Act establishes a National Monitoring and Evaluation Agency within the Ministry responsible for planning which shall be responsible for creating an effective national institutional framework to monitor and evaluate government and donor funded public sector projects as well as the National Development Plan, to lead monitoring and evaluation of all development programs and projects including government and donor parliament, to conduct special studies on various aspects of the public sector projects and establish and maintain a database on all completed and on-going projects.

## Clearing and Forwarding

All Government Ministries and Government owned organizations shall use the Sierra Leone National Shipping Company for all clearing and forwarding services.

## Limitation on Extraordinary Waiver of GST

No Goods and Services Tax (GST) waiver or exemption shall be granted unless provided for under the 2009 Act.

## Withholding Tax Exemptions:

### Agricultural Investment Loan

Withholding tax would be exempted on any interest payable by any loan granted by a bank for agricultural investments purposes, provided that the rate of interest on the loan is not more than the base lending rate at the time the loan was obtained.

### Working Capital Loan to Manufacturing Sector

Withholding tax would be exempted on any interest by any loan granted as working capital by a bank to any legally registered company engaged in the manufacturing sector provided the beneficiary company of the loan is using at least 40% of locally produced materials for its manufacturing and the rate of interest in the loan is not more than the base lending rate.

### Export Activities Loan

Withholding tax shall be exempted from interest accruing from loans granted by banks to aid export activities as follows:

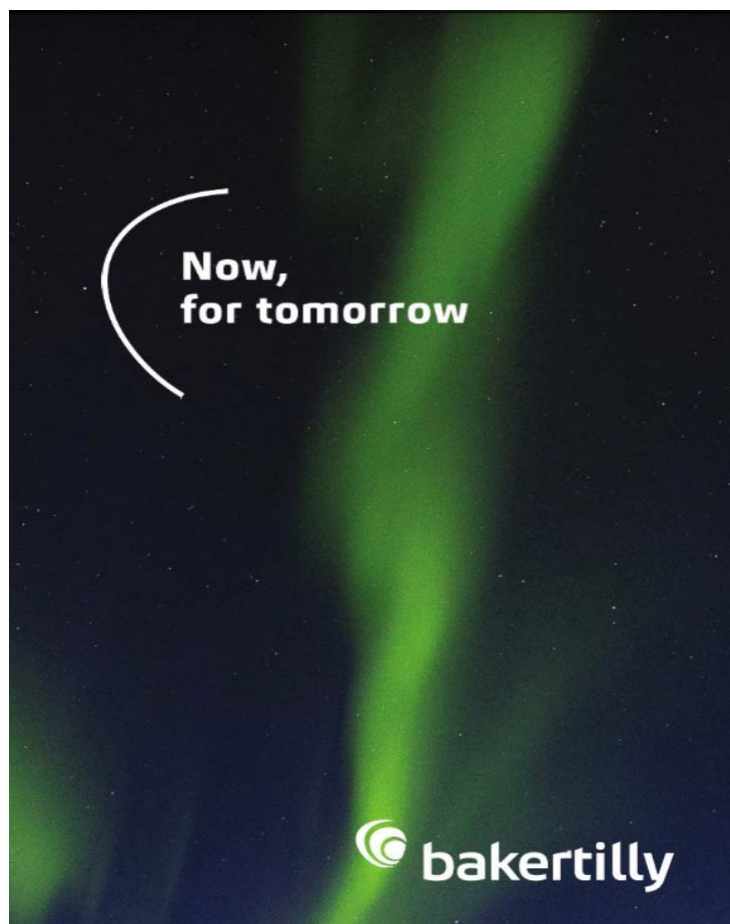
Loan period	% of Tax exemption allowed
Less than two years	Nil
2-5 years	50
5-7 years	60
Above 7 years	100

## Excise Stamps

An excise stamp shall be affixed on all excisable goods for which from time to time the Minister responsible for finance may specify by statutory instrument.

## Fees, rates and charges for MDA's

Fees, rates and charges for outlined services relating to the ministry responsible for works and public assets, Standard Bureau, ministry responsible for labor and social security, Office of the Registrar and Administrator-General and National Civil Registration Authority shall be set out in the 2<sup>nd</sup> schedule.



All government owned organizations shall use the Government Printing Department for all printing publication and associated services.

## CONCLUSION

Regular update in tax legislation usually seeks to clarify points of ambiguity and sometimes raise new ones. This Act seems to increase the powers of the Commissioner- General of NRA. There are new regulations on additional penalties just for tax payers to stay compliant. That notwithstanding, the NRA would need to closely monitor, implement and enforce these amendments. As a result of the Act, there are renewed enforcement powers given to the Commissioner- General of NRA and taxpayers need to be mindful of that fact. We therefore, advise that tax payers ensure returns are filed on time and remittance made in order to abide with all added regulations. We can assist companies to assess the impact of this and other Acts on their operations in Sierra Leone and can also assist companies in ensuring that they are and remain fully compliant with the regulation.





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