

IN THE SECOND SESSION OF THE EIGHTH PARLIAMENT OF
THE FOURTH REPUBLIC OF GHANA



REPORT OF THE FINANCE COMMITTEE ON THE TAX EXEMPTIONS
BILL, 2022

1.0. INTRODUCTION

The Exemptions Bill, 2022 was presented to Parliament and read the first time by the Hon. Minister responsible for Works and Housing, Mr. Francis Asenso-Boakye on behalf of the Minister responsible for Finance, on Tuesday, 5th July, 2022 and referred to the Finance Committee for consideration and report in accordance with Article 174 (1) of the 1992 Constitution and Order 169 and 125 of the Standing Orders of the Parliament of Ghana.

Pursuant to the referral, the Committee met with the Hon. Deputy Minister for Finance, Mrs. Abena Osei Asare and Officials of the Ministry of Finance, Attorney General's Department and Ghana Revenue Authority (GRA) and deliberated on the referral. The Committee is grateful to the Hon. Deputy Minister and Officials for the assistance.

2.0. REFERENCE

The Committee referred to the following documents at its deliberations:

- a. The 1992 Constitution of Ghana.
- b. The Standing Orders of the Parliament of Ghana.
- c. Public Financial Management Act, 2016 (Act 921)
- d. The Income Tax Act, 2015 (Act 896)
- e. Value Added Tax Act, 2013 (Act 870)
- f. Free Zones Act, 1995 (Act 504)
- g. Ghana Investment Promotion Centre Act, 2013 (Act 865)
- h. Ghana Revenue Authority Act, 2009 (Act 791)
- i. Customs Act, 2015 (Act 891)
- j. The Excise Duty Act, 2014 (Act 878)

3.0. PROCEDURE

In examining the referral, the Committee advertised for and received memoranda from the Tax Justice Coalition. The Coalition also made oral presentation to the Committee on the need to specifically legislate against the waiver of National Health Insurance Levy and Ghana Education Trust Fund to ensure that sufficient resources are channeled to these critical sectors of the economy.

Other proposals of the coalition include; a requirement that tax exemption laws should be underpinned by clear, transparent, and credible legal, political and technical process to deter rent seeking behavior that grants tax breaks purely for private gains. The Coalition also seeks to encourage the house to strengthen the reporting requirement in the Bill and deal with the issue of beneficial ownership of firms granted tax breaks. In addition, the coalition proposed the exclusion of goods made in or available in Ghana from import related exemptions and improve monitoring for free zone institutions.

4.0. BACKGROUND

In an effort to attract foreign direct investment, alleviate the tax burden on the vulnerable in society, encouraging business start-ups, attracting investment into specified sectors or locations and supporting the overall development agenda of

Government, tax exemptions have been granted to a number of persons over the years.

The legal basis of these Tax Exemptions are embedded in statutory legislation, contractual agreements and exemptions approved by Parliament of Ghana. These include Income Tax exemptions, tax holidays, rebates, and concessions, import exemptions, Value Added Tax reliefs, and Excise Tax.

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 have been efforts by the government to curtail the growth. Total of four point fifty-six billion Ghana Cedis was granted as exemptions between 2012 to 2016 compared. This has increased significantly TO nine point forty-seven billion Ghana Cedis between 2017 and 2020. As a result of efforts put in place by government to reduce this figure, Exemptions granted by government has decreased significantly from three point eight billion Ghana Cedis in 2017 to one point seventy-one billion Ghana Cedis in 2020.

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 as a result of the absence of effective monitoring regime. 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.

The Bill therefore seeks to address these, amongst others challenges confronting the existing exemptions regime in Ghana and to curtail the inherent abuse of the exemptions granted.

5.0. PURPOSE OF THE BILL

The object of the Bill is to provide for an exemptions regime including variation or limitation of the scope; set clear eligibility criteria; provide for the administration of exemptions and provide for the monitoring, evaluation and enforcement of exemptions. The Bill also seeks to provide a regulatory regime for monitoring tax exemptions to ensure that exemptions granted are used for the intended purposes and to curtail the abuse of the existing exemptions regime.

6.0. DIVISION OF THE BILL

The Exemptions Bill, 2022 is divided into thirty-three (33) Clauses and a Schedule. Clauses 1 and 2 states the object and application of the Bill and resolves the conflict between the Bill and other exemptions-related legislations by providing that the Bill will prevail in case of any conflict or inconsistency with other exemptions-related legislation.

Clause 3 defines exemption for the purposes of the Bill whilst 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 responsible for Finance.

Clause 7 provides the procedure for granting exemptions to Ministries, Departments and Agencies whilst Clauses 8 to 12 provide for exemptions to the President of the Republic and other privileged persons.

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 and Clauses 15 and 16 set the requirements for the negotiation of special tax incentives by strategic investors.

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 to 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. Clause 26 mandated the Minister to establish a schedule to review exemptions so that each exemption is reviewed at least once every five years,

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 a consequential amendment to the Ghana Investment Promotion Centre Act, 2013 (Act 865). Repeals, savings and transitional provisions are dealt with in clause 33.

7.0. OBSERVATIONS

7.1. Urgent Nature of the Bill

The Committee noted that the biggest threat to our domestic revenue mobilization strategy is exemptions. It is estimated that; Ghana loses about US\$2.27 billion annually to tax exemptions. It is estimated that, if Ghana should continue at this rate, in less than 16 years, Ghana will give more than half of our revenue base away by way of exemptions. There is therefore the urgent need to pass this Bill and halt this alarming trend.

In view of the fact that the Committee had earlier met the sponsors of an earlier version of the Bill and made inputs, which inputs had been incorporated in this new and re-laid Bill, and also, in view of the above stated revenue mobilisation imperatives, the Committee has determined that the Bill is of an urgent nature. The Committee therefore recommend to the House to pass the Tax Exemptions Bill, 2022 under a certificate of urgency in accordance with Article 106 (13) of the Constitution and Order 119 of the Standing Orders of Parliament.

7.2. Monitoring Mechanism for Exemptions

The Committee noted that, there proposed Bill seeks to establish a monitoring regime to regulate the granting and management of exemption in Ghana. The Committee noted that monitoring plays a crucial role in ensuring that exemptions and concessions granted are utilised by beneficiaries for the intended purposes to curtail

abuse. The Deputy Minister for Finance informed the Committee that the Bill provides for a robust reporting requirements and mechanisms to ensure the efficient and effective use of exemptions. The Bill also seeks to strengthen the monitoring role of the Ministry of Finance and Parliament on the management of exemption.

The Committee was informed 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 United Nations 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.

Overall, the Committee was informed that the projected exemptions for the 2022 financial year are expected to be lowered by about five hundred million Ghana Cedis when the Bill is passed by Parliament.

8.0. PROPOSED AMENDMENTS BY THE COMMITTEE

The Committee having carefully examined the Bill proposes the following amendments for the consideration of the House:

1. Clause 4 - **Amendment Proposed** – Subclause 3, line 1, after "not" insert the following: "waive or vary a domestic indirect tax, or"
2. Clause 4 – **Amendment Proposed** - Add the following new sub-clause (5): "A person shall not waive or vary a tax, levy, fee or charge imposed by a Local Government Authority unless the waiver or variation is authorised under a bye-law of the Local Government Authority".
3. New Clauses - **Amendment Proposed** - Add the following new clauses after Clause 16 as follows:

Personal Effects, Food Stuffs and Equipment for Trials

Baggage and Effects

16A. (1) Baggage of a passenger, accompanying the passenger travelling into the country, but not including goods for sale, barter exchange or as gift is exempted from customs duties and customs taxes.

(2) A personal effect, not being merchandise, of a Ghanaian dying in a place outside Ghana's jurisdiction is exempted from customs duties and customs taxes.

(3) The Minister shall, by Regulations, provide for the permissible quantities and kinds of imports to which this section applies.

Food Stuffs

16B. The following imported items of West African origin shall be exempt from the payment of customs duties and taxes:

- (a) raw food stuff;
- (b) fresh fish, chilled or frozen caught by Ghanaian owned vessels, trawlers or canoes; and
- (c) dried or smoked salted fish.

Equipment and Parts for Production Trial

16C. Equipment, replacement parts and kits for production trials imported by manufacturers or assemblers of plants and machinery, including automobiles,

- (a) registered by the Ministry responsible for trade and industry;
- (b) recommended by the Minister responsible for trade and industry; and
- (c) approved by the Minister

shall be exempted from customs duties and customs taxes.

4. Clause 31, Definition of "customs duties and customs taxes" - **Amendment Proposed** - line 3, delete "Fund," and insert "Fund Levy and" and after "Special Import Levy" delete all remaining words in line 3 and 4.

5. Clause 31 - **Amendment Proposed** - Add the following new definition:
"Local Government Authority" means District Assembly or a sub district structure established under section 3 of the Local Governance Act, 2016 (Act 936)
6. Clause 32 – **Amendment Proposed** – Delete subclause (2).
7. Clause 33 – **Amendment Proposed** – Add a new subclause (5) as follows:
Despite subsection (4), Part A and Part B of the Third Schedule of the Customs Act, 2015 (Act 891) are repealed ninety days from the day this Act comes into force.
8. SECOND SCHEDULE – **Amendment Proposed** – Delete the entire schedule.

9.0. CONCLUSION

The Committee upon a thorough examination of the Bill recommends to the House to adopt its report and pass the **Tax Exemptions Bill, 2022** into law in accordance with Article 106 of the Constitution and Orders 126 and 127 of the Standing Orders of the House.

Respectfully submitted.



HON. KWAKU AGYEMAN KWARTENG
(CHAIRMAN, FINANCE COMMITTEE)



JOANA A. S. ADJEI (MRS.)
(CLERK, FINACE COMMITTEE)

7TH JULY, 2022