2018 Finance Act - Key Changes

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The President of the Republic of Sierra Leone recently signed into law, the 2018 Finance Act ('the Act' or FA 2018). The Act was published in the government gazette on 1st March, 2018. The Act repeals/amends certain provisions of the Customs Tariff Act 1978, Development of Tourism Act, 1990, Income Tax Act (ITA), 2000, Goods and Services Tax Act (GST), 2009, Customs Act 2011 and the Finance Act 2011.

The Ministry of Finance through regular Finance Acts, amend the existing fiscal regime in order to align the laws with the prevailing business environment and strategic objectives in the annual budget.

The institution responsible for the implementation of all these changes and collection of the taxes is the National Revenue Authority, hereinafter referred to as ('NRA').

For taxpayers to be aware of these changes and their implication on businesses, and individuals, we have highlighted the key provisions of the amendments/repeals to relevant provisions of the relevant Acts.

Key Provisions

AMENDMENT TO SECTION 1 OF THE CUSTOMS TARIFF ACT 1978

The Act amended the above mentioned Act by inserting new definitions for the term "packaging materials". Further subdivisions of the term were also inserted, which are "Primary or sales packaging", "secondary or grouped packaging", "tertiary or transport packaging", "wood packaging" and "bottle and crate packaging". Each differentiating one from the other.
The Act further amended the definition of raw materials, to mean "*materials in their natural state for which no material value addition is required and excludes materials such as liquid alien and associated products*".

AMENDMENT TO THE DEVELOPMENT OF TOURISM ACT, 1990

Development aids and incentives given in the above Act, which include Income tax relief for investors constructing hotels; incentives for enterprises utilizing foreign investments; exemption from duty for investors in the hotel and tourism industry; relief from payroll tax for investors in approved development projects were repealed by the Act. This implies that these incentives will no longer be available for the benefit of investors in this sector.

Amendment of the Income Tax Act 2000

Tax on revenue generating activities of exempt persons or organisations

The Act amended Section 9 of the ITA 2000 by including a new Section immediately afterwards; whereas Section 9 identifies persons and organisations that are exempt, withholding taxes, corporate or business income taxes and goods and services tax shall be applicable on all activities that generate income by any and all of these organizations that are mentioned in Section 9.

Deemed Dividend

An additional subsection, (c) was added to Section 85 of the ITA 2000, as a result, retained earnings, that are in excess of 50% post tax profit in a current year of assessment for all cooperate entities including parastatals shall be taxed at rate of 30% and treated as dividend paid by companies to a shareholder. Ordinarily, dividend payments attract 10% withholding tax but the new Act treats deemed dividend as company chargeable income.

Anti-Avoidance

To further add to the scrutiny from tax authorities on transactions between related parties and pave the way for transfer pricing regulations, the Act requires associated persons to include information or details of parent and holding companies, subsidiary companies, associates or joint ventures irrespective of their residential status for tax purposes.
Towards the re-characterization of income and deductions, the Act included two subsections to Section 96; this further empowers the Commissioner-General to approve permissible tax avoidance schemes or disallow tax planning schemes if they are not approved beforehand by him.

Information Return

Regarding Section 99 of the Income Tax Act, The Finance Act 2018 amend details required in the information return to be submitted by persons that make payment of Sierra Leone source interest, dividends, rent or any other income that is from a source in Sierra Leone, irrespective of the residency of the taxpayer. The same applies for persons who award or intend to award contracts for the supply of goods or the provision of services. The Act requires the relevant information to be filed within 30 days of awarding contracts or making payments.

Prepayment of Income Tax on Imported Goods

Every taxpayer who imports goods into Sierra Leone for resale shall now pay to the Commissioner an amount equal to the higher of 5% of the CIF value of the goods imported or 5% of the value of the goods imported. This now replaces the 3% advance payment of imported goods into Sierra Leone.

Tax on Rental Income

The Act amended subsection 3 of Section 120 by repealing and replacing it with a new subsection.
Key amongst the amendment of this section is the change of the non-taxable threshold for rental income from Le. 3,600,000 to Le. 6,000,000; the tax deductible allowance was also reduced from 20% to 10% of the gross rental income in excess over the Le. 6,000,000 non-taxable threshold.

Benefits in Kind

As a result of the Act, the taxable value of all benefits in kind shall be the market value of all such benefits accruing to the employee during the course of his employment; no longer shall the lower of the values as prescribed in the Income Tax Act be applicable.

AMENDMENT TO THE GOODS AND SERVICES TAX ACT 2009

Taxable activity of Government agencies

The Finance Act 2018 amended the GST Act 2009 by extending the parameters of what should be deemed taxable by government entities or a local councils; "*mining lease agreements or rights to exploration activity including on-shore and off-shore drilling activities, right to secure a supply of goods or services; rights to secure building permission, all governments documents for which fees are paid for*" are now included as GST chargeable activities. Additionally, taxable activity now include instances where these entities carry on activities commonly conducted by other persons for profit and are GST chargeable.

Exempt Supplies

a. Printed matter, which among a host of other similar items includes books and newspapers that are fully printed or produced by any duplicating process, calendars and stationery are no longer regarded as exempt supplies for the purpose of GST.
b. The reference to "civil engineering" and "public works" in paragraph 12 have been struck off the Act.
c. The preservation, burial and cremation of human corpses and coffins is no longer deemed an activity that is tax exempt for GST.
d. The supply of baby foods given to children between ages 1-5 years; exercise books used in primary and secondary schools and raw fish that are caught in Sierra Leone territorial waters are exempt from GST.

AMENDMENT TO THE CUSTOMS ACT 2011

In addition to the introduction of a few new definitions, The Act amends the above named Act by presenting a subsection that imposes a USD$20,000 penalty or its equivalent in Leones on any company that fails to keep proper books of accounts or records or fails to produce records upon request by the authorities. The fine for individual importers that are not companies that flout this provision shall be USD$10,000 or its equivalent in Leones.

AMENDMENT TO THE FINANCE ACT 2011

In a bid to plug revenue leakages in the economy, the Act repealed some sections in the Finance Act 2011 that granted relief in certain areas, these include:

Duty Free Importation for persons importing plant, machinery or equipment for business purposes, excluding resale, for a period of five years chosen by that person; the 100% allowable deduction for income tax purposes on training costs on approved courses for local staff; investing a minimum of US$500,000.00; and employing a minimum of fifty persons, the three year import duty exemption to businesses importing liquefied petroleum gas (LPG) and LPG cookers and the ten year corporate tax relief given to pharmaceutical companies.

GENERAL PROVISIONS

The rate for the following tariff code and the product shall be as follows:

HS CODE	PRODUCT	RATE
15111010	Crude Oil for Manufacture of soap	20%
15119090	Crude oil for manufacture of other products	20%
15152900	Other fixed vegetable fats	20%
15171000	Margarine, excluding liquid margarine	30%

The Act empowered the National Revenue Authority to perform the following:

- Install a prescribed device or software in a taxable premises and facility in order to obtain information on all business transactions undertaking including supplies made for goods and services.
- In consultation with the minister responsible for finance may approve any taxable person's premises, facility or installation for installation of the prescribed devise or software.
- To penalize Owners of taxable premises, facility or installations that refuse access to their premises, facility or installation for the prescribed devise to be installed.

The ECOWAS Common External Tariff (CET) shall come into force on the date ECOWAS accepts Sierra Leone's 3% ECOWAS preferential rates.

Conclusion

To enhance domestic revenue mobilization for financing development programmes, the President of the Republic of Sierra Leone on 9th of April 2018 suspended with immediate effect, duty and tax waivers ratified by Parliament for certain organisations, the suspension covers duty exemptions, permits and tax exemptions.

In the absence of any ratified Agreement/ Memorandum of Understanding giving duty or tax exemption or waiver, taxpayers are expected to comply with ***all*** tax obligations as per the respective Tax Acts and adhere to their filing and payment requirements, however the exemptions in the respective tax Acts are still applicable.

Given the repeal of a few incentives in the Finance Act 2018, it seems that one key aim of the Act is to reduce revenue leakages, thus aim to improve the economy of the country through local revenue generation. The intention of the Government to mobilize advance revenue generation under prepayment of income tax for the importation of goods, an increase in rate of tax from 3 to 5% can be clearly seen.

The first section of the Act states that it shall commence on the 1st day of January 2018, however, the Act was only made available late April 2018, as a result, its retrospective effect is questionable and in doubt since the first quarter of the year has already past.

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