



**CUSTOMS AND EXCISE
(AMENDMENT) (NO. 2)
ACT 2012**

(NO. 8 OF 2012)



CUSTOMS AND EXCISE (AMENDMENT) (NO. 2) ACT 2012
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PASSED by the National Parliament this twenty seventh day of November 2012.

(This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)

Taeasi Sanga (Mrs)
Clerk to National Parliament

ASSENTED to in Her Majesty's name and on Her Majesty's behalf this eighteenth day of December 2012.

Sir Allan Kēmakeza
Acting Governor-General

Date of Commencement: see section 1

AN ACT TO AMEND THE CUSTOMS AND EXCISE ACT (CAP. 121) AND MAKE CONSEQUENTIAL AMENDMENTS TO RELATED TAX ACTS.

ENACTED by the National Parliament of Solomon Islands.

ARRANGEMENT OF SECTIONS**PART 1 – AMENDMENT TO THE CUSTOMS
AND EXCISE ACT**

1. Short title and commencement
2. Section 2 amended
3. Section 8 repealed and new sections substituted

PART 2 – CONSEQUENTIAL AMENDMENTS**Division 1 – Amendment to the Goods Tax Act**

4. Goods Tax Act amended

Division 2 – Amendment to the Income Tax Act

5. Section 2 of the Income Tax Act amended
6. Section 9 amended
7. Part III of the Income Tax Act amended
8. Addition of new sections 13A and 13B
9. Section 14 of the Income Tax Act amended
10. Section 16 of the Income Tax Act amended
11. Section 109 of the Income Tax Act amended
12. First and Second Schedules of the Income Tax Act amended

Division 3 – Amendment to the Sales Tax Act

13. Section 6A added

Division 4 – Amendment to the Stamp Duties Act

14. Section 3A added

**CUSTOMS AND EXCISE (AMENDMENT) (NO. 2)
ACT 2012**

**PART 1 – AMENDMENT TO THE CUSTOMS AND
EXCISE ACT**

1. This Act may be cited as the Customs and Excise (Amendment) (No. 2) Act 2012, and commences on a date appointed by the Minister, by notice in the *Gazette*.

Short title and commencement

2. Section 2 of the Customs and Excise Act (Cap. 121) is amended by adding the following definitions in their alphabetical sequence –

Section 2 amended

“exemption application” means an application for exemption made under section 8C;

“Exemption Committee” means the Revenue and Customs Exemption Committee established by section 8A;

“Secretary” means the Secretary of the Exemption Committee designated under section 8A(3);”.

3. The Customs and Excise Act (Cap. 121) is amended by repealing section 8 and substituting the following sections –

Section 8 repealed and new sections substituted

“Power to grant exemption

8. (1) The Minister may, on the recommendation of the Exemption Committee, grant duty exemption, in whole or in part, or refuse to grant duty exemption, on imported or exported goods.

(2) Any duty exemption granted under this section may be granted with or without conditions.

(3) Subject to subsections (4) to (7), the Minister shall act on the recommendation of the Exemption Committee.

(4) If the Minister does not agree with the recommendation of the Exemption Committee, the Minister shall refer the disagreement and reasons for it to the Exemption Committee to review the recommendation taking into account the disagreement and its reasons.

- (5) The Minister shall only raise any disagreement on any matter set out in section 8C(4).
- (6) The Exemption Committee shall consider the disagreement of the Minister and re-submit its report and recommendation to the Minister.
- (7) If the Minister does not make a decision on the recommendation submitted under subsections (1) or (6) within 10 working days, the recommendation of the Committee shall be deemed to be the decision of the Minister.
- (8) The Secretary shall inform the applicant accordingly on whether or not the exemption application has been granted by the Minister.
- (9) The decision of the Minister to grant or refuse to grant the duty exemption (including a decision deemed under subsection (7)) is final and conclusive, without any right of appeal.
- (10) The Minister shall, at the end of every period of 3 months, publish in the *Gazette* all duty exemptions, including the names of the grantees, granted under this section during that period.

Exemption
Committee
and the
Secretary

- 8A. (1) This section establishes the Revenue and Customs Exemption Committee consisting of the following senior public officers appointed by the Minister for a period of up to 2 years –
- (a) two officers of the Customs Division;
 - (b) two officers of the Inland Revenue Division;
 - (c) one officer to represent the Ministry responsible for National Planning;
 - (d) one officer to represent the Ministry responsible for Commerce.
- (2) The Exemption Committee shall perform other functions set out in any other written law.

(3) The Minister may designate a senior public officer appointed pursuant to subsection (1) from within the Customs or the Inland Revenue Departments to be the Secretary of the Exemption Committee.

(4) The functions of the Secretary are –

- (a) to provide administrative support to the Exemption Committee in relation to its functions under this Act and any other written law; and
- (b) to carry out other functions of the Secretary conferred under this Act or any other written law.

(5) The Exemption Committee may invite any person, including a public officer, to provide expert or technical advice to it, but the person has no right to vote on a matter before the Committee.

Meeting
procedures

8B. (1) The members representing the Customs Department or the Inland Revenue Department shall, by resolution, alternate the chairing of the Committee, and if the chair is absent at a meeting another member from the Customs Department or the Inland Revenue Department shall preside at that meeting.

(2) At a meeting of the Committee –

- (a) the quorum is 5 members, of which shall include two members from the Customs Division and two members from the Inland Revenue Division; and
- (b) the decision is by majority of the members present.

(3) If the votes are equal, the voting shall be deferred to allow further information to be provided or further deliberation of the Committee before another vote is taken.

(4) If a matter cannot be resolved because of subsection (3) or a member has raised reservations or objections, the matter, reservations or objections and the reasons must be stated in the report to the Minister.

Application for exemption

8C. (1) A person may apply to the Committee for a duty exemption under section 8 in accordance with the prescribed procedures.

(2) The Secretary shall –

- (a) if satisfied that sufficient information or particulars have been provided in support of the application, process the application within 5 working days of receiving the application or of receiving further information or particulars received under paragraph (b); or
- (b) if satisfied that further information or particulars are required, by written notice inform the applicant to provide such information or particulars within 5 working days of receiving the notice.

(3) The Exemption Committee shall consider any exemption application and prepare a report and its recommendations, including proposed conditions for the exemption, to the Minister on whether or not the exemption should be granted.

(4) In considering an application for exemption, the Exemption Committee shall take into account the following –

- (a) the requirements of this Act and the effect of the exemption on the national economy;
- (b) any guidelines prescribed by regulations.

(5) The Exemption Committee may require the applicant to provide any other information that the Committee may require before making its report and recommendations.

(6) The Exemption Committee may require a person to appear before it to make representation on the application or a person to provide any other information or particulars relevant to the application.

(7) An applicant whose exemption application has been refused because of lack of information or particulars may make a new application if further information or particulars, which were not available in the original application, are available.”.

PART 2 – CONSEQUENTIAL AMENDMENTS

Division 1 – Amendment to the Goods Tax Act

4. The Goods Tax Act (Cap. 122) is amended –

Goods Tax Act
amended

- (a) in section 2 by inserting the following definition in its proper alphabetical sequence –

“Exemption Committee” means the Revenue and Customs Exemption Committee established under section 8A of the Customs and Excise Act (Cap. 121);

- (b) in section 5, by adding after subsection (7) the following new subsection –

“(8) This section applies to a member of the Exemption Committee and any person invited by the Exemption Committee unless the person is an officer for the purpose of this Act.”; and

- (c) in section 37, by adding after subsection (2) the following subsections –

“(3) Before making an order under subsection (2) of this section, the Minister shall refer the proposed order for any exemption to the Exemption Committee to prepare and submit a report and its

recommendations to the Minister on the proposed order.

(4) The Exemption Committee shall take into account the following matters –

- (a) the requirements of this Act and the effect of the proposed order on the national economy;
- (b) any guidelines prescribed by regulation under this Act or the Income Tax Act (Cap. 123).

(5) Sections 8(3) to (10), 8A, 8B and 8C of the Customs and Excise Act (Cap. 121) apply to this section, with necessary modifications.”.

Division 2 – Amendment to the Income Tax Act

Section 2 of the
Income Tax Act
amended

5. The Income Tax Act (Cap.123) is amended in section 2 by inserting the following definitions in their proper alphabetical sequence –

““Exemption Committee” means the Revenue and Customs Exemption Committee established under section 8A of the Customs and Excise Act (Cap. 121);

“Secretary” means the Secretary of the Exemption Committee designated under section 8A(3) of the Customs and Excise Act (Cap. 121);”.

Section 9
amended

6. Section 9 of the Income Tax Act is amended –

- (a) in subsection (1), by adding “and the recommendation of the Exemption Committee” after “provisions of this section”;
- (b) in subsection (4), by deleting “Commissioner” and substituting “Secretary” wherever it appears in that subsection;

- (c) in subsection (5), by inserting “, on the recommendation of the Exemption Committee, after “Minister”.

7. Part III of the Income Tax Act is amended –

Part III of the
Income Tax Act
amended

- (a) in section 10, by deleting “In this Part” and substituting “In this Part and the relevant Schedules applicable to this Part”;
- (m) in section 11(1), by deleting “Commissioner” and substituting “Exemption Committee”;
- (n) in section 11(2), by deleting “Commissioner may” and substituting “Minister may, on the recommendation of the Exemption Committee.”;
- (o) in section 11(4), by deleting “Commissioner may” and substituting “Minister may, on the recommendation of the Exemption Committee.”;
- (p) in section 12(2), by deleting “Commissioner” and substituting “Exemption Committee”;
- (q) in section 12(3), by deleting “Commissioner shall” and substituting “Minister may, on the recommendation of the Exemption Committee.”;
- (r) in section 12(4), by deleting “Commissioner may” and substituting “Minister may, on the recommendation of the Exemption Committee”;
- (s) in section 13(1), by deleting “Commissioner may” and substituting “Minister may, on the recommendation of the Exemption Committee.”;
- (t) in section 13 by repealing subsection (2) and substituting the following subsections –

“(2) Before the Minister withdraws an exemption under subsection (1), the Minister shall refer the reasons for a proposed withdrawal of the exemption to the Exemption Committee.

- (2A) The Exemption Committee shall, upon receiving the reasons from the Minister, in writing inform the investor of the reasons for the proposed withdrawal of the exemption and ask the investor to give written reasons to the Exemption Committee why the exemption should not be withdrawn.”;
- (u) in section 13(3) –
- (i) by deleting “Commissioner’s” and substituting “Exemption Committee’s”;
- (ii) by deleting “Commissioner” and substituting “Exemption Committee”.
- (v) in section 13 by repealing subsection (4) and substituting the following subsection –
- “(4) On receiving the investor’s reasons (if any), the Exemption Committee shall consider the reasons and make recommendation to the Minister on the following –
- (a) whether or not the exemption should be withdrawn;
- (b) whether or not to allow the investor an opportunity to correct the contravention within a specified period and, if the investor does not correct the contravention to the Minister's satisfaction within that period, withdraw the exemption on the expiry of that period.”;
- (w) in section 13(5) –
- (i) by deleting “Commissioner” and substituting “Secretary”;
- (ii) by deleting “his” appearing twice in that provision and respectively substituting “the”;

8. The Income Tax Act is amended by adding after section 13 the following sections –

Addition of
new sections
13A and 13B

“Certain
provisions of
Customs and
Excise Act to
apply

13A Sections 8(3) to (10), 8A, 8B and 8C of the Customs and Excise Act (Cap. 121) apply to this Part, with necessary modifications.

Matters to be taken
into account by
Exemption
Committee

13B When considering any exemption under this Part, the Exemption Committee shall take into account the following matters –

- (a) the requirements of this Act and the effect of the proposed exemption on the national economy;
- (b) any guidelines prescribed by regulation.”.

9. The Income Tax Act is amended in section 14(1) by deleting “Sixth Schedule” and substituting “Sixth and Seventh Schedules”.

Section 14 of
the Income
Tax Act
amended

10. The Income Tax Act is amended in section 16 by adding after subsection (3) the following subsections –

Section 16 of
the Income Tax
Act amended

“(4) Before the Minister makes an order under subsection (2) or (3), the Minister shall first refer the proposed order to the Exemption Committee to make recommendations to the Minister on the proposed order.

(5) When considering any exemption under this Part, the Exemption Committee shall take into account the following matters –

- (a) the requirements of this Act and the effect of the proposed order on the national economy;
- (b) any guidelines prescribed by regulation.”.

(6) Sections 8(3) to (10), 8A, 8B, and 8C of the Customs and Excise Act (Cap. 121) apply to this section, with necessary modifications.”.

11. The Income Tax Act is amended in section 109 by adding after subsection (5) the following subsections –

Section 109
of the Income
Tax Act
amended

“(6) A member of the Exemption Committee, including any person invited by the Exemption Committee, shall subscribe to the oath specified under subsection (2) unless the member is a person to whom subsection (2) applies.

(7) Nothing in this section prevents the Commissioner from communicating to a member of the Exemption Committee, including any person invited by the Exemption Committee, any matter under section (1) relating to an exemption application.”.

First and Second
Schedules of the
Income Tax Act
amended

12. The Income Tax Act is amended –

- (a) in the First Schedule –
- (i) in paragraphs 1 to 4 of Part I, by deleting “Enterprises whose” and substituting “Investment activities of which the”;
 - (ii) in paragraph 5 of Part I, by deleting “Enterprises” and substituting “Investment activities”;
 - (iii) in Part III, by deleting “enterprises” and substituting “investment activities”
- (b) in the Second Schedule, by deleting “Commissioner” and substituting “Minister” wherever it appears in that Schedule except as it appears in paragraphs 2(1)(b) and 6(1) of that Schedule.

Division 3 – Amendment to the Sales Tax Act

Section 6A
added

13. The Sales Tax Act (Cap. 125) is amended by adding after section 6 the following new section –

“Recommend-
ation of the
Exemption
Committee

6A. (1) Before the Minister exercises any power under section 6, the Minister shall first refer the matter to the Exemption Committee established under section 8A of the Customs and Excise Act (Cap. 121) to make recommendations to the Minister.

(2) The Exemption Committee shall take into account the following matters –

- (a) the requirements of this Act and the effect of the exemption on the national economy;
 - (b) any guidelines prescribed by regulation under this Act or the Income Tax Act (Cap. 123).
- (3) Sections 8(3) to (10), 8A, 8B and 8C of the Customs and Excise Act (Cap. 121) apply to this Act, with necessary modifications.
- (4) Nothing prevents the Commissioner from communicating to a member of the Committee, including any person invited by the Committee, any matter relevant to an exemption application to which section 109(1) of the Income Tax Act (Cap. 123) applies.”.

Division 4 – Amendment to the Stamp Duties Act

14. The Stamp Duties Act (Cap. 126) is amended by adding after section 3 the following new section –

Section 3A
added

“Recommendation of the Exemption Committee

- 3A. (1) Before the Minister exercises any power under section 3(3), the Minister shall first refer the matter to the Exemption Committee established under section 8A of the Customs and Excise Act (Cap. 121) to make recommendations to the Minister.
- (2) The Exemption Committee shall take into account the following matters –
- (a) the requirements of this Act and the effect of the exemption on the national economy;
 - (b) any guidelines prescribed by regulation under this Act or the Income Tax Act (Cap. 123).
- (3) Sections 8(3) to (10), 8A, 8B and 8C of the Customs and Excise Act (Cap. 121) apply to this Act, with necessary modifications.”.
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