

Import duty waiver implementation constraints

August 2022





The opinions expressed in this document are those of the authors and do not necessarily represent the views of the UK Foreign, Commonwealth & Development Office. The use of this template is reserved exclusively for reports commissioned by Invest Salone.





Contents

Executive summary	1
1 Introduction	3
1.1 Background.....	3
1.2 Tasks	5
1.3 Approach	5
2 Regulatory framework of import duty waivers for the private sector	6
2.1 Agriculture and fishing.....	6
2.2 Manufacturing	7
2.3 Tourism.....	7
3 Administration of import duty waivers	8
4 Case studies	15
5 Conclusions and recommendations	18
Annex 1: Inventory of key import duty and GST exemptions.....	22



Executive summary

The laws in Sierra Leone make provision for the granting of import duty waivers to private businesses. This is one of the government's strategies to address various issues in the economy ranging from attracting private capital to job creation, boosting local entrepreneurship and productivity, or enhancing the business and regulatory environment. However, the implementation of the administrative processes for approval of duty waivers remains a challenge. There have been efforts by government authorities to expedite the application process and reduce the clearing time with the activation of the E-exempt module in the ASYCUDA World single window clearing system. Nevertheless, the process is still cumbersome and imposes significant costs to private businesses in the form of demurrage fees to the port operator and shippers for delayed containers.

The demurrage charges include Saturdays, Sundays and public holidays and are charged per container, its type and per day. For instance, one of the shippers, Maersk, charges US\$10 for a 20-ft container for the first five days in demurrage and US\$20 thereafter. For a 40-ft container the charge is US\$20 and US\$40 respectively for similar periods. The port operator Freetown Terminal charges US\$14.79 daily for a 20-ft equivalent unit for the first 10 days containers are in demurrage and US\$29.58 thereafter.

This study assessed the waiver constraints by first reviewing the regulations that grant duty waiver exemptions to businesses. It also carried out an assessment of the administrative processes along the clearing chain to pin-point specific areas where bottlenecks exist. Also, case studies were conducted to catalogue the experiences of businesses and where possible estimate costs imposed as a result of an ineffective system.

Flowing from these, the review of the administrative processing of duty waiver applications indicates the following key constraints in the system:

1. Limited window within which to upload the manifest into the ASYCUDA for declaration and application processing to commence
2. Seemingly poor understanding of review requirements at ministries, departments and agencies (MDA) level leading to significant proportions of application rejections at the Ministry of Finance
3. Delays by ministers at MDA level to authorise applications – single profiles in ASYCUDA system and non-delegating by ministers
4. Poor internet connectivity in MDAs impacting ASYCUDA operation
5. Mixing of duty waiver and dutiable goods in the same consignment
6. Unprofessional behaviour by clearing agents – “client mixing” and inefficient SMS alert system
7. Low awareness among businesses of existence of E-exemption platform
8. Continued physical interactions between government officials and consignees that create rent-seeking opportunities.

In order to relax these constraints, the following actions are recommended:

1. Review requirement to include the manifest as one of the mandatory documents for the initiation of applications – this could be verified at the end and a penalty imposed if found to be wilfully wrong
2. Create additional profiles in the ASYCUDA for MDAs and allow for delegation. Audit trail would serve as a safeguard
3. Train and capacitate personnel in the ministries to be able to speedily review applications for duty waiver before forwarding them to the Ministry of Finance
4. Set up a Public–Private Sector Working Group on import duty waivers to regularly discuss and address evolving impediments
5. Develop a charter on the import duty waiver processes and educate and engage clearing agents and brokers. Also create a platform for telephone numbers of consignees to be added in the E-exempt module.

Enforce provisions of the Customs Clearing and Forwarding Agency Regulation with respect to suspension and withdrawal of licences of clearing agents engaged in acts of impropriety.

1 Introduction

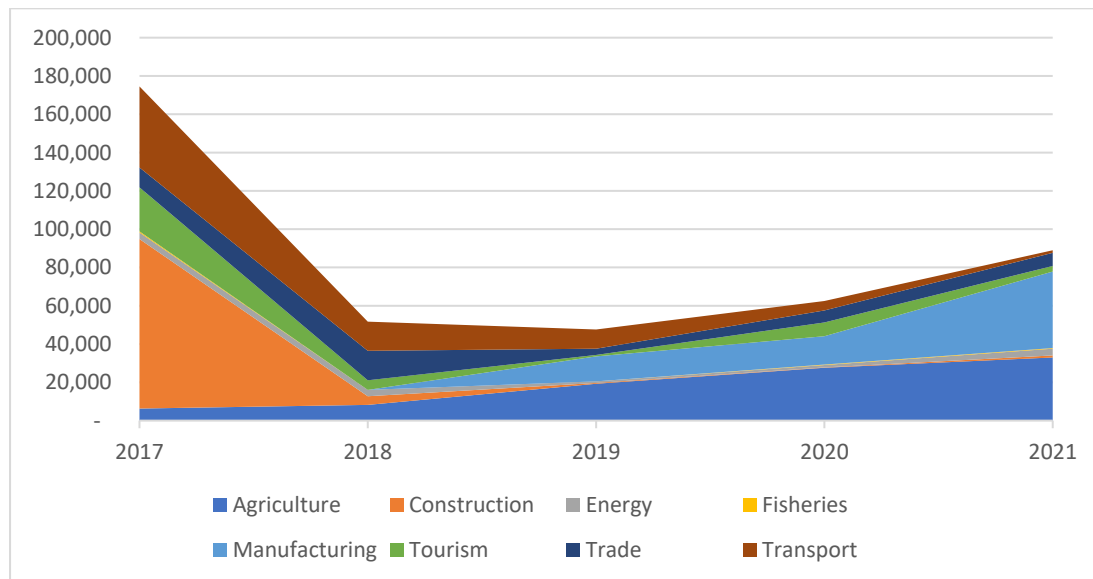
1.1 Background

The Government of Sierra Leone, like other low income country governments, needs sustainable sources of financing in order to promote public investments and social spending, which in turn would lead to long-term shared economic growth that will reduce poverty. Programmes geared towards improving public services in health, education and infrastructural development require the government to raise revenues, mainly from taxation, of which import duties and associated taxes are a significant proportion in Sierra Leone. Taxation not only pays for these public investments; it also acts as an important component in the social contract between citizens and the government.

The Government of Sierra Leone, like other countries, provides import duty exemptions to adhere to international obligations under various bilateral and multilateral treaties. Such exemptions also serve to promote national policy objectives from time to time, chief among them to drive investment in key productive sectors, increasing exports and jobs, creating added value as well as increasing production. The belief that this in principle should attract domestic as well as foreign direct investment (FDI) is often cited as the key reason for the award of duty waivers. The idea is that as tax burden reduces, investors are able to accrue a higher net rate of return, which can free up additional capital for re-investment. However, it should be noted that there is no evidence in Sierra Leone that FDI has directly increased as a result of waivers granted to potential investors, nor has it been empirically demonstrated that economic activities expanded as a result of duty exemptions.

The government, nonetheless, has been offering import duty and import goods and services tax (GST) waivers to private businesses and other organisations. In 2017, for instance, a total of Le176 billion was given as waivers, of which Le6.3 billion was for agricultural imports, representing 4% of waivers granted that year. By 2020 import waivers to this sector had increased to Le27 billion or 38% of total waiver given, and further increased to about Le33 billion in 2021, which was approximately 33% of waivers granted. Other sectors such as manufacturing, tourism, fisheries, trade and transport have all benefited from import duty and import GST waivers from the government. Waivers to manufacturing companies have increased in recent years from about Le13 billion in 2019 to Le39.9 billion in 2021, and represented 40% of all waivers in 2021. These two sectors, agriculture and manufacturing, are the biggest recipients of waivers and accounted for a combined 59% and 73% of all waivers in 2020 and 2021, respectively. However, in a bid to minimise abuse of waivers and increase tax revenue, total import and GST waivers have been declining and reduced from about Le176 billion in 2017 to Le88 billion in 2021. Figure 1 shows the changes in waivers over the past five years.

Figure 1: Import duty and GST waivers, 2017 to 2021



SOURCE: NATIONAL REVENUE AUTHORITY (NRA)

Private businesses are entitled to import duty waivers that are enshrined in several pieces of legislation including the Income Tax Act of 2000, the GST Act of 2009 and multiple Finance Acts enacted since 2010 and up to 2022. In the agricultural sector, for instance, waivers cover imports of animal feeds, vaccines and veterinary drugs for poultry and livestock. Business entities engaged in agricultural production are also entitled to duty-free import of agricultural inputs such as fertilisers, pesticides, insecticides, seeds and seedlings, hybrid tree seeds and day-old chicks. There are also GST exemptions for these contained in the GST Act 2009. Additionally, the Ministry of Agriculture and Forestry has separate agreements with a number of large agricultural companies that obligate the government to provide import duty relief for these companies.

Despite their existence in the legislation, anecdotal evidence suggests that the administration of duty waivers has been very challenging; some private businesses find them highly complex, adding direct and indirect costs to these firms. These issues have been raised by affected businesses in policy dialogue forums. There are reports of long delays in the processing of applications, leading to imported consignments at the port attracting high demurrage charges, which imposes additional costs and time on businesses. This also has had a discouraging effect and businesses are opting to pay import duties directly rather than apply for waivers, which ultimately will take a longer time to process and comes with high financial burdens to the business. This study therefore seeks to identify the constraints in the waiver implementation processes and procedures and to suggest practical solutions that can be discussed with all the stakeholder institutions active in the duty waiver processing chain.

1.2 Tasks

The following key tasks were carried out in this study:

- Assessment of the constraints to obtaining duty waivers and case studies, to catalogue what has worked and what has not for businesses in the agricultural space.
- Design of practical and clear processes and procedures that can be presented to the Ministry of Agriculture and Forestry for discussions with other ministries, departments and agencies (MDAs) and private sector players in the duty waiver chain.

1.3 Approach

The approach adopted in carrying out the study objectives is shown in the figure below. There are three key steps carried out in the study and these are explained below:

Step 1: Review of import duty waiver legislation: The first step in the study involved undertaking a review of the legislative instruments granting import duty waivers and other tax concessions to businesses in the country. The purpose is to identify and confirm the laws with associated schedules, that make provisions for import duty waivers and exemptions for private businesses. The ensuing steps were based on the application and interpretations of these laws as they pertain to clearing goods at the port with exemptions.

Step 2: Review of administrative process: This step focussed on an evaluation of the administrative handling and approvals of import duty waiver applications. The objective is to go through all of the administrative nodes in the process from end to end, to identify areas that pose challenges and impose cost burdens on firms. This step involved conducting key informant interviews with senior personnel involved in the processing of duty waiver applications in the Ministry of Agriculture and Forestry, Ministry of Finance and National Revenue Authority, including the Research and Monitoring, and Custom departments.

The purpose of the interviews was to get a good understanding of the internal processes of the respective MDAs as they relate to the approval of duty waiver applications and the clearing of consignments at the port. The interviews investigated areas of the administrative processes that are working well and those that have bottlenecks, diving into the root cause of these constraints. Invest Salone made the necessary introductions to the respective MDAs.

Step 3: Case studies: Case studies were conducted wherein a number of agribusinesses were interviewed to document their experiences in the application for duty waivers along the chain. Issues investigated in these interviews included knowledge of the legal provisions granting waivers, pre-clearance preparations, experience of the application processes for duty waivers and direct experiences with the process. Additionally, the case studies examined costs and burdens imposed on firms during the import duty waiver application process.

2 Regulatory framework of import duty waivers for the private sector

There are many different types of tax waivers provided in the tax system to the private sector. For importation, there are four types of waivers that are directly granted: import custom duty; goods and services tax (GST); withholding income tax; and non-ECOWAS (Economic Community of West African States) community tax that is levied for goods from non-member states. The regulatory framework refers to finance acts and policies governing GST and import duty waivers granted to private businesses when clearing goods at the port. There are currently 21 of these exemptions across various sectors. Descriptions of the legal provisions for import duty and GST waivers for the agricultural and fishing, manufacturing and tourism sectors are given below.

2.1 Agriculture and fishing

The agriculture and fishing sector, which is the biggest contributor to gross domestic product (up to 60%) and employs the largest share of the labour force, has attracted different forms of import duty waivers and tax exemptions to attract investment in the sector. An inventory of the key legislation applicable to businesses in the agricultural sector is presented in Annex 1. Businesses in this sector are entitled to income tax relief, duty free and GST exemptions. The Income Tax Act 2000, and Finance Acts 2013 and 2015 make provisions for exemptions for income from rice and tree crop farming, poultry, livestock, fishery, ginger and tubers. There is an entitlement of 50% tax exemption on dividend paid if proper records are maintained. However, certain conditions must be met including that the agribusiness cultivates at least 500 hectares of agricultural land of which 100 hectares is irrigated.

For poultry companies to benefit from this they should have an investment of at least US\$500,000 for local firms and US\$1 million for foreign-owned investments in livestock production and processing. It is not clear how the authorities are able to ascertain this investment value made by private businesses when processing waiver applications as firms often are unwilling to disclose such, citing the need for confidentiality. There are also duty-free waivers for animal feeds, vaccines and veterinary drugs for poultry and livestock. Entities engaged in agricultural production are also entitled to duty-free import of agricultural inputs such as fertilisers, pesticides, insecticides, seeds and seedlings, hybrid tree seeds and day-old chicks. In the Finance Acts, the agricultural inputs are not all specified and well defined, and this creates room for arbitrariness in the review of waiver applications as officials have the latitude to interpret “agricultural inputs” and on that basis reject an application. There are also GST exemptions for these which are contained in the GST Act 2009.

The duty and tax exemption policy developed by the Ministry of Finance and ratified by Cabinet also offers a number of tax concessions to agribusinesses that have at least 30% local ownership and control and carry out processing, preservation and packaging of fruits, vegetables, meat and meat products, poultry, marine products, dairy products or the integrated business of handling, storage and transportation of food grains. These concessions include:

1. 50% of profits and gains derived from the first five years, beginning in the year in which the business commences the processing, preservation and packaging of items mentioned above
2. 25% (30% in the case of a company) of profits and gains derived over the next five years provided that:
 - In the case of businesses engaging in the processing, preservation and packaging of fruits and vegetables, or integrated business of handling, storage and transportation of food grains, they should have commenced this line of business on or after 1 January 2021
 - In the case of businesses engaging in the processing, preservation and packaging of meat and meat products, poultry, marine products and dairy products, they should have commenced this line of business on or after 1 January 2023
 - They have imported or procured plant, machinery and equipment and working capital valued at US\$2.5 million and for small limited liability companies US\$250,000
 - They have maintained accounts that are audited by a member of the Institute of Chartered Accountants of Sierra Leone
 - They have at least 25 permanent employees and in the case of a small limited liability company five permanent employees
 - They make optimum use of locally produced raw materials

2.2 Manufacturing

The duty waiver and tax exemptions for manufacturing activities are included in several legal instruments including Finance Acts 2011, 2013 and 2016 as well as the Excise Act 1982 as amended in 1986 and the GST Act 2009. Duty waivers for three years are provided for in the legislation that covers plant and machinery excluding spare parts and general-purpose vehicles for business operations of qualifying investors. This is for new businesses with investment values of at least US\$10 million or US\$5 million for an existing business that is expanding. New businesses manufacturing drugs, medical devices and other health-related items are entitled to income tax exemptions. In addition, manufacturing companies are entitled to GST exemptions if they are engaged in the production of machinery, apparatus and appliances designed for use exclusively in the agriculture, veterinary, fishing and horticulture sectors.

2.3 Tourism

Operators in the tourism sector are entitled to import duty relief as well as GST and income tax waivers. The exemptions are covered in the Development of Tourism Act 1990 and amended in the Finance Act 2011. There are GST exemptions on imports for the construction of a new hotel with more than 100 rooms as contained in the GST Act 2009 and amended in 2016. Income tax relief is also available to operators in constructing a new hotel, extending, restoring or renovating an existing hotel or any tourist facility.

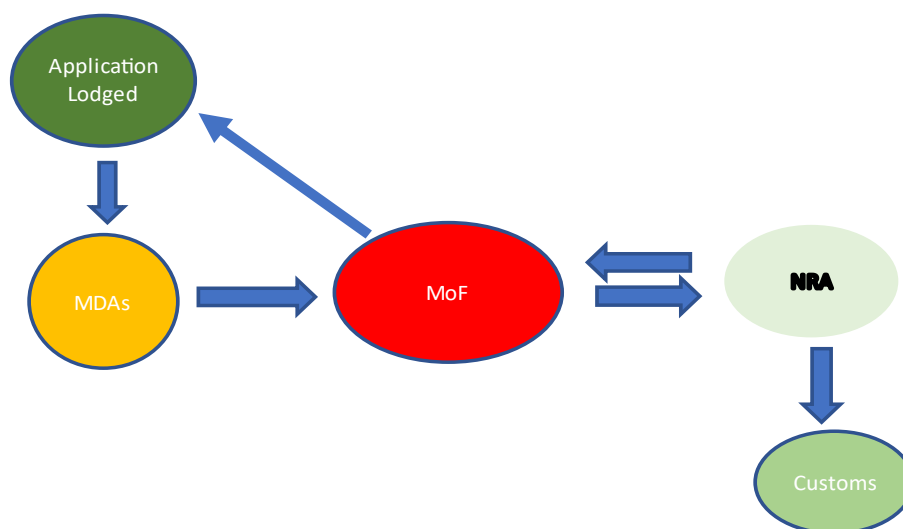
In addition to the laws, a number of companies in the agricultural sector have special agreements with the government and these agreements have been ratified by parliament. These agreements are entered into especially for large investments in the sector aimed at boosting productivity for both

the domestic market and exports. The agreements often give specified tax and import duty exemptions for certain periods and these are considered to be legal. As agreements such as duty waivers have fiscal implications, parliament must approve them, after they are endorsed by Cabinet and taken to the legislature by the ministry concerned. Typically, large businesses do have those agreements and they clearly state all the items covered by waivers. Room for arbitrary interpretations are thus removed for them when they import and clear goods at the port.

3 Administration of import duty waivers

The application process for an import duty waiver starts with the potential beneficiary hiring a broker or clearing agent at the port who is certified by the National Revenue Authority, to carry out the clearance processes. The next step towards acquiring approval of duty and tax exemptions is to complete a duty waiver declaration form and lodgement of entry for a customs officer to confirm the assessment done by the clearing agent. In order to expedite the processing of such applications, the E-exemption module has been launched in the ASYCUDA World Platform Electronic Single Window, which enables all supporting documents to be scanned and uploaded to the module and for MDAs to process duty waivers. Selected personnel in the respective MDAs have access to this module including staff of the Revenue Tax Policy Division of the Ministry of Finance as well as the Commissioner General of the National Revenue Authority. Figure 2 shows the channels through which import duty waiver applications pass.

Figure 2: Import duty waiver application processing channels



NOTE: MDAs, MINISTRIES, DEPARTMENTS AND AGENCIES; MoF, MINISTRY OF FINANCE; NRA, NATIONAL REVENUE AUTHORITY.

This electronic module replaces the previous slow, cumbersome and labour-intensive process that required the movement of application letters from consignees and documentation between the MDAs and the port. The module also enhances transparency. The platform has been rolled out to most MDAs for the processing and approval of duty waivers depending on the sector the company is operating in and the types of goods being imported. For instance, agribusiness will go to the Ministry of Agriculture and Forestry for processing; manufacturers will deal with the Ministry of Trade and Industry; hotels will have to deal with the Ministry of Tourism and Cultural Affairs in processing their applications, and so on. In some cases, an importer may have to deal with multiple ministries. The implementation of the electronic module should reduce physical interactions between brokers and government officials processing the waivers, significantly reduce rent-seeking opportunities, and also speed-up the time of clearing goods at the port. The platform has time stamps that allow for the tracking of applications through the system and shows points where there are delays in the process.

As shown in Figure 2, the process of applying for import duty waiver exemptions starts with the consignee appointing a registered customs agent to undertake the clearance of the goods at the port. The completion of the declaration form and lodgement of entry is done electronically and should normally start prior to the arrival of the imported consignments. The NRA recommends that the selected broker commences the application two weeks before the arrival of the vessel carrying the goods and this is to give sufficient time for reviews of the exempt application to be done by the different stakeholders in the revenue management and customs clearing chain.

The Customs Act 2011 allows for importers to have the choice of transacting the business of importation with Customs either directly or by designating any third party to act as a customs clearing agent on their behalf. This is supported by the Customs Clearing and Forwarding Agency Regulation 2015 that makes provision for importers to clear goods at the port directly on their own account. However, in practice, importers are having no choice but to hire agents to clear goods because of controls in the ASYCUDA system. The simplified clearance procedure configuration in the system requires mandatory information from the exporter (person shipping the goods to Sierra Leone), importer (person the goods are consigned to in Sierra Leone) and the declarant (person making the declaration to Customs).

If an importer or consignee makes the declaration, the information on the system for the importer and declarant will be the same, which makes it difficult for the system to distinguish between the importer (taxpayer at that time) and declarant (person making the declaration). It should be noted, however, that this rigour only applies at the port. There is a simplified declaration at both the airport and land border crossing points allowing individuals coming to the country for the first time and small businesses to make declarations without agents and Customs does the declarations on their behalf. According to the Regulation, an individual cannot act as a Customs Clearing and Forwarding Agent unless they are a holder of a customs clearing agent's licence issued by NRA for a period of one year. The licence is subject to renewal and could also be suspended or withdrawn by NRA based on the provisions stipulated in the Regulation.

Undoubtedly, importers can expect delays in clearing goods under the duty waiver category if the process is not initiated prior to the arrival of the consignments and in sufficient time for all the

relevant authorities to properly consider the application. Delays may also result if the necessary supporting documentation is not lodged in the ASYCUDA platform by the broker in good time. So, the broker starts the application process by logging on to the E-exemption module using their authorised profile and uploading the following mandatory documents for review:

- bill of lading
- commercial invoice
- packing list
- purchase order
- credit note
- telegraphic/wire transfer
- delivery order
- manifest

The Customs Act does not make it mandatory to present these documents with a declaration; rather they have been selected by Customs as necessary to complete the clearing process and this is included in the duty waiver policy. A key document in this mandatory list is the cargo manifest which gives information on the goods carried in the ship, its route and the characteristics of the consignments. This is normally not released by the shippers to the consignees in time for them to start the declaration in the ASYCUDA early. The practice is that the cargo manifest is released when the ship reaches the Freetown Port and this should be available to both consignees and Customs 48 hours before arrival at the port. Without the manifest, consignees are unable to start the duty waiver application process and at the earliest can only initiate applications around 24 hours prior to the arrival of the ship, wasting precious time and likely incurring demurrage charges as the consignment will be cleared in the six-day free period allowed. Though the bill of lading is normally released up to three weeks in advance to consignees there is a requirement that it should be registered in the manifest and this cannot happen prior to the arrival of the vessel carrying the goods.

The delivery order, which is also a mandatory document for initiating the duty waiver application, and which is also issued to consignees upon arrival of the vessel at the Freetown Port by shipping companies, is in the process of being removed from this list. Removal of the manifest as a mandatory document would also free up sufficient time for clearing of goods to be processed and completed, using the bill of lading. However, Customs is averse to this, citing that its removal will interfere with the collection of accurate trade statistics. In the current configuration, the manifest has to be registered before declaration for goods clearance can commence. This is a significant issue that if reviewed could have a telling impact on the clearing time of goods.

After the application is successfully completed online and all documents uploaded onto the ASYCUDA system, the next step is for the appropriate MDA to review the application and the accompanying supporting documents and make a recommendation to the Ministry of Finance for approval. This step is also not a statutory requirement but adopted because it is the ministries that are conversant with the sector and the activities of the companies seeking waivers and are better placed to make recommendations for duty waivers based on this knowledge. Also, an important aspect of the duty waiver granting process is monitoring: inspections and site visits of companies are

conducted to confirm content and nature of the items, status of the projects, and use of items in the distribution lists and to validate information provided during application for the exemptions. This exercise is typically undertaken by the line ministry, hence the need for their involvement in the processing of duty waiver applications.

An administration fee of Le1 million is paid to the MDA by the applicant for each consignment of goods in respect of which duty waiver is sought. This is to cover the processing cost and as prescribed in the Finance Act 2013, and amended in the Finance Act 2016. The minister in each government ministry has the mandate, though not statutory, to recommend the applications for duty waiver to be granted after consulting the technical heads in the respective division in the ministry. The reason cited for the minister having the exclusive authority to process the waiver is because the minister bears the greatest responsibility and is accountable for all happenings (right and wrong) in the ministry. This is one potential area of delay as ministers are typically busy with other assignments and also often travelling away from the technical staff. Ideally, the minister should be able to log in to the platform and review and approve the application but will have to rely on documentation and advice from other officials before such approval is given.

This potentially could take a couple of days or even weeks as was indicated in the interviews. The ministries are also supposed to scrutinise the documents attached with the application to ensure that they are consistent with the law, before recommending the applicant for import duty waiver. When the review is complete and adjudged to be compliant with the law, the minister gives the approval in the system for onward processing in the Ministry of Finance.

If the documentation is incomplete or not backed by the statutory framework the minister rejects the application or can request the necessary documentation. This cannot be done in the absence of the minister as each ministry has had only one profile created for it in the ASYCUDA system. Evidence was presented where ministers were not in the country and waiver applications had to wait until they returned. Also, the ASYCUDA system, which is a web-based system, is installed on desktops in the offices of the ministers and this means that processing of waiver applications can only be done when the minister is in the office and there is a functional internet connection. In addition, it was also noted that within the line ministries, working committees have been set up to review duty waiver applications to advise the ministers. Internal bureaucracies within the ministries are observed to be a source of delay.

If the waiver application gets a recommendation from the line ministry, the next step is for the Ministry of Finance to yet again review and give approval. It should be noted that based on the Finance Act 2008, it is only the Minister of Finance that can approve import duty waivers. In the Ministry of Finance, the Revenue Tax Policy Division is responsible for the processing and review of the waiver application. Such reviews are carried out by examining the legal basis for granting of the import waiver as well as the appropriateness of the lists in the bill of lading to the operations of the business applying for the duty exemption. In the case where there are legal grounds to grant the waiver, officials at the Ministry of Finance also thoroughly scrutinise the bill of lading, carrying out an item-by-item review. In addition to the provisions of existing legislative instruments, there are

companies with legal agreements with the government that also grant tax exemptions and duty waivers and this is also accepted as legal grounds for the approval of waiver applications.

Certainly, this process of multiple ministries being involved in approving duty waiver applications is cumbersome. It would seem that if the duty exemption is already in the law, it should just be a case of checking the goods to see if the waiver applies. Multiple levels of approval open avenues for rent-seeking behaviour as officials in the ministries exercise discretion in the approval of waivers, especially in cases where the provisions in the laws are not well defined. If the import duty waivers are backed by legal instruments, and not approved through special permissions by the line ministries, it would be expected that they should be automatically approved at a single location and not required to go through several levels of approval. This would ensure speedy decision making that would directly reduce the turnaround time in the application of tax reliefs. It becomes critical therefore that tax incentives are included in the tax laws so that the authorities can administer them accurately and without undue delays, which impose shadow costs on doing business.

The outcome of the waiver application review by the Ministry of Finance will result in the duty waiver application being approved or rejected. Applications could also be partially approved where there is a legal basis for the granting of duty exemptions, but the consignment contains items that are not related to the operations of the business or not covered by the law. For instance, there are occasions when an agribusiness imports farm equipment and implements but also includes building materials in the same consignment that are not covered by the exemption. In such a case, the business will be required to clear the exempt goods on duty free whilst paying for the items that were not approved by the Ministry of Finance. The complication is that though the goods eligible for duty waiver will be approved for clearance with exemption, the non-dutiable goods will be rejected and if they are in the same container, this creates problems with clearance.

Even though there is a possibility for sorting of goods at Customs to clear goods whose duties have been waived, this adds another layer of complexity for the importer and a new declaration for the non-dutiable goods would have to be made which also takes time. Once a container is open and goods are sorted along this line, importers then become anxious about storage of the non-dutiable goods when they are being processed for clearance as well as their security. The ultimate decision it was revealed is for importers to leave both sets of goods in the container and clear after duties have been accordingly paid for the appropriate goods. By this time, demurrage costs would have set in.

After an application has been approved by the Minister of Finance, there is a third layer of checking wherein the National Revenue Authority is notified in the system for the Commissioner General to review and approve. NRA also conducts its own due diligence on the waiver application using similar metrics of legal basis and consignment appropriateness to the company's operations. Based on the review of the NRA and guided by the Monitoring, Research and Planning Division, the waiver application will either be endorsed or queried by the Commissioner General. When the application is endorsed, it is sent to Customs for the consignment to be processed for release through the ASYCUDA system under a set of Customs Procedure Codes. An approved application is queried by NRA if they are of the view that the Minister of Finance should undertake another review of the application. The main reasons cited for this are, first, that the Ministry of Finance may have

approved items that are not backed by the law and, second, that the items for which waivers are being sought are suspected to not be aligned with the operations of the company. It would have been useful to get data on these occurrences when the NRA requests the Ministry of Finance to recheck the applications they had approved, but such evidence was not available.

To demonstrate, three cases were examined of which two are agricultural businesses that applied for waivers and got mixed approvals and the other a trading company. Details from the E-exemption module of ASYCUDA system are included in the annex of this report. The first case relates to Miro Forestry Company that applied for duty waiver in June 2021 for seven items that the company had imported into the country. The application received full approvals from the Ministry of Finance for all seven items, but three items were queried by the Commissioner General of NRA: fuel, lubricating and cooling pumps for internal combustion piston engines, and oil and petrol filters.

These items could not have been granted duty waiver exemption unless there was a special agreement between the company and government that stipulates those waivers should be granted for the items. In the absence of such an agreement, the general provisions in the Finance Acts apply. Typically, while the laws would give duty waiver for farm equipment like tractors, planters, harvesters and others, they do not cover spare parts for these machines. Therefore, in such a case of partial approval, the company will have to make amendments in the ASYCUDA system and have to pay for the non-approved items before the exempt items can all be cleared at the port as they will be in the same container. In this case the line ministry should have picked this up and stopped the application from progressing, thus saving time and cost, but they were not able to do so. Making amendments takes time and by the time the processing is completed the consignment would have attracted demurrage charges. For companies with special agreements that cover imported items, these are approved for duty waivers and are thus processed within a reasonably short period. The number of companies with such special agreements is not known but it is reasonable to assume that they are in the minority on the basis that it is often companies that are making multi-million-dollar investments that benefit from such agreements. So the vast majority of businesses applying for duty waivers don't have these agreements and depend on provisions in the law covering waivers.

The second case relates to SOCFIN, which imported nine items for its oil palm processing operations, all of which were approved by the Ministry of Finance after recommendations from the Ministry of Agriculture and Forestry, and were finally endorsed by NRA. The application took about six days to go through the process on to the clearing of the goods. The notable reason for this was that all the required documentation was submitted with the duty waiver application and the items imported were also covered by the law and a special agreement between the company and the government. This example, supported by printouts of the ASYCUDA system, indicates that the duty waiver process works when the company's request aligns with provisions in the agreements and it submits the necessary documentation in good time. However, as mentioned earlier, this case is more of an outlier as a significant proportion of businesses applying for waivers don't have special agreements with line ministries as they are often small businesses.

The third case relates to a trading company that applied for duty waivers in May 2021. Although the Ministry of Trade and Industry recommended the exemption of 16 items, this was rejected outright

by the Ministry of Finance because the items imported for which waivers were being sought were not covered by any legislative instrument or agreement. This was supposed to have been picked up at the Ministry of Trade and Industry but the application was processed for the approval of the Ministry of Finance. It took about three weeks after the recommendation was made before the application was rejected and by this time the consignments would have started to attract demurrage charges, even before an amendment was made for the goods to be cleared through the dutiable channel where payment is made. It is not known why the companies decided to apply for duty waivers even though apparently the goods were not covered in the legislative instruments and it is unclear why the minister recommended the goods for waivers.

Flowing from these examples, the review of the administrative processing of duty waiver applications indicates the following key constraints in the system that are increasing throughput time in applying for duty waivers:

1. Designating the cargo manifest as a mandatory document for declaration in the ASYCUDA limits the time available for consignments to be cleared as manifests are only available when the shipping vessel arrives at the Freetown Port, leaving importers with only six days to clear goods before paying demurrage to both port landlord and shippers
2. Poor understanding and awareness on the part of consignees of provisions of all items covered in the statutory instruments for duty waivers, resulting in rejections of applications
3. Cumbersome process as the duty waiver application goes through three layers of reviews that cause delays in processing with the process stalling at any one of the three points – MDA, Ministry of Finance or NRA/Customs
4. Poor understanding of the review requirements for duty waiver applications by officials in MDAs, leading to a significant number of applications that are recommended at this level being rejected at the next level in the application review chain
5. Inefficiency and long lead times particularly at MDA levels in processing waiver applications as authorisation has to wait for the minister to be in the office where the ASYCUDA system is installed in addition to in-house review committees set up that are bureaucratic in nature
6. Each ministry has only one profile in the ASYCUDA system to process applications, and ministers are not delegating authorisation responsibility to deputy ministers or permanent secretaries
7. Poor internet connectivity in MDAs which limits access to the web-based ASYCUDA system and drives processing time upwards
8. Poor performance and unprofessional conduct by clearing agents as they engage in various activities to take advantage of the duty waiver process that result in loss of revenue to the government, and are found out.

In addition to these, there are also existing rent-seeking behaviours that are serving as an impediment to the administration of the process. Whilst the electronic application portal was meant to eliminate physical interactions between consignees and government officials, this is currently not the case. Interviews with key players in the importation business reveal that without physical interventions by ministry officials to “facilitate” the processing and review of documents,

applications don't progress in the system to the next stage, and this happens across the entire chain of the clearing process. It was alleged by several interviewees that officials in the ministries will normally assert that duty waiver applications have not yet been received, and employ tacit means to solicit unauthorised payments from consignees. This imposes additional costs on businesses in the clearing of goods through this system.

Moreover, central to the success of the administrative process is the integrity of clearing agents and brokers as they play a critical role in the application and lodgement of documents. By law, all goods clearing at the port has to be done by brokers. The findings reveal that unprofessional practices by brokers contribute to the delay in the processing of duty waivers. There is evidence of brokers including goods from other clients that should pay import duty in the applications for duty waiver of other clients to try to beat the system. This seems to be a prevalent practice by agents and often proceeds along the clearing chain, ending up in rejection and thus requiring a new declaration in the ASYCUDA system. Evidence also indicates that companies with in-house clearing arrangements tend to clear their goods faster with duty waiver applications.

4 Case studies

Interviews were conducted with a number of businesses to ascertain their knowledge of the provisions of import waivers in the law, catalogue their experiences in applying for the import waivers and determine areas that are working well as well as identifying bottlenecks in the processes from the perspective of the businesses. The interviews were structured in nature, with probing questions where necessary, to get a deeper understanding of the responses.

The interviews indicate that the awareness of the existence of import duty waivers among businesses is quite high in terms of the broader provisions but not so much of the specific details. Nearly all of the business owners interviewed have not read the relevant Finance Acts and other legal instruments that support the award of waivers. Businesses are aware that import duty waivers mostly cover agricultural inputs and machinery and are also aware of the financial benefits to the company in the form of import duty fees savings that duty waiver brings.

The interviews also revealed that there is a relatively high level of interest to secure duty waivers. Most of the businesses have applied for duty waivers more than once in the last three years. However, a particular business revealed that a prior experience with the process that led to high demurrage costs has discouraged them from further application for duty waivers. Financial records were not readily available from the companies to state the total amounts of duty tax that were waived per consignment or to estimate costs imposed as a result of delays that led to consignments being cleared with demurrage.

The discussions indicate that a significant number of the applications for import duty waivers by companies spend the most time between the MDAs and the Ministry of Finance, though they are stuck more often than not at the latter. After the brokers have submitted the application and uploaded the documents, the recommendation from the ministry is relatively straightforward.

However, getting approvals at the Ministry of Finance seems to be the most challenging part of the process for businesses. This is consistent with the findings from interviews with officials of the Ministry of Finance as they review the applications by assessing the consignment item by item. The ministry has a different incentive as it has a mandate to enhance revenue collection for government spending and so appears to be more stringent than the other MDAs. When applications are rejected at the ministry, it takes time for business owners to be notified as they typically have not authorised the clearing agents to include the telephone numbers of the company as opposed to the agents. In one case it was revealed that delays at the Ministry of Finance led to the payment of about US\$20,000 in demurrage costs, whereas the company was seeking a waiver of US\$3,000 and the company had to take a bank loan to pay those demurrage charges to clear the shipment at the port.

The interviews revealed different experiences with the duty waiver system but all seem to point in the same direction: in their view, the system is time-consuming and imposes significant additional costs on them. These are summarised in the case studies below.

Case study 1

- Company is involved in small-scale manufacturing and imported several containers
- Applied for duty waiver using the E-exemption platform
- Required approvals from two MDAs because of the nature of goods imported – various machines for operations of a group of companies and agricultural inputs
- Had only 6 free days to clear containers after the arrival of manifest
- Took more than 2 weeks to get the two MDAs (Ministry of Trade and Industry and Ministry of Agriculture and Forestry to review and recommend duty waiver to the Ministry of Finance
- Got final approval 3 weeks after application and had to go through several personal interventions to push it through – despite e-platform module – personal interactions with officials created rent-seeking avenues
- Paid about Le500 million for demurrage to both port and shipper

Case study 2

- Company is involved in poultry farming and imported a container of feed
- Applied for duty waiver using the E-exemption platform
- Had to follow up the approval at the Ministry of Agriculture and Forestry
- Significant delays at the ministry – minister was not available, official to review and advise minister was on leave, internet connectivity was down
- Consignee had to bring internet modem to the ministry to support operations
- Took more than a month for final approval from all players in the chain
- Demurrage cost was around Le200 million and company was forced to take a bank loan to settle costs
- Company now prefers to pay duties on feeds imported rather than apply for waivers which they believe will certainly end up with demurrage costs

Case study 3

- Company is involved in poultry farming and imported three containers of feed concentrates and other farm equipment
- Initiated import duty waiver with the Ministry of Agriculture and Forestry using the paper-based method and wrote an application letter
- After two weeks of chasing papers at the ministry, company was told that application should be done online
- Started the process again and container had already started incurring demurrage costs
- Took another two weeks for the minister to make the recommendation online and paid monies to ministry officials to facilitate process
- Had some spare parts for the feed mixer in one of the containers which was rejected by the Ministry of Finance as the company did not have a memorandum of understanding with the MAF covering these goods
- Application was rejected and had to do new declaration for the spares
- Took more than 6 weeks to complete clearing and at a high cost (not revealed)
- Some clearing agents had very limited understanding of the workings of the electronic system
- Company will not apply for import duty waivers in future

Case study 4

- Company is relatively large and is based in the provinces and specialises in packaging rice after parboiling
- Company imported agricultural machines, rice mill and dryers in 2018 and two containers of farm consumables
- Company operates an out-grower model and supports farmers with inputs and technical advisory services
- Buys back output from farmers for sale in the market
- Applied for duty waivers using the old system and took five weeks to clear goods
- Company paid 40% more than it would have cost to clear the consignments paying the import duty and GST
- Company could have saved between Le60 million and Le70 million on each of the two containers
- A number of the agricultural goods were rejected as “non-agricultural” and interpretation was done by an official – no clear guidelines. Had to pay duty on these
- Parboiler and dryers were rejected on the grounds that they could be used for other activities, even though the company is registered as an agricultural company
- Company is not aware there is an electronic system for import duty waivers and would also not consider applying for waivers in future

Case study 5

- Company is in the business of supplies and won a contract to supply certain goods for an ongoing government project
- Funder is an external development partner and goods should be cleared with duty exemptions as part of the agreement
- Goods arrived at the port more than 4 months ago, company has had immense difficulty from the MDA in processing the documents for onward progress to the Ministry of Finance
- Ministry official to send a letter was on leave and had to wait for 3 weeks for the letter to be signed
- Government officials in the ministry had shown strong but subtle signals of rent-seeking tendencies which consignee has not countenanced
- The value of the goods in the container is Le2.5 billion but demurrage costs alone at the time of interviews was Le3.9 billion
- Contractor is unwilling to pay that amount and cannot clear the containers
- Project has stalled and is behind schedule for completion – no end in sight

5 Conclusions and recommendations

Import duty and import GST waivers could be important in encouraging domestic and foreign investment, driving economic growth, creating jobs in productive sectors and improving well-being. However, the extent to which this could become a reality is dependent on how they are designed and administered, and the impact they would have on businesses trading across the border. The electronic platform for the processing of duty waivers in the ASYCUDA system has been launched and this is supposed to streamline the process to make it easier and take less time. However, evidence from this study has shown that whilst there are a number of import duty waivers targeting different sectors, and significant amounts are given out annually to businesses as waivers, there are still serious constraints in the process implementation and administration which cause long delays and costs to businesses.

Essentially, whilst the clearing process works for some companies, for others the process is still cumbersome and comes with challenges that discourage businesses from applying for waivers. To remedy the situation, therefore, a distinction is made between streamlining the process to make it more efficient for businesses that are already benefiting but experiencing delays, and changing the implementation processes and procedures to make it holistically beneficial for all businesses qualified to apply for waivers. The following recommendations are accordingly made for these two sets of process maps.

1. Changes to the duty waiver implementation process
 - a. **Allow bill of lading as alternative to manifest:** The requirement that cargo manifest is a mandatory document for declaration should be reviewed and changed. This current requirement limits any chances for waiver applications to be processed in time as the

shippers release this shortly before the ship docks in Freetown. In total with the availability of this document, consignees only have eight days to clear goods. Reviewing this requirement and allowing the application to commence with the other documents will speed up processing. The manifest could still be required at the end of the process for validation of the declaration and if the wrong declarations have been made, there could be punitive measures to both the agent and consignee to deter future wrong declarations. As an alternative, the bill of lading which is a legal document and certifies the title of goods at a particular point of time could be used at the point of declaration. The bill of lading generally carries the same information as the manifest and therefore can serve the same purpose. Bill of lading is typically received by consignees several weeks before the arrival of the vessel and its use to initiate the waiver application process will notably reduce the processing time.

- b. Integrate Ministry of Finance with NRA in the review of waiver application:** The current process warrants that applications are reviewed by the Ministry of Finance and approval given and then another round of review takes place at NRA. This happens after the application has been reviewed at the line ministry. Measures that link the Ministry of Finance and the NRA will save time and remove an extra layer of application review. By law it is only the Minister of Finance that gives approval for import waivers and another layer of review after such approval may be redundant. NRA should therefore integrate its own review processes within the framework of the Ministry of Finance, such that after approval is given by the minister, the applicant is then sent to Customs to clear the goods.
 - c. Make some Harmonised System (HS) Codes automatically eligible for clearing:** Similar to the colour lanes used for the clearing of goods at the port, trade codes could be used for the fast and efficient release of goods. The identified and stipulated codes could be integrated in the system and used to identify goods that are automatically eligible for duty and GST waivers. The goods carrying the required HS codes will be subjected to assessments and appropriately processed and immediately released at Customs without going through several channels of approvals in government ministries.
2. Making the current process work better for improved performance
- a. Develop and introduce key performance indicators:** In order to streamline and expedite the clearing process, the development of key performance indicators to guide the number of days those applications should take within an MDA will be helpful. This will drive effectiveness and efficiency of the system. This should be guided by best practices and with monitoring mechanisms that allow for monthly reports on institutional to be generated and discussed collaboratively to improve processing times of import duty waiver applications.
 - b. Ensure delegation of authority for approvals:** In the current electronic portal in the ASYCUDA system, only ministers are allowed to create profiles that will enable them to

review duty waiver applications and make recommendations to the Ministry of Finance for approval. This has proven to be a major challenge as ministers are often busy and also on travel assignments, and as such it takes time for approvals to be granted from the ministries. Although the law stipulates for ministers to delegate responsibility to other staff in the ministry, this is not a common practice in all attesting MDAs. Where the need to reduce multiple users from a single ministry is understandable, mechanisms could be worked out and systems put in place to allow such authority to be delegated to deputy ministers or directors in the ministry. In the case of NRA, both the Commissioner General and the Deputy Commissioner General have profiles in the system that allow for the endorsement role to be delegated to the deputy.

The creation of additional profiles from the same ministry will allow delegation of duty to deputy ministers or permanent secretaries. As the system can be audited, authorisers can be held accountable for their recommendations through the system. Also, when there are changes in Cabinet and new ministers are appointed, there are long delays as the new ministers often take time to understand the operations of the ministry before signing off on duty waivers. The existence of other senior personnel within the ministry with a profile in the system will allow for continuous processing of applications whilst the new minister is understudying the system.

- c. **Set-up of a Public–Private Sector Working Group on Duty Waivers to improve performance:** A forum for dialogue that includes attesting MDAs, Ministry of Finance, NRA and the private sector to discuss challenges and proffer quick solutions to tax and duty concessions issues will contribute immensely in reducing the processing times. This working group could also be co-chaired by a private sector individual and provide leadership in the discussions of policy issues and administration constraints related to waivers. The respective farmer associations would also be represented in this body to provide feedback on the waiver administration process.
- d. **Training within government institutions:** One of the main reasons for the rejection or partial approval of duty waiver applications has to do with the completeness of documentation submitted by the applicants. Related to this is the appropriateness of the items for which duty waivers are sought in relation to the operations of the company applying for the exemption. The attesting MDA is the first institution to review these documents for recommendation for onward processing by other institutions. It appears that review of documents for completeness in terms of compliance with the law and appropriateness is not done properly, as a large number of applications that are recommended by the ministry do not get approved.

The Ministry of Finance and the National Revenue Authority should engage the leadership of the line ministries in workshops and take officials through the document review process, so as to build the capacity of the Ministry of Agriculture and Forestry to play the gate-keeping role and filter applications that will not be accepted and endorsed during the application process. Such a workshop should include senior officials in the

line ministries of the rank of permanent secretary and directors, as they get to advise the minister on recommending a duty waiver application to the Ministry of Finance.

- e. **Review of licensing of agents and clarification of roles:** Clearing agents play a central role in the duty waiver application process as they initiate the applications and upload the necessary documentation on behalf of the companies. They also include their telephone numbers in the system related to the applications, and receive alerts on the application status. There is anecdotal evidence of agents engaging in unscrupulous activities and malpractices that undermine the integrity of the goods clearing process. As these agents are regulated by NRA, reports of such activities should be periodically reviewed by the licence committee and where wanton punitive actions taken including the suspension of licences to engage in the clearing process. Repeat offenders should be blacklisted by NRA and such a list should be made public to guide consignees on agents to avoid.

Also, agents should be knowledgeable on the provisions of the law and coverage and the documentation required in the application for duty waivers. Also, they should be encouraged to commence timely applications prior to the arrival of the shipment at the port. A charter that gives a summary of these guidelines should be developed and made available to the agents.

Annex 1: Inventory of key import duty and GST exemptions

No.	Description	Tax type	Legal reference	Date introduced
1	3-year duty free for plant, machinery and equipment except vehicles for qualifying investors	Customs duty	Finance Act 2011 Section 11, as amended in Finance Act 2016 Section 33	2011
2	Duty free for imports into any Special Economic Zone created	Customs duty	Customs Act 2011 Section 51	2011
3	Duty free plant, equipment and other inputs, excluding petroleum products, during period of construction for public-private partnerships infrastructure projects over US\$20 million (see also no. 86: CIT relief)	Customs duty	Finance Act 2011 Section 23 (2) – linked to S.23(1) providing income tax relief	2011
4	3-year duty free for imports of equipment used for the production of “assembling stoves and cookers...or importing or producing liquid petroleum gas”	Customs duty	Finance Act 2011 Section 24	2011
5	Solar systems: 3-year duty free for photovoltaic system equipment and low energy or energy efficient appliances for resale or use by third parties	Customs duty	Finance Act 2011 Section 26, as amended in Finance Act 2016 Section 26	2011
6	5-year duty free for feeds, vaccine and veterinary drugs for poultry and livestock	Customs duty	Finance Act 2013 Section 50(2)	2013
7	5-year duty free for agricultural imports for agricultural producers	Customs duty	Finance Act 2013 Section 49	2013
8	Duty free raw materials for 10 years for drug/medical device manufacturing company investing a minimum of US\$0.5 million and employing a minimum of 50 people (see also no. 84 – CIT relief)	Customs duty	Finance Act 2011 Section 25(2) – linked to S.25(1) providing CIT relief	2011
9	Exemption from customs duty during period of construction or rehabilitation of tourism business	Customs duty	Development of Tourism Act 1990	2011
10	5-year duty free for equipment and machinery for investing manufacturing business (see also no. 88 – CIT relief)	Customs duty	Finance Act 2013 Section 48(b) – linked to 48(a) CIT relief	2013

No.	Description	Tax type	Legal reference	Date introduced
11	Zero-rated raw materials, as defined under Sierra Leone Tariff/ECOWAS Common External Tariff	Customs duty	Tariff Act, First Schedule External Tariff	1978
12	Zero-rated goods imported that originate within ECOWAS, under Trade Liberalisation Scheme	Customs duty	Tariff Act, First Schedule External Tariff	N/A
13	Duty waived under agreement signed with Government of Sierra Leone	Customs duty	Separate agreements (various)	Various
14	Exemption for animals, fish and birds imported for breeding and rearing purposes, seeds, bulb rooting imported for propagation	GST	GST Act 2009 Second Schedule, Section 1	2009
15	Exemption for rice in its raw state	GST	GST Act 2009 Second Schedule, Section 2	2009
16	Exemption for agricultural inputs e.g. chemical fertilisers, acaricides, fungicides, nematicides, growth regulators, pesticides, veterinary drugs and vaccine and animal feed unfit for human consumption	GST	GST Act 2009 Second Schedule, Section 3	2009
17	Exemption for printed matter (books and newspapers)	GST	GST Act 2009 Second Schedule, Section 5	2009
18	Exemption for transportation of persons by bikes, buses and similar vehicles, ferry, train and air excluding internal air travel, boat and hovercraft services	GST	GST Act 2009 Second Schedule, Section 8	2009
19	Exemption for crude oil and hydrocarbon products: petrol, diesel, liquefied petroleum gas, kerosene and residual fuel oil, bitumen but excluding lubricating oils	GST	GST Act 2009 Second Schedule, Section 9	2009
20	Exemption for public works (civil engineering)	GST	GST Act 2009 Second Schedule, Section 12(b)	2009
21	Exemption for machinery, apparatus and appliances designed for use exclusively in (a) agriculture, veterinary, fishing and horticulture, (b) manufacturing, and (c) mining, and classified as exempt under the Harmonised Systems Commodity Classification Code	GST	GST Act 2009 Second Schedule, Section 13	2009

NOTE: CIT, CORPORATE INCOME TAX

investsalone.com

