

Guidelines for the Application of Section 8 of the Customs and Excise Act [CAP121]

1.0 Overview

Section 8 (7) of the Customs and Excise Act (the Act) provides for the Minister of Finance to grant exemption from Duties of Customs where goods are:

- **Imported or Exported** – Pursuant to a Memorandum of Understanding (MOU) or agreement between the applicant and the Solomon Islands Government and such goods are eligible for an exemption, in whole or in part, in accordance with the terms and conditions specified in the MOU or agreement. [In accordance with items 19 and 25 to the First Schedule and Item 3 of the Exports Schedule of the Act]

The Ministers may decide to either endorse or refuse such exemptions where the application has been approved by the committee established under Section 8(9) of the Act (the Exemptions Committee).

While the Act provides an outline of the conditions and criteria for applications, it is appropriate to confirm policy and operational guidelines to support the application of these legislative provisions. This document sets out how the Minister of Finance and the Exemptions Committee will undertake their statutory functions in applying this legislation, and how the Comptroller of Customs will administratively support the Minister.

2.0 MOUs and Agreements

Before any application for an exemption from Customs Duty can be made, the goods subject of the application must first be specified in an MOU or agreement between the applicant and the Solomon Islands Government. Any terms or conditions specified in the MOU or agreement will be applicable to the exemption.

Separate guidelines on the process for seeking an MOU or entering into an agreement with the Solomon Islands Government have been published. In general terms where an MOU or agreement provides for an exemption from Customs Duty as part of its conditions, the criteria which determine whether such MOU or Agreement will be entered into will be consistent with the exemption eligibility criteria administered by the Committee.

3.0 Qualifying Items

In addition to the need for goods subject of the application for exemption to be specified in an MOU or Agreement, the Minister of Finance has determined that exemption from Duties of Customs will only be considered for importers of capital inputs in respect of:

- New businesses commencing operation in Solomon Islands;
- Modernisation or expansion of existing business activities in Solomon Islands; and
- Rural community development.

Items that are specifically excluded from exemption include any:

- Goods purchased for resale;
- Goods consumed by the business in the normal course of its business operation;
- Road vehicles which are used wholly or partly for private purposes;

- Spare parts, Oil, Fuel, Diesel or lubricants purchased by large businesses (ie, businesses with a turnover of more than SBD 1,000,000 per year);
- Goods eligible for exemption under any of the other statutory exemption items if the First Schedule; and
- Goods excluded under the terms of the relevant item of the First Schedule under which the exemption is being claimed.

In determining the application of section 8 the Exemptions Committee and the Minister of Finance will have regard to ***whether it is in the national interest to forgo revenue that would otherwise be collected***. This national interest test is in addition to the conditions above and includes a broad analysis that considers the:

- benefits to the national interest;
- costs to the national interest (including the cost of forgone revenue, the economic costs caused by exemptions and the precedent created by granting the exemption);
- sustainability of these benefits and costs;
- 'revenue' (taxation, duties and excise) compliance of the applicant and any persons associated with the applicant;
- nature and amount of any other Government assistance being sort or received by the applicant; and,
- nature of any benefits arising to rural communities through the activity.

These guidelines are designed to help implement this cost/benefit analysis in a **simple, timely and consistent way**. They should also assist prospective applicants in determining their eligibility.

4.0 Guiding Principle – 'Revenue forgone is in the National Interest'

Benefits to the national interest - In assessing how an investment may benefit the 'national interest', the Minister of Finance will consider how the investment contributes to development and economic growth. As a rule, economic growth is best fuelled by businesses competing on a level playing field, without exemptions. Exemptions that undermine competition among businesses in related activities are not generally beneficial. Consequently, the Minister of Finance will in general only consider investments with significant likely spillover benefits (or "positive externalities").

Important spillover benefits from an investment could include:

- Increased employment opportunities for Solomon Islanders. For the purposes of these provisions, the Minister of Finance has determined that at least 5 full time sustainable new jobs must be created for Solomon Islanders;
- Increased export of goods produced or manufactured in the Solomon Islands;
- Improved infrastructural assets for the country, at least 20% of which must be for the benefit of the community and available for continuous public use; and
- Increased taxation payments, either directly or indirectly for the investment, to Government within 5 years of the commencement of the investment activity.

Cost of the exemption to the Government and the Economy – customs duty exemptions cost government revenue which is then not available to the Government for use elsewhere in the economy. In addition, they create distortions in the economy by discouraging businesses or sectors of the economy that do not receive exemptions. In assessing the costs of the exemption, the Minister of Finance will consider both the revenue costs and also the likely costs to the economy.

The Applicant will need to provide the Exemptions Committee with detailed information

and evidence supporting the costs and benefits outlined in respect of the proposal. This could include: Copies of any cost benefit proposal; Feasibility studies and project plans; Finance costing and cost of capital; Cash flow forecasts, together with sensitivity analysis on information; and Details of any resource planning or other consent applications sort.

Government revenue compliance history - The Exemptions Committee will consider the revenue compliance (both with Customs and IRD) history of the applicant and any persons associated with the application. In general terms the Exemptions Committee must be satisfied that the applicant has met its duty, excise and tax obligations, or if it is a new taxpayer, will meet its future obligations. In addition to demonstrating a good customs compliance history, these include lodging returns by the due date, paying any outstanding taxation in a timely manner, correctly accounting for any PAYE or Goods Tax, and filing an accurate annual Income tax return containing all assessable income and correctly deductible expenses.

Total Cost to Government - Total amount of fiscal assistance being provided by the Government through these and other incentive provisions, and how that cost compares to the total investment by the investor, and the likely benefits that will be received must be considered. The precedent created by any decision and the wider impacts of the decision on others operating in that industry, or any related industry must be taken into account.

Sustainability - In assessing the sustainability of the benefits of an investment and the costs of exemption, the Exemptions Committee will also consider whether the business and the spillover benefits it provides are likely to continue.

In respect of any application for the exportation of natural resources or forestry, the Exemptions Committee must have regard to the impact on the environment and in particular, in the case of forestry extraction how reforestation is to occur.

Non-Transferable - Exemptions are only available to the applicant for the project nominated in the application and can not be transferred to any other project or person.

Term of Exemption – all exemptions granted shall be for a prescribed period. In assessing such period the Exemptions Committee shall have regard to the forgoing principles. No exemption shall be for a period of more than 12 months. The prescribed period shall relate to **date of arrival** of the goods in Solomon Islands

Prospective – All exemption applications must be made prior to the arrival of the subject goods. Consistent with the policy intent outlined in this document, any application received after the subject goods have been entered or duty paid must be rejected. It is suggested that application should be made prior to the importer entering in to a contract or placing a firm order with the supplier.

Transparency and Accountability – the Minister is required to table in Parliament and publish in the Gazette the following information in respect of any exemptions granted:

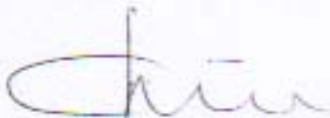
- Name and address of the importer;
- Nature of their business activity;
- Nature and period of the exemption granted; and
- Reason for granting the exemption.

The Comptroller of Customs and Excise will also publish a copy of information published in the Gazette on a quarterly basis.

5.0 Administrative Process operating under the Act

To support the decision making processes of the Minister of Finance, the Exemptions Committee has been established under section 8(9) of the Act to consider and make recommendations to the Minister of Finance on all exemption requests made subject to an MOU (items 19 and 25 to the First Schedule and Item 3 of the Exports Schedule of the Act). The Exemptions Committee will use these guidelines in considering requests for exemption and advise the Minister of Finance accordingly. The Exemption Committee will also be responsible for:

- Overseeing the proper administration of the scheme
- Designing of Exemption forms, and the education of the public about the new processes;
- Providing summary information to the Minister of Finance on a quarterly basis
- Publication of the detail outlined above, including Gazette notices
- Providing advice to the Minister on amendment to the schedule of statutory exemptions.
- Ensuring appropriate representation by the Ministry responsible for regulation of the commodity the subject of the exemption application.



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Approved, Hon. Gordon D. Lilo
(Minister of Finance and Treasury)

12, 06, 2006
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Date