Workshop on Tax Incentives and Base Protection
New York, 23-24 April 2015

SAMPLE LEGISLATIVE PROVISIONS (GHANA)

Free Zone Act, 1995

22. The imports of a free zone developer, sub- contractor or enterprise into a free zone or single- factory zone shall be exempt from direct and indirect taxes and duties.

28. (1) Free zone developers and enterprises granted licences under this Act shall be exempted from the payment of income tax on profits for the first ten years from the date of commencement of operation.

(2) The income tax rate after ten years shall not exceed a maximum of 8 per cent.

(3) A shareholder shall be exempted from the payment of withholding taxes on dividends arising out of free zone investments.

41. (1) The Minister [responsible for trade and industry] may make regulations for the effective implementation of this Act including regulations which exempt licensed enterprises from the provisions of existing laws and regulations.

Internal Revenue Act 2000

Industry Concessions

11 (1) Subject to subsection (7), the income of a person from a farming business in Ghana is exempt from tax-

(a) in the case of farming tree crops, for the period of ten years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the first harvest of those crops by the business occurs;

(b) in the case of farming livestock (other than cattle), fish, or cash crops, for the period of five years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the business commences; or

(c) in the case of farming cattle, for the period of ten years of assessment commencing from and including the year in which the basis period of that person ends, being the period in which the business commences.

(2) The income of a company from an agro processing business in Ghana is exempt from tax for the period of three years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which commercial production commences.

(2a) The income of a company from an agro processing business established in Ghana in or after the financial year commencing 1st January 2004 is exempt from tax for a period of five years of assessment commencing from and including the year in which the basis period of the company ends being the period in which commercial production commences.

(2b) The income of a company which produces on commercial basis cocoa by-products derived from substandard cocoa beans, cocoa husks and other cocoa waste as its main raw materials is exempt from tax for a period of five years of assessment commencing from and including the year in which the basis period of the company ends being the period in which commercial production commences.

(2c) The income of a company whose principal activity is the processing of waste including recycling of plastic and polythene material for agricultural or commercial purposes is exempt from tax for a period of seven years of assessment commencing from and including the year in which the basis period of the company ends being the period in which commercial production commences.

(3) Where a company conducts both farming and agro processing business, the company may elect to be treated as if the business were a farming business or an agro processing business and claim the exemption for which it is eligible under subsection (1) or (2).

(4) The income of a rural bank from a business of banking is exempt from tax for the period of ten years of assessment commencing from and including the year in which the basis period of the bank ends, being the period in which operations commence.

(5) The income of a venture capital financing company that satisfies the eligibility requirements for funding under the Venture Capital Trust Fund Act, 2004 (Act 680) is exempt from tax for the period of five years of assessment commencing from and including the year in which the basis period of the company ends, being the period in which operations commenced.

(6) The income of a company from a business of construction for sale or letting of residential premises is exempt from tax for the period of five years of assessment commencing from and including the year in which the basis period of that company ends, being the period in which operations commenced.

(7) The income from cocoa of a cocoa farmer is exempt from tax.

(8) The income of the Ghana Stock Exchange is exempt from tax for the period of twenty years of assessment commencing from and including the year in which the basis period of the Ghana Stock Exchange ends, being the period in which operations commenced.

(9) For the purposes of this section, a business of a person of the type referred to in subsection (1), (2), (4), or (6) which is carried on by that person at a particular time is treated as the same business as one of a similar type carried on by that person or an associate of that person at a later time.

(10) In this section:

(1) 'cash crops' includes cassava, maize, pineapple, rice, and yam;

(2) 'farming business' means the business of producing crops, fish, or livestock;

(3) 'agro processing business' means the business of converting crops, fish, or livestock produced in Ghana into edible canned or other packaged product other than in their raw state;

(4) 'tree crops' includes coconut, coffee, oil palm, rubber, and shear nut.

Derivative Amounts

12 Nothing in section 10 or 11 shall be construed as exempting in the hands of the recipient, any amounts, including dividends, interest, or employment income, paid wholly or partly out of income exempt from tax.

FIRST SCHEDULE

PART II. RATES OF INCOME TAX UPON COMPANIES

(1) Subject to paragraphs 3, 4 and 5 the income tax rates applicable to companies (other than a company principally engaged in the hotel industry) are:

Nature of Income	Rate of Income Tax (for every cedi)
Income from the export of non-traditional goods and income of rural banks	8 percent
Other income	32.5 percent

(2) The income tax rate applicable to a company principally engaged in the hotel industry is 25 percent.

(2a) The income tax rate applicable to the chargeable income of a company referred to in sections 11 (2a) and 11 (2b) after the five year tax holiday is

Location	Rate of Income Tax
Accra and Tema	20 percent
Other Regional Capitals except Northern, Upper East and Upper West	10 percent
Northern, Upper East and Upper West Regions	0 percent

Outside other Regional Capitals	0 percent

The above rates schedule shall apply to agro processing businesses in existence before the financial year commencing 1st January 2004 that use local raw agricultural products as their main inputs other than businesses which process raw cocoa beans.

(3) The income tax rate applicable to income derived by a financial institution from a loan granted to a farming enterprise for use by that enterprise in the production of its income is 20 percent.

(4) The income tax rate applicable to income derived by a financial institution from a loan granted to a leasing company for the use by that company for the funding of acquisition of assets for lease is 20 percent.

(5) The income tax rate applicable to a company listed on the Ghana Stock Exchange is 30 percent. The income tax rate applicable to a company fully listed on the Ghana Stock Exchange in or after the financial year commencing 1st January 2004 shall be 25 percent for the first three years.

(6) The income tax rate applicable to a company's chargeable income 'from a manufacturing business not included in subsections (2a) and 2(b) of section 11:

Location	**Rate of Income Tax**
Manufacturing business located in regional capitals of Ghana	75% of the rate of income tax applicable to other income under paragraph 1
Manufacturing business located elsewhere in Ghana	50% of the rate of income tax applicable to other income under paragraph 1

(7) In this Part, 'non-traditional goods' means-

(a) horticultural products;

(b) processed and raw agricultural products grown in Ghana, other than cocoa beans;

(c) wood products, other than lumber and logs;

(d) handicrafts; and

(e) locally manufactured goods

Proposed rewrite of provisions

PART X
TEMPORARY PROVISIONS AND TRANSITIONAL

Division I: Temporary Provisions

Temporary Concessions

126. (1) The provisions of the Sixth Schedule provide for concessions of a temporary nature. Those provisions apply to modify the application of this Act for the periods set out therein.

(2) Unless expressly stated to the contrary, the provisions of the Sixth Schedule:

(a) are to be applied strictly and only in accordance with their clear wording;

(b) do not apply in calculating the tax payable by a person subject to presumptive tax under the Second Schedule (other than tax on a final withholding payment); and

(c) expire five years after they become operative.

(3) A person is not entitled to a concession in the Sixth Schedule if an associated person has benefited or is benefiting from that concession. This rule does not apply as between two associated individuals.

(4) For the purposes of this Act, where a provision of the Sixth Schedule applies to grant a concession to a person with respect to a particular type of business-

(a) the business is construed narrowly and only the person's activities devoted wholly and exclusively to that business are treated as part of the business; and

(b) the person's income or loss from the business for a year of assessment is calculated separately from any other activity of the person.

SIXTH SCHEDULE
TEMPORARY CONCESSIONS
(Section 126)

Agriculture

1. (1) Where an individual conducts a farming business wholly within Ghana, the following are exempt from tax:

(a) in the case of farming tree crops and cocoa, income from the business for a period of ten years of assessment commencing from and including the year during which the first harvest of crops occurs;

(b) in the case of farming livestock (other than cattle), fish or cash crops, income from the business for a period of five years of assessment commencing from and including the year during which the business commences; and

(c) in the case of farming cattle, income from the business for the period of ten years of assessment commencing from and including the year during which the business commences.

(2) The income of a person from an agro processing business conducted wholly in Ghana is exempt for a period of five years of assessment commencing from and including the year in which commercial production commences.

(3) The income of a person from a cocoa by-product business conducted wholly in Ghana is exempt from tax for a period of five years of assessment commencing from and including the year in which commercial production commences.

(4) In this paragraph-

"cash crops" includes cassava, maize, pineapple, rice, and yam;

"cocoa by-product business" means a business that produces on a commercial basis cocoa by-products using as its main raw material substandard cocoa beans, cocoa husks and other cocoa waste;

"farming business" means the business of producing, catching or raising crops, fish or livestock;

"agro processing business" means the business of processing crops, fish or livestock produced, caught or raised in Ghana from their raw state into an edible canned or packaged product; and

"tree crops" includes coconut, coffee, oil palm, rubber, and shear nut.

Rural Banking

2. (1) The income of a person from a rural banking business is exempt from tax up to the limit provided in subparagraph (2) for the period of ten years of assessment commencing from and including the year in which the business is established.

(2) The limit is GH¢!! for each year of assessment.

(3) In this paragraph, "rural banking business" means a business designated as such under the Banking Act, 2004 (Act 273).

Waste Processing

3. (1) The income of a company from a waste processing business is exempt from tax for a period of seven years of assessment commencing from and including the year in which the business commences.

(2) In this paragraph, "waste processing business" means a business where the principal activity is the processing of waste, including recycling of plastic and polythene material for agricultural or commercial purposes.

Residential Premises

4. (1) The income of a certified company from a low cost housing business is exempt from tax for the period of five years of assessment commencing from and including the year in which operations commence.

(2) Notwithstanding sections 8 and 9 of the Act, in calculating an individual's income from conducting an employment, business or investment for a year of assessment, deduct mortgage interest incurred during the year to the extent provided for in subparagraph (3).

(3) An individual may deduct mortgage interest in respect of only one residential premises during the individual's life. The amount of mortgage interest that is deductible for a year of assessment is limited to the following amounts:

Year of Assessment	**Amount**
In which premises acquired	100%
Second Year	80%
Third Year	60%
Fourth Year	40%
Fifth Year	20%
Subsequent Years	Nil

(4) In this paragraph-

"certified company" means a company issued with a certificate from the Minister responsible for Works and Housing stating that it is engaged in a low cost housing business;

"low cost housing business" means the business of construction for sale or letting of low cost affordable residential premises; and

"mortgage interest" means interest incurred by an individual in respect of a borrowing employed in constructing or acquiring the individual's only place of residence.

Ghana Stock Exchange

5. The income of the Ghana Stock Exchange is exempt until the end of [2020?].

(2) Until the end of [2020?], securities of a company listed on the Ghana Stock Exchange are not an investment asset (but may still qualify as an asset of a business).

Approved Unit Trusts

6. (1) The income of an approved unit trust scheme or mutual fund is exempt from tax. [this should be limited like capital venture financing companies]

(2) For so long as an approved unit trust scheme or mutual fund is exempt under subparagraph (1), interest and dividends paid or credited to a holder or member on an investment in the scheme or fund are also exempt.

(3) In this paragraph, "approved unit trust scheme or mutual fund" means a scheme or fund approved under [state law!!]

Venture Capital Financing Companies

7. (1) The income of a qualifying venture capital financing company is exempt from tax for the period of ten years of assessment commencing from and including the year in which the company first qualifies.

(2) This subparagraph applies to a loss incurred by a venture capital financing company on the disposal of an investment in a venture capital subsidiary company under the Venture Capital Trust Fund Act, 2004 (Act 680) during the exemption period referred to in subparagraph (1). The loss may be carried forward for five years of assessment following the end of the exemption period. [Remove?]

(3) This subparagraph applies to a loss incurred by a venture capital financing company from the disposal of shares in any venture investment under section 17 of the Venture Capital Trust Fund Act, 2004 (Act 680) during a year of assessment. The loss may be carried forward for five years of assessment after the year of disposal. [Remove?]

(4) For so long as a qualifying venture capital financing company is exempt under subparagraph (1), interest and dividends paid or credited to a person on a qualifying investment in the company are also exempt.

(5) In this paragraph-

"qualifying investment" means an investment by way of funding a qualifying venture capital financing company in accordance with the Venture Capital Trust Fund Act, 2004 (Act 680); and

"qualifying venture capital financing company" means a company that satisfies the eligibility requirements for funding under the Venture Capital Trust Fund Act, 2004 (Act 680).

Employment of Graduates

8. (1) In calculating a company's income from conducting a business for a year of assessment, the company is entitled to an additional deduction as provided in subparagraph (2) for salary and wages paid during the year to fresh graduates from a recognised Ghanaian tertiary institution.

(2) The additional deduction is:

PERCENTAGE OF FRESH GRADUATES IN WORKFORCE	ADDITIONAL DEDUCTION
Up to 1%	10% of salaries and wages
Above 1%, but not more than 5%	30% of salaries and wages
Above 5%	50% of salaries and wages

Apex Bank

9. The income of Apex Bank from its banking business is exempt until the end of [20!!].

PART VIII
REDUCTION AND REFUND OF TAX

Limits on Tax Reductions

78. (1) In assessing, collecting and recovering tax, the Commissioner-General and the Revenue Authority must ignore a tax reduction that does not comply with the requirements of this section.

(2) An attempted reduction of tax is invalid unless it is sanctioned by law.

(3) This subsection applies to a purported exercise of a power of tax reduction by any person (including a Minister or public body) being-

(a) use of a mechanism under a law (whether the mechanism is created before or after this section comes into force) by which tax may be reduced other than directly by existing express terms of a statute; and

(b) in particular, the making of a regulation (as defined in subsection (8)).

(4) Subsection (3) does not apply to a power conferred on the Minister or the Revenue Authority by the express terms of a tax law, except to the extent the tax law requires compliance with this section.

(5) Where subsection (3) applies, the exercise of the power is ineffective unless-

(a) the Minister has issued an order under subsection (6);

(b) the exercise complies with the criteria and factors specified in the order (as amended); and

(c) the Minister specifically confirms that compliance by further order published in the Gazette.

(6) The Board of the Revenue Authority must, from time to time, specify to the Minister-

(a) criteria or factors for granting a tax reduction by way of exercise of a power referred to in subsection (3); and

(b) procedures to be followed in granting such a tax reduction.

(7) The Minister may by order published in the Gazette confirm the criteria, factors and procedures recommended under subsection (6), but may not amend them.

(8) The Minister may amend an order under subsection (7) if the Board of the Revenue Authority alters its specifications under subsection (6).

(9) In this section-

"reduction", with respect to tax, includes an exemption, mitigation, deferment or remission; and

"regulation" includes a regulation, order, direction, grant, judgment, approval, agreement, consent or any other discretion or arrangement whether or not made as subsidiary legislation and whether or not amending or purporting to amend a statutory provision (including a schedule of a statute).

Reporting of Tax Reductions

79. (1) The Commissioner-General must submit to the Board of the Revenue Authority quarterly reports on the total amount of reductions of tax granted to or claimed by taxpayers.

(2) Each report of the Commissioner-General must categorise reductions of tax by reference to-

(a) reductions granted that comply with section 78, subcategorised by reference to-

(i) each statutory provision by which reduction is granted; and

(ii) with respect to regulations, each of the criteria or factors specified in the order mentioned in section 78(7) (as amended);

(b) reductions granted that do not comply with section 78, including reasons why the reductions were granted; and

(c) reductions claimed but not granted, including reasons why the claims were denied.

(3) For each financial year of the Revenue Authority, the Board of the Revenue Authority must prepare a report-

(a) summarising reports received from the Commissioner-General during the year under subsection (1); and

(b) making recommendations considered appropriate regarding the scope and administration of tax reductions, including by reference to the summary under paragraph (a).

(4) A report prepared under subsection (3)-

(a) must be submitted to the Minister within three months of the end of each financial year of the Revenue Authority to which it relates; and

(b) be published in the Gazette (in the form in which it was sent to the Minister) within six months of the end of the financial year of the Revenue Authority to which it relates.

(5) In this section, "reduction", with respect to tax, and "regulation" have the meanings given in section 78.

Part XII TEMPORARY PROVISIONS AND TRANSITIONAL

Agreements Affecting Tax

111A. (1) Subsections (2) and (3) apply where the Government of Ghana has concluded (whether before or after the commencement of this Act) a binding agreement with a person that purports to modify the manner in which tax is imposed, including by reason of a fiscal stability clause.

(2) Where this subsection applies, the provisions of the old tax law that are modified or protected by the agreement continue to apply until the earlier of-

(a) the end of the agreement or relevant clauses in the agreement;

(b) the first alteration of the agreement after the commencement of this Act; and

(c) the relinquishment by the person of the person's right to modified tax treatment.

(3) Where this subsection applies, in calculating the tax liability of the person during the application period referred to in subsection (2), the Commissioner-General may, in the Commissioner-General's discretion-

(a) continue to apply other provisions of the old tax law-

(i) that the Commissioner-General considers are associated with or that have an application that is consequential upon the provisions mentioned in subsection (2); and

(ii) instead of applying the corresponding provisions under the new tax law, as amended from time to time; and

(b) disapply any provisions in the new tax law, as amended from time to time, that have no corresponding provision in the old tax law.

(4) An agreement referred to in subsection (1) has no effect on the application of a tax law until such time as it is incorporated in a register to be kept by the Minister and known as the Register of Tax Agreements.

(5) A person seeking the benefit of an agreement referred to in subsection (1) must apply to the Minister for inclusion of the agreement in the Register of Tax Agreements.

(6) In this section-

"fiscal stability clause" refers to a clause in an agreement such that certain provisions of a tax law at the time of the agreement will continue to apply or not be altered to the detriment of a contracting party;

"new tax law" means a tax law after it has been modified or excluded by an agreement referred to in subsection (1), but without considering any such modification or exclusion; and

"old tax law" means a tax law as applicable immediately before it is modified or protected by an agreement referred to in subsection (1)."