

The Revenue Administration (Amendment) Act, 2020 (Act 1029) becomes law

In brief

The Parliament of Ghana passed the Revenue Administration (Amendment) Bill, 2020 on 20 July 2020. This new law was gazetted as Act 1029 on 6 October 2020. Act 1029 amends the Revenue Administration Act, 2016 (Act 915) in two main ways. Firstly, it establishes the Independent Tax Appeals Board to handle disputes between the Ghana Revenue Authority and taxpayers before the High Court is brought in to resolve the tax dispute. The Amendment also provides for amnesty from penalties under some conditions. These measures were announced in the 2018 National Budget delivered by the Minister for Finance.

In detail

Amnesty from penalty on making false or misleading statements

Prior to Act 1029, Act 915 prescribed a penalty for taxpayers who provided false or misleading information (“misstatements”) to tax officers. Depending on the circumstances, Act 915 sets the initial penalty for providing false or misleading information at 30% or 100% of the tax shortfall. For subsequent misstatements, the penalty is increased cumulatively by 20% unless the taxpayer voluntarily discloses the error to the Ghana Revenue Authority (“GRA”).

Act 1029 now modifies what happens when the taxpayer discloses the error. Rather than the usual 20% reduction in the penalty rate, the Amendment now removes the penalty entirely. That means if the misstatement is brought to the attention of the GRA by the taxpayer and promptly settled, the taxpayer will not suffer any penalty for this violation. So, a key obstacle against benefiting from this amnesty is where the tax remains unpaid. The goal is to encourage taxpayers to provide true records and pay the right taxes without being afraid of penalties associated with the additional taxes.

Although Act 1029 provides some assurance to taxpayers in this category, it is seen to have a narrow application as it is linked exclusively to voluntary disclosures of tax shortfall that arose from making misstatements. Tax shortfalls generally attract interest for late payment of the taxes. As things stand now, a taxpayer who made a misstatement and wants to correct that statement will be spared the

penalty for making the false statement but will be exposed to interest for failing to pay the tax on time. An amnesty for a particular penalty does not cascade to other sanctions.

Independent Tax Appeals Board

Ghana joins Kenya, Tanzania, South Africa, Zambia and other countries that have independent tax appeal bodies. These bodies are responsible for settling disputes between the tax revenue authority and the taxpayer before the disputes reach the Courts.

Act 1029 establishes the Independent Tax Appeals Board in Ghana. The Board’s function is to hear and determine objections to tax decisions from the Commissioner-General (“CG”). When this Board is fully functional, any taxpayer who is dissatisfied with a tax decision of the CG will still be required to first raise an objection to the CG. If the taxpayer is dissatisfied with the CG’s decision, the taxpayer can proceed to the Board.

The Board will be composed of 11 persons, including a chairperson, who will be chosen from diverse backgrounds and appointed by the Minister for Finance. Each member of the Board will be in office for a term of up to four years and is eligible for appointment for a second term.

The business of the Board will be based on a panel system with each panel comprising three members from the Board. Where necessary, the Panel may seek an expert’s advice.

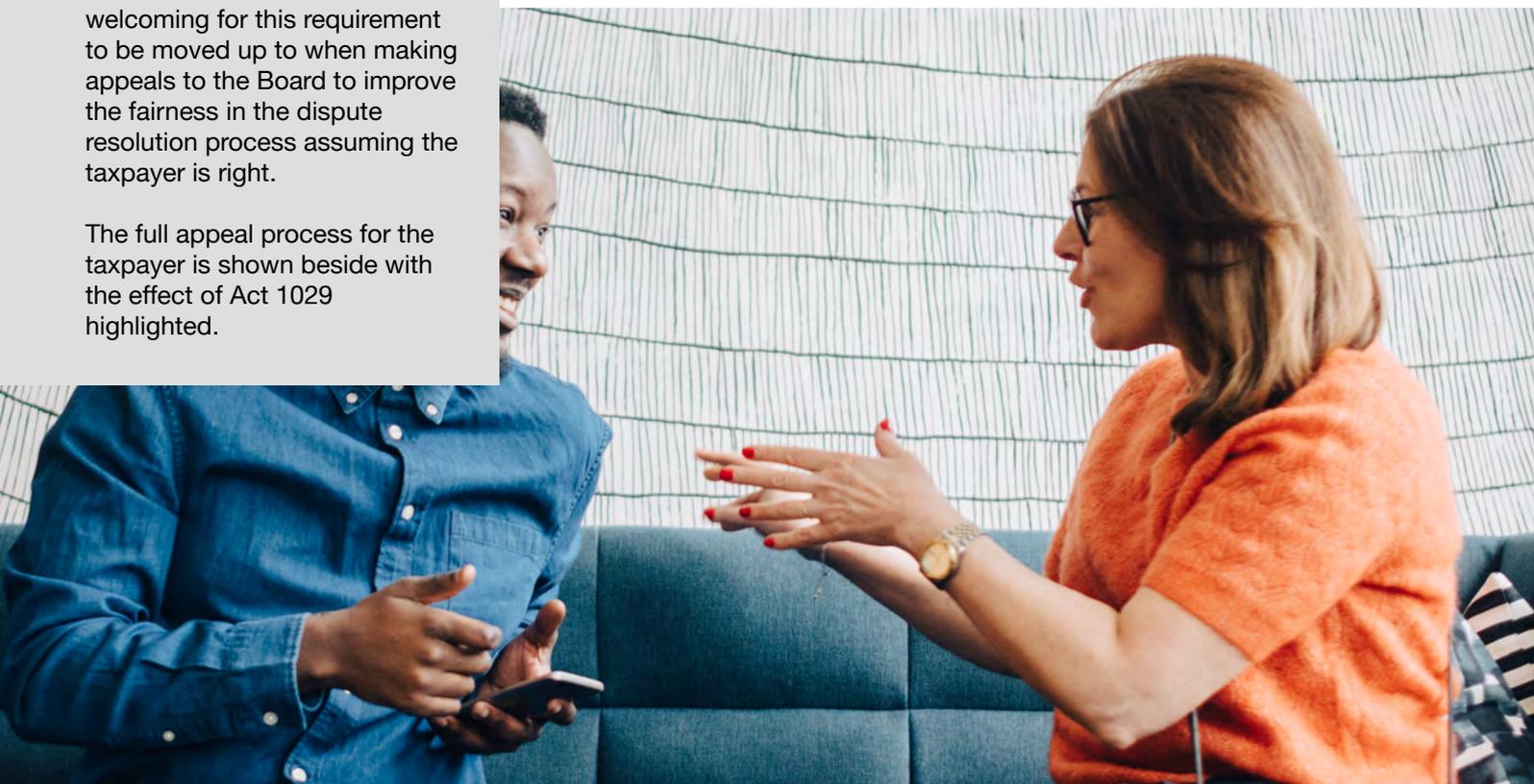
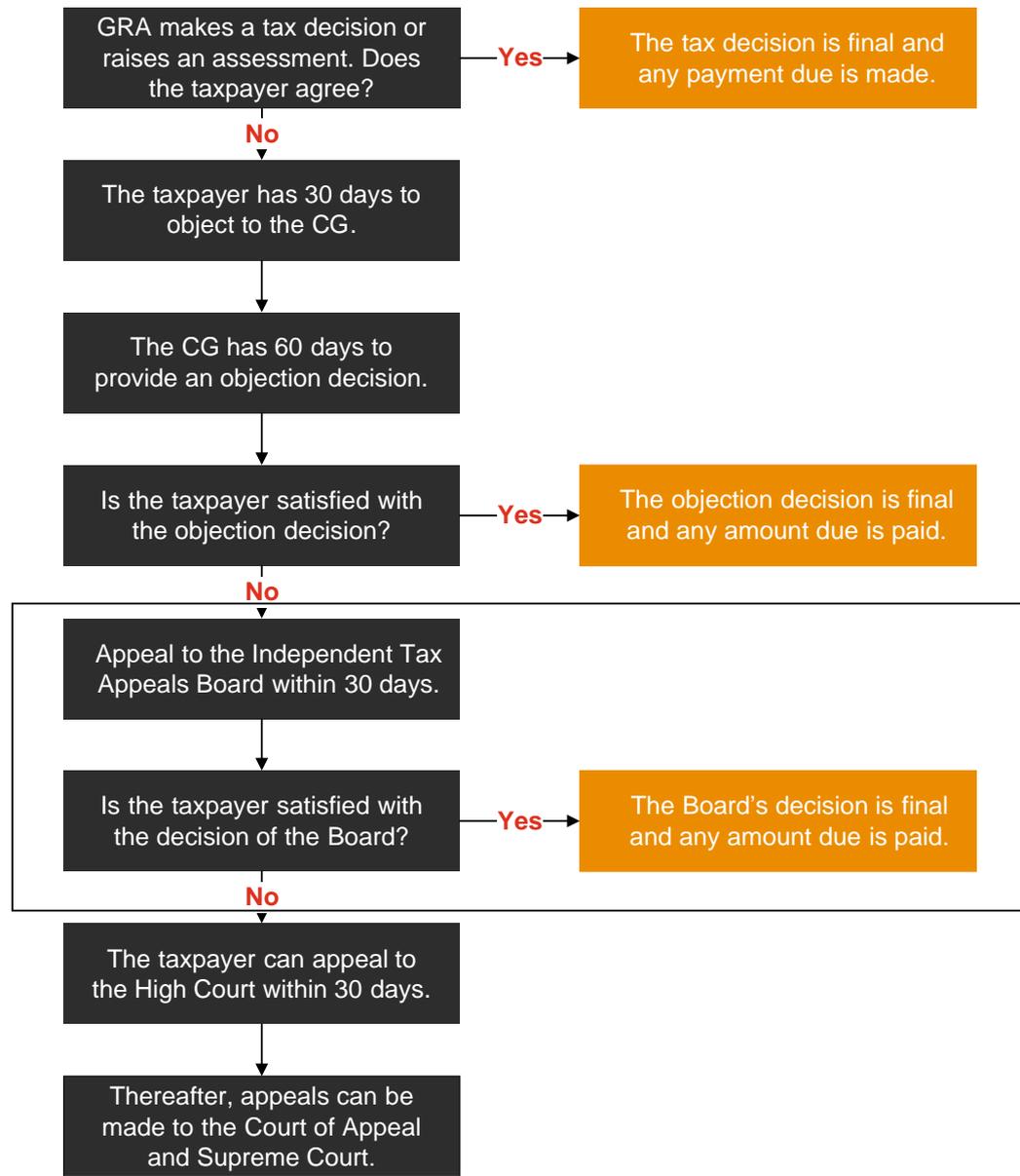
To resolve disputes, Panels can meet at a time and place determined by the Chairperson. Multiple Panels could run at any given time. We expect this to create flexibility for the Board to move around the country to resolve disputes and avoids a situation where all tax disputes are heard in Accra.

Although the CG is responsible for raising any additional tax liability, the taxpayer has the duty to show that the assessment (excluding penalties) is incorrect. The CG's duty is to demonstrate to the Panel that penalty should be imposed under the circumstances.

It is optional for the Panel to make their decisions publicly available. In most jurisdictions, decisions of the appeals body are publicly available. This helps other taxpayers to determine whether a decision has already been taken on a particular matter and how it may affect them.

Currently, unless varied by the CG, a taxpayer has to pay 100% of disputed import duties and related taxes, and 30% of other taxes before the initial objection can be heard by the CG. There was no change to this requirement even with the establishment of the Board. It would have been more welcoming for this requirement to be moved up to when making appeals to the Board to improve the fairness in the dispute resolution process assuming the taxpayer is right.

The full appeal process for the taxpayer is shown beside with the effect of Act 1029 highlighted.



Takeaway

The Revenue Administration (Amendment) Act, 2020 (Act 1029) provides incentives for taxpayers who have underpaid taxes by inadvertently making misstatements to voluntarily disclose the error and pay the appropriate taxes. The sanction for this violation has been relaxed under some conditions so that underdeclared taxes can be paid without applying the penalty for misstatement.

Rather than paying up to twice of the underdeclared tax as a result of the penalty imposition, the taxpayer can potentially pay only the principal debt. We encourage taxpayers who may have made misstatements to consider applying for this amnesty.

Act 1029 also introduces a quasi-judicial approach to dealing with tax disputes. We expect that the Board will expeditiously deal with cases so as not to delay the dispute resolution process. We hope the Board will be set up as soon as is practicable for it to start working.



Let's talk

For a deeper discussion of how this issue might affect your business, please contact:



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