



Regulatory Alert

Ghana introduces Electronic VAT system, Up-front VAT payment and Taxation of E-Commerce.

The Value Added Tax Act, 2013 has been amended by the Value Added Tax (Amendment) Act which came into force on 12 September 2022. The purpose of this amendment is to compel taxpayers who qualify to register for value-added tax (VAT) to register on time. The main policy rationale for the provisions introduced by this amendment is to aid tax authorities in Ghana in their effort to tighten the laws to ensure non-resident persons who supply taxable goods or services, register for VAT.

The principal enactment has been amended to provide for the following: the upfront payment of VAT by unregistered importers, the taxation of electronic commerce, the electronic issuance of tax invoices, and the zero-rating of the supply of locally assembled vehicles.

In this alert, we highlight the key areas of the amendment below:

Up-front payment by unregistered importer

- Importers of taxable goods who are not registered for tax are liable to upfront payment of 12.5% of the custom value of the taxable goods as penalty.
- The law has however provided that the upfront payment may be recovered after the person has registered for the tax and filed a return.

Unregistered Non-Resident Persons Providing Telecommunication and Ecommerce Service

- The law now requires an unregistered non-resident person who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country, other than through a Value Added Tax registered agent to register, if that person makes a taxable supply.
- There is an imposition of restriction of access in the country by a person who fails to register for VAT as provided above until the person fulfills the obligation under the Act and Regulation.
- Digital Services which was hitherto not included in the Act, has now been included. Digital Service has been defined to include social networking, online gaming, cloud services, video or audio streaming, digital marketplace operations and online advertisement services.

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Introduction of a Certified Invoicing System for The Issuance of Tax Invoices (E-VAT)

- The current amendment to the law (Act 1082) requires a taxable person to issue VAT invoices through a certified invoicing system which the taxable person is to ensure is integrated into the invoicing system of the Commissioner-General of the Ghana Revenue Authority.
- The purpose of this new system is to promote data sharing between the Commissioner General and the taxable persons.
- Where a taxable person fails to integrate their Certified Invoicing System into the invoicing system of the Commissioner-General, the person, shall in addition to other sanctions provided under the Act, be liable to pay a penalty of an amount of not more than five hundred currency points or three times the amount of tax involved, whichever is higher.
- It further provides that taxable persons with a period of one year from the coming into force of Act 1082 to comply with the requirements of the Certified Invoicing System.

Place of Supply of Electronic Commerce and Digital Services.

- Definition for the place of supply of Electronic Commerce and Digital Services to include;
- A place of supply of e-commerce services is the place where the effective use or enjoyment occurs whilst the place of supply of digital services is the place where the service is supplied, used or enjoyed in the country if any two of the following circumstances exist:
 - i. the recipient of the service is a resident person.
 - ii. the payment, including mobile money, credit card, debit card or bank account, for the supply of a digital service originates from a payment platform in the country or a registered or authorised financial institution as provided for under the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930);
 - iii. the recipient of the supply of a digital service has either a business, residential or postal address, internet proxy address or phone number in the country; and
 - iv. the service is received on a terminal located in the country, including a computer, tablet, mobile phone or similar device.”.

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Deductible input tax

- The initial provision which allowed for the deduction of output tax on amounts equal to the tax fraction of an amount paid during the tax period by the taxable person as a prize or winnings to the recipient of services under a betting agreement or participation in a game of chance has been repealed.
- A non-resident person who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country, other than through a Value Added Tax registered agent are required to register for VAT shall not qualify for deductible input tax for the supply of a digital service.
- Additionally, the Commissioner-General may determine the procedure for the deduction of input tax by a resident person who uses or enjoys a digital service from a non-resident person.

Submission of tax return and date of payment of the tax

- A non-resident person who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country, other than through a Value Added Tax registered agent shall:
 - » submit a return to the Commissioner General, not later than the last day of the month immediately following the month to which the return relates, whether or not tax is payable for the period; and

- » pay the tax due to the Commissioner General on the same day that the return is due
- It is relevant to note that, both the days for filing and the payment of tax includes weekends and public holidays, for a nonresident person who provides telecommunication services or electronic commerce to persons for use or enjoyment in the country, other than through a Value Added Tax registered agent

Interpretation

- The following "definitions now apply;
 - i. Certified Invoicing System: an electronic invoicing system certified by the Commissioner General in accordance with this Act;
 - ii. A Tax invoice is now defined to include an electronic tax invoice issued through a Certified Invoicing System for a supply of goods or services by a taxable person in accordance with this Act and Regulations made under this Act;"

Zero rated supply

- Effective 1 September, 2022 to 31 December, 2023, supply of locally assembled vehicles under the Ghana Automotive Development Programme will be classified as zero rated supply.



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Takeaways

- The introduction of a centralized Certified invoicing system will help promote data sharing between persons engaged in the provision of taxable supply and the Commissioner General. The Certified Invoicing System will also facilitate the easy filing of tax returns and will ultimately positively impact the Administration of Value Added Tax in Ghana.
- It is evidenced that Ghana Revenue Authority is closing the gap with digitization. It is expected that, transactions that could earlier go under the radial of GRA may soon be discovered and expose taxpayers for non-compliance.
- The provision that allows suppliers of digital service and communication services to file and pay tax on weekend and public holidays is very consistent with development in tax administration in Ghana. In our opinion, the laws that restricted the statutory days for filing and payment of taxes considered the administrative challenges regarding weekends and public holidays. With the implementation of the current GRA taxpayer portal and Ghana.gov, this administrative challenge no more exists since one can file and pay taxes without physical presence at GRA or a bank. It is therefore time to reconsider this law and open the gate to other taxpayers to be able to file and pay tax returns on Saturdays, Sundays and Public holidays.
- Now businesses operating online (e-commerce) without physical location and presence in Ghana, who were previously not covered have now been brought into the net and are required to register for VAT.
- The E-VAT system is not an all-round solution for under reporting of taxable supply. The problem of cash transactions if allowed to continue to exist, will likely result in a similar challenge associated with the E-Levy, for which GRA could not meet the revenue targets. GRA needs to employ measures to encourage self-compliance, reportage of non-compliant suppliers and culture of compliance among both vendors and buyers.
- For GRA to achieve the desired result of the E-VAT system, there should be total enrollment of all taxpayers. Failure to do that may leave a significant portion of taxable activities which are currently either not or under reported, to continue the status quo and thereby denying GRA the opportunity to widen the tax net.
- The current E-VAT system appears to have been designed to collect the output data without the input. The assumption is that the output will be analysed to automatically report the input where the taxpayer does not need to manually report the input. If this is not done, and taxpayers are left to manually record the input tax, it could be manipulated to reduce the tax payable in defeat of the intent of the system.
- To resolve one of the issues of under declaration of import values at the port, the E-VAT system could be synched with the database at the port. Thus, where the value of goods are under declared at the port, the sale values will expose a higher profit margin for Corporate Income Tax (CIT).

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