

5. Appendix

Abridged Version of VALUE ADDED TAX ACT, 2013 (ACT 870)

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Introduction

The Government of Ghana introduced the Value Added Tax Act, 2013 (Act 870) in 2013 to revise and consolidate the law relating to the imposition of the value added tax (VAT) and to provide for related matters. This represents an abridged version of the Act 870 and its amendments.

Imposition of tax

Imposition of VAT

VAT is to be charged on the supply of goods or services made in Ghana and on the import of goods or services other than those exempted from VAT.

VAT is charged on the taxable supply of goods or services made by taxable persons in the course of the taxable activity of the person.

Persons liable to pay tax

VAT shall be paid by the taxable person making the taxable supply, an importer of goods, or recipient of imported services.

Rate of the tax

The rate of the tax is twelve and a half percent (12.5%) of the value of the taxable supply of goods or services or on the value of the import.

A taxable person who is a retailer or wholesaler of goods shall account for VAT at a flat rate of three percent (3%). This does not apply to the supply of power, heat, refrigeration or ventilation.

Taxable person and taxable activity

Taxable Person

A taxable person is a person who is registered for VAT or is required to register for VAT.

Taxable activity

A “taxable activity” means an activity carried in or partly in Ghana either for profit or not and involves the supply of goods or services to another person for payment.

Taxable activity includes:

- an activity of a local authority or unincorporated association or body that involves, in whole or in part, the supply of goods or services to another person for consideration;
- the processing of data or supply of information or similar service;
- the supply of staff;
- the making of gifts or loans of goods;

- the leasing or letting of goods on hire;
- the appropriation of goods or services for personal use or consumption by the taxable person or by any other person;
- the sale, transfer, assignment or licensing of patents, copyrights, trademarks, computer software and other proprietary information; and
- the export of non-traditional products.

A supply for consideration is a supply in which the supplier is directly or indirectly entitled to receive payment wholly or partly in money or in kind from the person to whom the supply is made.

A supply is part of a taxable activity, if the supply is made by a person as part of, or incidental to any economic activity the person conducts.

Registration

Registration requirement

An unregistered taxable person engaged in a taxable activity shall register if:

- for a period of twelve (12) months or less the person makes taxable supplies exceeding two hundred thousand Ghana Cedis; or
- from the supplies made in any month, there are reasonable grounds to expect that, within the next twelve (12) months or less the person will make supplies exceeding two hundred thousand Ghana Cedis,

the application for registration must be filed within thirty (30) days after the end of twelve (12) months.

An unregistered taxable person shall register if:

- at the end of any three (3) month period, the person made, taxable supplies exceeding fifty thousand Ghana Cedis and is required to file the application for registration within thirty (30) days after the three (3) month period; and
- from the supplies made there are reasonable grounds to expect that, the total value of taxable supplies made by that person during that period and to be made during the next consecutive nine (9) months will exceed two hundred thousand Ghana Cedis,

the application for registration must be filed within thirty (30) days after the end of the month.

A person who is required to register shall apply for Value Added Tax registration in the form and manner prescribed by the Commissioner-General.

Period for becoming a taxable person

A person who is required to register but fails to register is regarded as a taxable person, from the beginning of the tax period in which the requirement to apply for registration arose.

Notice of Registration

The Commissioner-General shall within thirty (30) days after the receipt of an application, give notice to the applicant of the decision on registration.

Where the Commissioner-General fails to serve notice, the Commissioner-General is deemed to have made a decision to register the applicant.

Where within thirty (30) days the Commissioner-General requests additional information from the applicant in order to decide if the applicant is qualified for registration, the Commissioner-General shall have not less than fourteen (14) days after receipt of the required information to decide on the application.

Certificate of registration

The Commissioner-General shall issue a certificate of registration to each person registered for VAT. A registered person shall clearly exhibit the certificate of registration at the business premises.

Notice of cancellation in respect of turnover

The Commissioner-General may, in writing, notify a person that, that person has made taxable supplies in excess of or below a turnover threshold and is either registrable as a taxable person or is not.

Exceptions regarding thresholds

A promoter of public entertainment, an auctioneer or a national, regional, local or other authority or body, carrying on any taxable activity is required to register as a taxable person regardless of the rules applicable to thresholds.

A national, regional, local or other authority or body shall apply for registration within thirty (30) days after commencement of a taxable activity.

An auctioneer is required to register within thirty (30) days after the date on becoming an auctioneer.

A promoter of public entertainment shall apply for registration at least forty-eight (48) hours before the commencement of a public entertainment activity, and if there is a reasonable expectation of taxable supplies exceeding ten thousand Ghana Cedis.

Designation of taxable persons in respect of groups and distinct divisions

A group of taxable persons may apply to the Commissioner-General to be treated as one taxable person. A taxable person with a business structured into distinct divisions may apply to register one or more of its divisions for the tax.

Where a group has been designated as one taxable person, each member of the group shall be jointly and severally liable for any liability.

Application for voluntary registration

A person, who is not required to register, may voluntarily apply to be registered.

A voluntary applicant shall be registered as a taxable person where the Commissioner-General:

- is satisfied that the person has a fixed place of abode or business; or
- reasonably believes that, the person keeps proper accounting records related to any business activity carried on by that person, submits regular and reliable tax returns; or
- reasonably believes that the person is a fit and proper person to be registered.

Compulsory registration

Where a person required to register fails to do so, the Commissioner-General shall register that person.

Sanctions for failure to register

A person who does not register is liable to a penalty of up to two times the amount of tax on taxable supplies, which the person would have had to pay from the time the person was required to apply for registration, until the person files an application for registration.

Unregistered, non-resident persons who provide telecommunication services or electronic commerce

Where an unregistered, non-resident person provides telecommunication services or electronic commerce to persons for use, or enjoyment in the country other than through a VAT registered agent, that person must register, if that person makes taxable supplies exceeding the threshold for registration.

Notice of change in business

A taxable person shall give written notice to the Commissioner-General within fourteen (14) days, where that person ceases to operate, sells or relocates the business or there is a change in ownership of the business among others.

Cancellation of registration

A taxable person's registration may be cancelled by the Commissioner-General where he is satisfied that the taxable person:

- no longer exists;
- is not carrying on a taxable activity;
- is not required or entitled to apply for registration;
- has no fixed place of business or abode;

- has not kept proper accounting records related to a business activity carried on by that person; or
- has not submitted regular and reliable tax returns.

A registered taxable person who registered voluntarily can request for cancellation of registration, only after the expiration of two (2) years from the date of registration.

Special supply

Repossession of goods as supply of goods

Where goods are repossessed under a credit agreement, the repossession is a supply of the goods by the debtor to the person exercising the right of repossession.

Lay-away agreement and betting as supply of services

Where there is an agreement by the seller to reserve an item for a consumer, and the agreement is terminated, and the seller retains or recovers an amount under the agreement, the termination is a supply of services by the seller.

When a person places a bet with another person operating a game of chance, it is a supply of services to the person placing the bet.

Separate supply

Where a supply of goods or services consists of a supply at different tax rates each part of the supply of goods, or services is treated as a separate supply for the purpose of charging different tax rates applicable to each part, if each part can be supplied separately.

Activities that do not constitute supply of goods or services

A supply of services by an employee to an employer by reason of the employment is not a supply of services.

The transfer of goods to a person, acting in a representative capacity to the person transferring the goods, is not a supply of goods.

Payment of deposit and receipt of claim as supply of goods or services

The payment of deposit, other than on a returnable container, is a supply when the deposit is forfeited.

Where a taxable person receives a payment of a claim or is indemnified under a non-life insurance contract for a loss incurred under a taxable activity, the receipt of payment or indemnity is a supply of a taxable activity, but only if the supply of that non-life insurance contract is taxable.

Supply of power and others as supply of goods

The supply of power, heat, refrigeration or ventilation is a supply of goods.

Phone cards and prepayment as supply of services

The issuance of a phone card, prepayment on a cell phone or similar scheme of advance payment for the supply of goods, or the rendering of services is a supply of services.

Mixed Supplies

A supply of services connected to a supply of goods is treated as part of the supply of goods.

A supply of goods connected to a supply of services is treated as part of the supply of services.

A supply of services connected to an import of goods is treated as part of the import of the goods.

However, supply of real property does not include the supply or the import of services connected to that supply.

Supply by Agent or Auctioneer

A supply of goods or services made by an agent for the principal is a supply by the principal.

A supply of goods by auction is treated as a supply of goods by the auctioneer.

Taxable supplies

Taxable supply

A taxable supply is a supply of goods or services made by a taxable person for consideration, in the course of or as part of a taxable activity carried on by that person.

Exempt supply

The supply of goods and services that are exempt from VAT, as provided for under the first schedule of the law.

The supply of goods and services at the rate of zero percent (0%) is not an exempt supply.

Zero-rated supply

Supply of goods and services that are zero-rated are provided for under the second schedule of the law.

A taxable person who makes a zero-rated supply, is required to obtain and retain documentary proof that is acceptable to the Commissioner-General.

Exempt import

An import of goods is an exempt import if the goods are exempt under the first schedule of the law or classified as an exempt import in the Customs Tariff Schedule (HS Code).

Relief supply

Relief from tax may be granted to persons specified under the third schedule of the law.

Time and place of supply, tax invoice and sales receipt

Time of supply

A supply of goods or services occurs:

- on the date on which the goods or services are first applied to own use;
- Where the supply is by way of gift, on the date on which ownership in the goods passes or the performance of the services is completed.

In any other case, the time of supply occurs on the earliest of the dates on which;

- the goods are removed from the premises of the taxable person, or from other premises where the goods are under the taxable person's control;
- the goods are made available to the person to whom they are supplied;
- the performance of services is completed;
- receipt of payment is made, or a tax invoice or sales receipt is issued.

Where metered supplies are made on a continuous basis, the time of supply is at each meter reading.

The supply of goods under a hire purchase agreement, or finance lease occurs on the date the goods are made available.

Where goods are supplied under a rental agreement, or goods or services are supplied under an agreement or law which provides for periodic payments, the goods or services shall be considered as supplied on the date on which payment is due or received or that the invoice is issued whichever date is earlier.

A supply of goods in accordance with a lay-away agreement occurs when the goods are delivered to the purchaser.

A supply of goods that have been repossessed occurs, when the goods are repossessed; or where the debtor is reinstated under the credit agreement.

A supply of goods made through a coin-operated machine occurs, when the supplier withdraws the consideration from the coin-operated machine.

The forfeiture of a deposit, other than on a returnable container, occurs when the deposit is forfeited.

The supply of a token, voucher, gift certificate, or stamp is a supply, when the token, voucher, gift certificate, or stamp is issued.

Time of import

An import of goods occurs when the goods are entered for home consumption.

Issue of tax invoice or sales receipt

A taxable person shall, on making a taxable supply of goods or services, issue to the recipient, a tax invoice and retain a copy.

The Commissioner-General may authorise a taxable person who makes a taxable supply to issue a sales receipt instead of a tax invoice.

A person who:

- issues a false tax invoice or sales receipt;
- uses a false taxpayer identification number: or
- fails to issue a tax invoice or sales receipt,

is in addition to a fine, liable to a term of imprisonment and a penalty of not more than five hundred Ghana Cedis or three times the amount of tax involved.

Place of supply

The place of supply of goods is the place where the goods are transported from, delivered or made available by the supplier.

A supply of thermal or electrical energy, heating, gas, refrigeration, air conditioning, or water takes place where the supply is received.

A supply of services takes place at the location of the business of the supplier from which the services are supplied.

The supply of the following services takes place where the recipient uses the service including:

- a transfer or assignment of a copyright, patent, licence, trademark, or similar right;
- the service of a consultant, engineer, lawyer, architect, accountant or other professionals;
- the processing of data or supplying information, or any similar service;
- an advertising service;
- the supply of personnel;
- the service of an agent in procuring for the agent's principal; or
- the leasing of tangible personal property other than transport property.

A supply of services incidental to transport takes place, where the transportation occurs.

In the case of telecommunications service, the place of supply is the place where the facility or instrument for the emission, transmission or reception of the service, is issued or is to be issued, is ordinarily situated or the place where the effective use and enjoyment occurs.

In the case of electronic commerce, the place of the supply is the place, where the effective use and enjoyment occurs.

The place of supply of a recharge card or other similar mode of recharging is the place, where the product is supplied.

Taxable value

Value of taxable supply

The value of a taxable supply for monetary consideration, is the consideration including all duties and taxes excluding VAT.

Where the supply is not for monetary consideration or is partly for monetary consideration, the value is the open market value of a similar supply excluding the VAT.

Where a taxable supply is made without a separate amount for the consideration being identified as a payment of the tax, the taxable value of that supply is the amount of the consideration paid excluding the tax.

Where a supply is made by a taxable person for no consideration or for a consideration that is less than the open market value of that supply, the value of the supply is the open market value.

The value of a supply of goods under a credit agreement is the cash value of the supply.

The value of the supply of goods by the debtor under a credit agreement is the value of the supply, equal to the balance of the cash value of the supply of those goods to the debtor that have not been recovered at the time of the supply.

The value of a supply of services in a terminated or cancelled lay-away agreement or betting transaction, is an amount equal to the amount that is retained or recoverable by the seller or purchaser.

Where the consideration received for a token, voucher, gift certificate or stamp exceeds the monetary value of the token, voucher, gift certificate or stamp, the value of the supply is the excess amount.

Where the holder of a token, voucher, gift certificate, or stamp issued by a taxable person discounts the token, voucher, gift certificate, or stamp to a person other than the issuer, the value of the supply of the goods or services is the monetary value exclusive of VAT.

Taxable value for determining the tax on imported goods and services

The import value, other taxes, and the cost of insurance and freight (CIF) are included in the determination of value for the purposes of arriving at the tax chargeable on imported goods.

The value of the import of services is the open market value of the import of the services, where an import of services is made for no or less consideration than the open market value, and the parties are related persons.

Adjustments

A taxable person making the supply shall make an adjustment where in relation to a taxable supply:

- the supply is cancelled;
- the nature of the supply has been fundamentally altered;
- the previously agreed consideration has been altered by agreement; or
- all or part of the goods or services have been returned.

Where a taxable person issues a tax invoice in relation to the supply above and the amount shown on the invoice as the tax charged is incorrect; or a return for the period in which the supply relates is filed and has accounted for an incorrect amount, the taxable person making the supply shall make an adjustment.

Adjustment on account of bad debts

Where a taxable person issues a tax invoice for the supply of taxable goods or services and the whole or part of the consideration for the supply was not received by the taxable person, the taxable person may deduct input tax for tax paid in respect of the taxable supply that is subsequently treated as a bad debt.

The amount of the deduction allowed is the amount of the tax paid, in respect of the taxable supply which corresponds to the amount treated as bad debt.

Calculation of tax payable and refunds

Tax payable for tax period

The tax payable by a person for a tax period in respect of taxable supplies is the total amount of output tax charged by the person, in respect of the taxable supplies made or considered to have been made, by that person during the period, less the total deductible input tax allowed to the person for the period.

Where the total amount of deductible input tax allowed to a person for a tax period exceeds the total amount of output tax chargeable by that person, for that period the amount of the excess tax shall be treated as either a credit or refund.

Appointment of a Value Added Tax Withholding Agent

Value Added Tax Withholding Agents maybe be appointed by the Commissioner General. The Agent shall withhold from the payment to a registered VAT trader, seven percent (7%) of the taxable output value of the standard rate suppliers.

Deductible input tax

A taxable person may deduct input tax from the output tax on goods and services as follows:

- tax on goods and services purchased in the country and goods imported by that person and used wholly, exclusively and necessarily in the course of the taxable activity;
- where adjustments have been made in relation to a taxable supply by way of cancellation or variation of supply or consideration, or on account of bad debt;
- in respect of an amount equal to the tax fraction of an amount paid during the tax period, by the taxable person as a prize or winnings in relation to the operation of a game of chance; or
- with respect to an amount equal to the tax fraction of any amount paid during the tax period by the taxable person in respect of the redemption of a token, voucher, gift certificate or stamp.

An input tax deduction shall not be allowed on purchases or imports in respect of exempt supplies by the taxable person.

An input tax deduction shall not be made more than once or after the expiration of a period of six (6) months after the date the deduction accrued.

A taxable person does not qualify for deductible input tax in respect of a taxable supply relating to entertainment including restaurant, meals and hotel expenses unless the taxable person is engaged in a taxable activity of providing entertainment, and the entertainment is used in that taxable activity.

A taxable person does not qualify for deductible input tax on fees or subscriptions paid by the person, in respect of membership of a club, association, or society of a sporting, social, or recreational nature by any person.

Where a taxable supply to, or an import of goods by, a taxable person is partly for use in a taxable activity and partly for personal or other use, the amount of input tax allowed as a deductible input tax shall be restricted to that part of the supply that relates to the use in connection with a taxable activity.

Where a taxable person does not have a tax invoice that provides evidence of the input tax paid, the Commissioner-General may allow a deductible input tax in the tax period in which the deduction arises if he is satisfied that certain conditions have been met.

A newly registered taxable person may claim a deduction for allowable input tax in the first tax period that registration is effective for:

- goods acquired by supply or import, within four (4) months before the date of registration; and
- capital goods acquired, by supply or import, within six (6) months before the date of registration.

A taxable person, under the VAT flat rate scheme does not qualify for an input tax deduction in respect of a supply of goods.

Deductible input tax for mixed taxable and exempt supply

A taxable person who makes both taxable and exempt supplies, may deduct the input tax on the taxable purchases and taxable imports that can be directly allocated to the taxable supplies made.

Where a taxable person has made both taxable and exempt supplies, but cannot directly allocate input tax to the taxable and exempt supplies that person may deduct input tax on the taxable purchases and taxable imports, an amount that bears the same ratio as the taxable supplies bear to the total supplies.

Where the ratio of taxable supplies to total supplies for the tax period is less than five per cent (5%), the taxable person is not entitled to deduct any input tax for the tax period.

Where the ratio of taxable supplies to total supplies for the tax period is more than ninety-five per cent (95%), the taxable person may deduct the entire input tax allowable on the taxable purchase and taxable imports.

Where a bank or other financial institution makes both exempt and taxable supplies for a tax period, the amount of the input tax allowed as a deduction for that period is limited to the amount of input tax payable in respect of supplies or imports received which are directly linked to the making of taxable supplies.

Tax Inclusive Pricing

A price advertised or quoted in respect of a taxable supply shall include the tax and this shall be advertised.

Where the price quoted in respect of taxable supply excludes the tax, it must be separately stated and advertised.

Submission of tax return and date of payment of the tax

A taxable person shall account for the tax on a tax return for each tax period. The return shall be in a form and filed in the appropriate manner stating the amount of tax payable for the period.

The tax return shall be submitted not later than the last working day of the month immediately following the month to which the return relates, whether or not tax is payable for the tax period.

The payment of the tax due for a tax period shall be made, not later than the date the return is required to be submitted.

A taxable person who without justification fails to submit tax returns by the due date is liable to a penalty of five hundred Ghana Cedis and a further penalty of ten Ghana Cedis for each day after the due date that the return is not submitted.

Payment of tax on import of services

Where tax is payable on an import of services, the person liable for the tax is required to provide a service import declaration, and pay the tax due in respect of the import within twenty one (21) days after the tax period in which the services were imported.

Assessment of the tax and correction of return

A person will become liable for the payment of an amount of tax, where there is a reasonable belief that the amount may not be paid, or a return is incorrect or that any lawful tax has not been paid amongst others.

The Commissioner-General, based on that may make an assessment of the amount of tax payable or of the amount of tax claimed by the person as payable in respect of a supply.

The Commissioner-General may approve or refuse to approve the application where a person applies to amend the return.

Recovery of tax due

An amount shown on an invoice or sales receipt as tax on a supply of goods or services is recoverable as tax due from the person issuing the invoice or sales receipt, whether the invoice or sales receipt is issued by a taxable person or another person, and whether or not the person issuing the invoice is a taxable person.

Recovery from recipient of a supply

Where in making a taxable supply, the taxable person has, as a result of a fraudulent action or misrepresentation by the recipient of the supply, incorrectly treated the supply as an exempt or zero-rated supply, an assessment may be raised on the recipient for the amount of unpaid tax in respect of the supply together with any interest and penalty that has become payable.

The Commissioner-General is not prevented from recovering the tax, interest, and penalty due from the taxable person making the supply.

Where an amount of tax, interest, or penalty is paid by the taxable person, the taxable person may recover the amount paid from the recipient.

Failure to issue tax invoice

A person who fails to issue a tax invoice or sales receipt for taxable goods supplied or taxable services rendered, commits an offence and is liable to a fine or to a term of imprisonment or to both.

Evasion of tax payment

A person who knowingly engages in the evasion of tax or takes steps with a view to evade tax payable by that person or any other person, commits an offence and is liable to a fine or to a term of imprisonment or to both.

A person who acquires possession of or deals with any goods, or accepts the supply of any goods or services having reason to believe that the tax on the supply of the goods or services has not been, or will not be paid, or that tax has been, or will be, falsely reclaimed, commits an offence. The person is liable to a fine or to a term of imprisonment or to both.

Power to seal off premises

The Commissioner General may obtain a court order to seal off a premise of a taxpayer if the taxpayer:

- fails to issue tax invoice, debit or credit note;
- improperly claims a tax refund;
- fails to file tax returns; or
- fails to pay tax when due.

Disclaimer

This document is designed to provide user friendly information and is by no means replacing the Value Added Tax Act, 2013 (Act 870).