

FOURTH REPUBLIC

Communications Service Tax (Amendment) Act, 2013 Act 864

ARRANGEMENT OF SECTIONS

Section

1. Section 1 of Act 754 amended
2. Section 2 of Act 754 amended
3. Section 6 of Act 754 amended
4. Section 8 of Act 754 amended
5. Section 11 of Act 754 amended
6. Section 12 of Act 754 amended
7. Section 14 of Act 754 amended
8. Section 16 of Act 754 amended

SCHEDULE

Act 864

REPUBLIC OF GHANA

THE EIGHT HUNDRED AND SIXTY-FOURTH

ACT

**OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED**

COMMUNICATIONS SERVICE TAX (AMENDMENT) ACT, 2013

(ACT 864)

A ACT to amend the Communications Service Tax Act, 2008 (Act 754) to clarify the scope and coverage of the tax and to provide for related matters.

DATE OF ASSENT: *12th July, 2013.*

PASSED by Parliament and assented to by the President:

Section 1 of Act 754 amended

1. The Communications Service Tax Act, 2008 (Act 754) referred to in this Act as the principal enactment is amended by the substitution for section 1 of

Imposition of communications service tax

1. (1) There is imposed by this Act a tax to be known as Communications Service Tax to be levied on charges payable by a user of an electronic communications service other than private electronic communications services.

(2) The tax shall be levied on electronic communications service supplied by service providers;

(3) For the purpose of this section, the supply of any form of recharges shall be considered as a charge for usage of electronic communications service."

Section 2 of Act 754 amended

2. The principal enactment is amended by the substitution for section 2 of

"Persons liable to pay the tax

2. (1) The tax shall be paid together with the electronic communications service charge payable to the service provider by the user of the service.

(2) The tax is due and payable on any supply of electronic communications service within the time period specified under subsection (5) of section 6 whether or not the person making the supply is permitted or authorised under the Electronic Communications Act 2008, (Act 77 5) and Electronic Communications Regulations, 2011 (L.I.1991) to provide electronic communications services" .

Section 6 of Act 754 amended

3. The principal enactment is amended in subsection (1) of section 6 by the substitution for "communications service provider" of "service provider" .

Section 8 of Act 754 amended

4. The principal enactment is amended in section 8 by the substitution for subsection (2) of

"(2)An amount shown as the tax on a bill or invoice for electronic communications service usage is recoverable as tax from the person who issues the bill or invoice whether or not

(a) tax is chargeable on the electronic communications service usage, or

(b) the person who issues the bill or invoice is a person authorised to provide electronic communications service under the Electronic Communications Act, 2008 (Act 775)."

Section 11 of Act 754 amended

5. The principal enactment is amended by the substitution for section 11 of

"Application of Act 546 to the tax

11. Sections 29 and 30 and Part XII of the Value Added Tax Act, 1998 (Act 546) apply to the management of the tax with the necessary modifications."

Section 12 of Act 754 amended

6. The principal enactment is amended by the substitution for section 12 of

"Objections and appeals

12. Sections 54 and 55 of the Value Added Tax Act, 1998 (Act 546) apply in matters of objections and appeals related to the tax."

Section 14 of Act 754 amended

7. The principal enactment is amended in section 14 (a) by the substitution for subsection (4) of

"(4) The Minister in collaboration with the Minister responsible for communications shall

(a) establish a monitoring mechanism to verify the actual revenue that accrue to service providers for the purpose of computing taxes due the Government under this Act

(b) be given physical access to the physical network nodes of the service providers' network at an equivalent point in the network where the network providers' billing systems are connected, and

(c) ensure that a common platform is used for the purpose of monitoring revenues under this Act as well as revenues accruing from levies under the Electronic Communications (Amendment) Act 2009, (Act 786)"; and

(b) By the insertion of new subsections (5), (6) and (7)

"(5) A service provider who refuses to provide access to its network for Government or its appointed agents as specified in subsection (4)(b) commits an offence and is liable to pay a

penalty of five percent of the annual gross revenue of the last audited financial statement of the service provider after the first thirty days and if the situation persists after ninety days, the National Communications Authority may revoke the operating licence of that service provider.

(6) The monitoring mechanism referred to in subsection (4)(a) shall not have the capability to actively or passively record, monitor, or tap into the content of any incoming or outgoing electronic communications traffic, including voice, video or data existing discretely or on a converged platform whether local or international.

(7) A service provider who has an objection to a request for the introduction of an equipment to the physical node of its network as provided under subsection 4 (b) shall within seven days of receipt of the request apply to the High Court for a determination of the objection stating reasons for the objection, to the request.

Section 16 of Act 754 amended

8. The principal enactment is amended in section 16 (a) by the substitution for the interpretation of (i) "charge for communications service usage" of "charge for electronic communications service usage" means

(a) the amount chargeable by a service provider for electronic communications service usage other than the amount for Value Added Tax and the National Health Insurance Levy;

(b) where the charge for electronic communications service usage is for money consideration, the amount of the consideration but excluding the amount of Value Added Tax and the National Health Insurance Levy;

(c) where the charge for electronic communications service usage is partly for money consideration, the open market value excluding the Value Added Tax and the National Health Insurance Levy; and

(d) in the case of promotion, protocol, personal use, bonus, gift and similar supplies, the charge shall be the open market value excluding Value Added Tax and the National Health Insurance Levy";

(ii) "Communication service" of ""electronic communications service" includes a service providing electronic communications, a closed user group service, a private electronic communications service, a public electronic communications service, a radio communications service and a value added service"; and

(iii) "service provider" of

""service provider" means a person permitted or authorised under the Electronic Communications Act, 2008 (Act 775) and Electronic Communications Regulations, 2011 (L.I.1991) to provide electronic communications service."

(b) by the insertion

(i) after the interpretation of "charge for communications service usage" of

""closed user group service" means electronic communications service, used by a closed user group, operated without interconnection to a public electronic communications network enabling electronic communications to persons other than the members of that group";

(ii) after the interpretation of "Commissioner" of

""Commissioner-General" means the person appointed under section 13 of the Ghana Revenue Authority Act, 2009 (Act 791);"

(iii) after the interpretation of "Court" of

""electronic communications" means any communication through the use of wire, radio optical or electromagnetic transmission emission or receiving system or any part of these and includes interconnection";

"electronic communications network" means any wire, radio, optical or electromagnetic transmission, emission or receiving system, or any part of these, used for the provision of electronic communications service; and

"interconnection" means the linking of public electronic communications networks and services to allow the users of one public electronic communications service to communicate with users of another public electronic communications service";

(iv) after the interpretation of "Minister" of

""open market value" means the value of a supply of electronic communications service determined under paragraph (a) of the interpretation of" charge payable for electronic communications service usage" if the supplier, user or any other person concerned in the transaction were completely independent of each other and did not in any way influence the transaction";

(v) after the interpretation of "prescribed" of

""private electronic communications service" means electronic communications service used' within one enterprise or any body corporate with which it is affiliated, to satisfy its internal needs and operated without interconnection to a public electronic communications network that enables electronic communications to persons other than within the enterprise or the body corporate; and

"recharges" includes any plan, scheme or form by which users receive additional electronic communications services from service providers";

(vi) after the interpretation of "service" of

""supply" means any means by which a user receives electronic communications services from a service provider"; and

(vii) after the interpretation of "tax period" of

""user" means a customer or a subscriber of electronic communications network or service or broad- casting service and includes a customer that is an operator or provider of electronic communications network or service; and

"value added service" includes a service that combines applications provided to users with telecommunications, but does not include any public electronic communications service.".

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