

On point

Re-imposition of National Fiscal Stabilisation Levy (“NFSL”)

July 2013

In line with the government’s intention to raise funds for fiscal stabilisation of the economy and related matters, parliament of Ghana has approved a Bill to re-introduce the National Fiscal Stabilisation Levy (“NFSL”).

The objective of the bill is to re-impose the NFSL at a rate of 5% on profits before tax of specified companies for a period of eighteen months covering the 2013 and 2014 years of assessment. The rate remains unchanged from the first introduction in 2009 when it was 5%.

The levy imposed overrides any provision to the contrary in any enactment relating to a tax holiday or exemption from direct or indirect tax applicable to a company. Therefore entities falling within the scope which are under any special tax dispensation are still required to pay.

Scope

Companies and institutions which will be liable to pay the NFSL are:

- ✓ Banks (excluding community and rural banks);
- ✓ Non-Bank Financial Institutions;
- ✓ Insurance companies;
- ✓ Telecommunications companies liable to collect and pay the Communications Service Tax (CST) under the Communications Service Tax Act, 2008 (Act 754) as amended; and
- ✓ Breweries.

Per the Bill, the levy will not be an allowable deduction for the purpose of ascertaining the chargeable income of the entities in question.

It appears that government is seeking to make up for its fiscal deficits by re-introducing the NFSL on taxpayers within the same tax pool, thereby deepening rather than broadening tax net. Since these tax payers have paid their dues and continue to do so, the expectation is that the focus would be shifted to persons liable to tax who are currently outside the tax net. This could bring in the much needed revenue for Government while allowing the existing tax payers to remain profitable to expand and help national development through the creation of jobs etc.

This new NFSL Bill excludes mining companies which were previously liable to pay. This is welcome news for mining companies after witnessing an increase in corporate income tax rate, a reduction in capital allowance rate for mining assets, ring-fencing of mining income by mining area and current efforts of Government to renegotiate all fiscal concession agreements with mining companies.

Based on our understanding from Parliamentary proceedings of 3 July 2013, the following companies and institutions have also been included within the scope of the NFSL:

- Inspection and Valuation Companies;
- Companies providing mining support services; and

- Shipping Lines, Maritime and Airport Terminal Operators.

Should they be included in the bill as proposed, the effect will be most undesirable particularly because it will significantly reduce their disposable income which could have been used to reinvest in the business through acquisition of equipment employment of more personnel etc.

The mining industry is particularly doing poorly globally and some mining companies have either cancelled their contracts with mining service companies or renegotiated them. The cancellation or renegotiation of contracts has tended to reduce the operating profits of these mining services companies. Locally, certain projects are being cancelled in Ghana as well and this is being passed on to the mining service companies through more stringent contract negotiations or certain extensions/projects being eliminated by the mining companies. As a result, extending the NFSL to include mining service companies would result in an increase in the cost of mining service operations at a time when the mining industry is struggling or carrying out projects outside of Ghana. We are not sure why the mining service companies were not excluded as mining companies have been based on fact that they are in the same industry.

Another worrying issue for mining service companies is that by the very nature of their business, they tend to have exchange differences and given the performance of the cedi in recent times, this may be more pronounced. Assuming therefore that an entity in this category makes a notional profit through exchange gains, are we then saying that tax should be computed on the notional profit especially where the gains are unrealized?

Further, with respect to the actual scope of mining service companies which will be liable, it is expected that those registered with the Minerals Commission will be the first targets. However there have been uncertainties in the past as to whether entities registered with both the Minerals Commission and Ghana Investment Promotion Council which provide services for both mining and other industries will be classified as mining service providers as well. In such a scenario, will the accounting profit be pro-rated based on the entity's mining service operations or will the full profit be chargeable to the levy? If this is not clearly defined or narrowed, there are likely to be several interpretations given to the law as to who is really liable.



The telecommunication companies are not excluded from the adverse effects. After recently getting judgement in their favour on whether CST should be chargeable on interconnect services, there is now an amendment that will require that CST is actually chargeable on interconnect. This will potentially represent additional cost to them. This coupled with the NFSL will be a substantial financial burden for them.

For the other entities being considered such as the inspection and valuation companies

and transport operators, are we going to see increased fees or hidden charges as consumers of these services while the entities try to cushion themselves for the reduction in profits?

Should this happen the consumers of these services will be the likely victims and once again the existing tax net deepens rather than widening

The tax seems to be targeting major transportation businesses but an obvious omission from that sector is Airlines. Could there be a reason for this? And if so could this reason be tangible enough to save the other transportation sectors?

Also, since almost all the shipping lines are non-resident entities, are they being targeted as non-resident taxpayers? Will they be required to file returns in Ghana especially since they pay a final withholding tax on their income?

Administration

The levy will be administered by the Ghana Revenue Authority ("GRA"). It is to be paid on quarterly basis for the 2013 and 2014 years of assessment

For the 2013 year of assessment, a proportionate quarterly payment is due on 30 September 2013 and 31 December 2013.

Note that the NFSL becomes payable only after it is assented to by the President and the first quarterly installment of the 5% will be due on 30 September 2013

The bill mandates the Commissioner-General ("CG") of the ("GRA") to prepare a provisional assessment for each year of assessment in respect of the companies to which the levy applies.

Given that a majority of the companies within the scope are likely to be large tax payers who are under self-assessment which is due on or before the commencement of the year of assessment, a provisional assessment from the CG will pose an extra administrative burden for both GRA and tax payers.

This could be minimised if the NFSL was incorporated into the self assessment for the companies and done once.



You need to know that...

This Act has been passed by Parliament but we are yet to obtain confirmation that it has received Presidential Assent and final gazette notification. Once we have confirmed these facts, we would inform you accordingly so you can incorporate this amendment in your strategic planning.

How can PwC assist your business?

PwC Ghana has built competencies in tax compliance and advisory services over the years; we can assist your business with compliance with the new taxes and levies once in force. PwC also has the capacity to conduct training for your staff on both new and existing grey areas of tax compliance.

Please contact the under listed persons if you wish to discuss any of the matters contained in this publication or if you require our professional tax advice on any transactions:

Tax Leader:

Darcy White
+233 (30) 2761576
+233 (24) 3171453
darcy.white@gh.pwc.com

Tax Partner:

George Kwatia
+233 (30) 2761459
+233 (54) 4334009
george.kwatia@gh.pwc.com

Tax Director:

Francis Adiasani
+233 (30) 2761500
+233 (24) 4667350
francis.adiasani@gh.pwc.com

Tax Director:

Ayesha Bedwei
+233 (30) 2761500
+233 (24) 4813956
ayesha.a.bedwei@gh.pwc.com

Tax Director:

Lydia Pwadura
+233 (30) 2761500
+233 (24) 4603276
lydia.pwadura@gh.pwc.com
