

On point

Communications Service Tax (Amendment) Bill

The Government of Ghana in its attempt to increase revenue generation has introduced five (5) new Bills before Parliament for deliberations and approval.

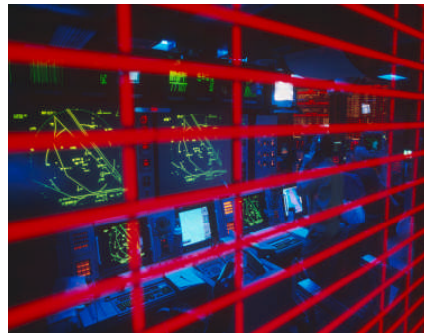
July 2013

The Communication Service Tax Bill ("CSTB") is one of five (5) Bills which has recently been approved by Parliament and awaiting Presidential assent.

Background

The Communication Service Tax ("CST") was introduced in 2008 as a tax to raise additional revenue from communications services rendered by mobile operators to their customers. In the process of implementing the CST Act, the telecommunications companies ("Telcos") raised administrative and legal objections on the Ghana Revenue Authority's ("GRA") resolve to collect CST from the Telcos on local interconnection services culminating in the landmark judgment handed down by the Commercial Division of the Accra Fast Track High Court in favour of the Telcos (i.e. Scancom Limited, now MTN, Ghana Telecom Co Ltd, now Vodafone, and Milicom Ghana Limited, also known as TiGo). The judgement effectively barred GRA and Government from collecting CST on interconnect services. It is our considered view that the CST Bill ("CSTB") is a direct

response of Government and the GRA in terms of their inability to collect CST on interconnect services.



The CST Amendment Bill

The main objective of the CSTB is to clarify the scope and coverage of the CST and to explicitly include interconnect services within the tax base. The CSTB is also meant to end the controversy over whether or not CST is applicable on interconnect services provided by one telecommunication company to another.

Contents of the CSTB

Proposed Provisions	Current Provisions	Comments
<p>1. Imposition of communication service tax</p> <p>Clause 1 of the Bill provides that CST is to be levied on charges payable by a user¹ of an Electronic Communication Service² ("ECS") other than private ECS.</p> <p>Specifically, CST would be levied on:</p> <p>(a) ECS supplied by service providers; and</p> <p>(b) charges payable on ECS received by users from sources outside Ghana.</p> <p>CST is also applicable on the supply of any form of recharges (this includes any plan, scheme or form by which users receive additional ECS from service providers).</p>	<p>In Section 1 of the Communication Service Tax Act, 2008 (Act 754) "existing Law", CST is levied on charges payable by consumers for the use of communication service.</p>	<p>The CSTB appears to widen the scope of the tax.</p> <p>For instance, the term "consumers" in the existing Law has been replaced with "users". This seeks to include operators or providers of electronic communication network or services as long as they use electronic communication and thus become "users" in that sense.</p> <p>Similarly, the term "communication service" in the existing Law has been phased out and in lieu of it is "ECS". This is intended to clearly capture <i>interconnect services</i> under the scope of CST and all communication services that are electronic in nature. This is because, the definition of electronic communications includes interconnect services.</p>

¹ User means a customer or a subscriber of electronic communication network or service or broadcasting service and includes a customer that is an operator or provider of electronic communications network or service.

² Electronic Communications Service ("ECS") includes a service providing electronic communications, a closed user group service, a private ECS, a public ECS, a radio communication service and a value added service.

"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.

		<p>Further, in the CSTB, the term "communication service provider" (in the existing Law) has now been replaced with the term "service provider" (see point 3 below for further clarification on this point of departure).</p> <p>Finally, the scope of CST has also been widened to include charges payable on ECS received by users from sources outside Ghana. This effectively also brings to closure any disputes on whether international interconnect is subject to CST.</p> <p>However, CST does not apply to "Private ECS"³ (i.e. ECS used internally/within an entity and its affiliates without interconnection to a public electronic communications network).</p>
<p>2. Persons liable to pay the tax</p> <p>(a) Clause 2 of the CSTB requires the tax to be paid by the user of the service.</p> <p>(b) Also, the persons liable to pay CST has been widened to include users who receive ECS from a source outside Ghana.</p> <p>(c) Further, in Clause 2 of the</p>	<p>There is a similar provision in Section 2 of existing CST law which provides that CST shall be paid together with service charge to communication service providers by consumers of the service.</p>	<p>The CSTB states that in the case of ECS received outside this country, the tax shall be paid by the user who received the service. This provision is one of the reasons why discussion on the CSTB has stalled in the Parliament of Ghana. As there is no clarity on whether the "user" here</p>

³ "Private Electronic Communications Service" means ECS 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.

<p>CSTB, the tax liability is triggered once a person makes any supply ECS regardless of whether or not that person is permitted or authorised to provide ECS under the Electronic Communications Act, 2008 (Act 755) and its Regulations.</p>	<p>However, this provision is silent on the application of CST on consumers who receive communication service from sources outside Ghana</p>	<p>refers to the final consumer or the telcom network operators.</p> <p>Further, CST will now apply to any supply of ECS regardless of the eligibility of the service provider to provide ECS under the Electronic Communications Act, 2008 (Act 755) and its Regulations.</p>
<p>3. Replacement of "communication service providers" by "service providers"</p> <p>Clause 3 and 7 of the CSTB have substituted "communications service provider"⁴ for "service provider"</p>	<p>In the existing Law, the term "communications service providers" refers to those issued with Class 1 licence as provided in the National Communications Regulations, 2003 (L.I. 1719)("NCR LI")</p>	<p>There is no longer any reference to the NCR LI in the CSTB. The statute or legislation referred to is the Electronic Communications Act ("ECA"), 2008 (Act 775) and its Regulations. This therefore means that once the services being provided by a person meets the definition of electronic communication service, that person would be required to charge CST and account for it. The change from the NCR LI to the ECA is meant to widen the scope of CST and to remove any legislative challenges inherent in the NCR LI.</p>

⁴ 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 communication service.

<p>4. Records, related matters, offences and penalties.</p> <p>In Clause 5 of the Bill, while sections 29 and 30 and Part XII of the Value Added Tax Act 1988 (Act 564) ("VAT Act") have been maintained, Part IX of the VAT Act which relates to recovery of tax due, interest and others have been excluded in the applicable provisions for management of CST.</p>	<p>The existing Law provided that Part IX of the VAT Act was applicable for the management of the CST regime (with modifications as appropriate).</p>	<p>This effectively means that when the Bill is passed in its current form, the GRA may not be able to exercise its powers of garnishment and distraint for liability powers.</p> <p>However, in terms of recovering the tax due including penalties and interest, under section 8 of CSTB, the GRA can still collect such amounts without reference to Part IX of the VAT Act which is being amended.</p>
<p>5. Objections and Appeals</p> <p>Clause 6 of the Bill excludes part X of the VAT Act which relates to the administration of VAT to be applied in matters of objections and appeals related to the tax.</p>	<p>The existing Law required that sections 54 and 55 and part X of the VAT Act be applicable in matters of objections and appeals related to the tax.</p>	<p>The aim of this clause is to exclude the administrative set up of the VAT Service from the existing CST Law as the VAT Service has now been fully integrated into the GRA. There is however a significant omission in the CSTB in that the C-G of the GRA is not required to pay CST amounts collected into the Consolidated Funds as this legislative directive is contained in Part X of the VAT Act that is being amended.</p>

<p>6. widening the scope of "charge for electronic communications service usage"</p> <p>In clause 16, charge for ECS usage means following (in all cases, excluding VAT and National Heal Insurance Levy):</p> <ul style="list-style-type: none">a) the amount chargeable by a service provider for ECS usage;b) where the charge for ECS is for money consideration, the consideration;c) where the charge for ECS is partly for money consideration, the open market value (i.e. arm's lenght value); andd) in the case of promotion, protocol, personal use, bonus, gift and similar suppliers, the charge shall be the open market value.	<p>In the existing Law, the term "charge for commuicaions service usage" means the amount chargeable by a communication service provider for communication service usage, other than VAT (and National Heal Insurance Levy)</p>	<p>The CSTB has clearly included promotions, bonuses and gifts within the definition of "charge for ECS". This implies that service providers are required to charge and account for CST on promotions, bonuses and gift offers which they run.</p> <p>Receipts/beneficiaries of promotional ECS services or bonuses might see a reduction of the value ECS they would receive due to the inherent CST in the value of the offers they receive.</p>
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What this means to the Telecommunication Industry and its Customers

The inclusion of interconnect services in the tax base of CST will lead to an increase in taxes payable by Telcos. It is expected that since telecommunication services have become a necessity for most users, the additional tax burden will most likely be passed onto final users.

Consequently, pushing the additional tax burden onto consumers will increase the cost of using such electronic communication services in Ghana.



However, if all the costs are not passed onto final consumers, then it will also affect the operating cost of the Telcos and will adversely affect the ability of these Telcos to reinvest excess profits in capital expenditure meant to improve service quality among others.

In summary, while it is expected that this CSTB will clarify the existing CST law in respect of the taxation or non-taxation of interconnect services within the tax base, the issue of which fund the CST amount has to be paid it and who the true “user” is in terms of international interconnect needs to be properly addressed.

Also, while Government is highly expectant of increased tax revenue from CST, a careful balance has to be sought so that in the likely event that the Telcos actually passes on the additional tax burden onto the users, it does not negatively affect the overall tax revenues of Government. In any case, however one looks at the CSTB, it would negatively affect government’s tax revenues (either a reduction on CST revenues or corporate income taxes of Telecoms as a result of taking up additional costs).

Further Updates on the CSTB

Our understanding from Parliamentary proceedings of 9 July 2013, that some amendments have been made to the CSTB. These include the following:

- the section that required CST to apply on ECS received by users from sources outside Ghana has been removed from the CSTB. This implies that recipients of ECS from outside Ghana will no longer be required to pay CST; and
- section 24 of the existing Law has been updated to include additional powers for the Minister responsible for Finance (in collaboration with the Minister Responsible for Communications). The Ministers shall have the power to establish monitoring mechanisms for verifying the actual revenue that accrue

to the service providers for purposes of computing CST. The Ministers shall also be given physical access to the physical network nodes of the service providers' network. Penalties will apply to service providers who refuse to grant access to the Ministers or their appointed agents.

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 PwC can 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 and any other tax or regulatory assistance that your business require.

PwC also has the capacity to conduct training for your staff on both new and existing grey areas of tax compliance.

Finally, if your business is in Sierra Leone or Liberia, then PwC is happy to partner you in those jurisdictions as your trusted advisor.

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:

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