

# Does the tax regime in Ghana cater for the evolved needs of Fintechs?

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The advent of new technologies continues to disrupt existing traditional industries while creating new ones. These changes among other things affect the nature, composition and complexities of these industries, the activities they undertake and the need for regulatory frameworks to catch up with these changes. In this article, we focus on fintech and its taxation challenges.

## What is Fintech?

Financial technology or “fintech”, is an amalgamation of two terms, namely “financials, finances, or financial services” and “technology”. The former represents the traditional objectives, functions and uses of money and money’s worth and related support services. It could also be simplified to cover dealings with money.

The fintech industry continues to rapidly evolve in terms of their activities and service offerings. These range from the familiar payment services providers to complex digital assets such as non-fungible tokens (“NFTs”). This article discusses fintechs in Ghana such as payment aggregators, payment service providers, deposit takers, among others. Notable services rendered by fintechs in Ghana include, digitalised payments – integrating customers’ banks accounts to that of third party suppliers such as retailers to process payments; subscription-based services such as use of financial platforms; investment and insurance management; and lending in the form of microfinance and peer-to-peer lending collectively called digital lending.

Companies in the communications industry have also dipped their feet in the fintech pool offering electronic payment services such as the MTN MoMo and VodafoneCash.

## What is the tax framework for fintechs in Ghana?

Despite the current challenging economic environment, fintechs continue to thrive. It is therefore no surprise that there is an increased investor interest as well as regulatory screening.

In Ghana there is no special taxation regime for fintechs unlike entities operating in mining, petroleum or traditional banking industries.

Before we go into some specifics of fintech taxation, it is important to look at the common types of income or revenue streams for fintechs. The income streams can be broadly divided into direct and indirect revenue streams.

Direct streams of income consist of revenues the fintech generates for itself in its capacity as a supplier. Indirect revenue streams on the other hand, are revenues a fintech generates in its capacity as a facilitator, intermediary or agent for revenue-generating transactions. For example, commissions earned by payment aggregators from processing transactions.

These revenue streams determine the form of financial statements presentation and disclosures. The revenue streams potentially should also inform the manner in which tax is applied to fintechs based on existing tax legislation. Following from this, if the revenue stream is not accurately determined or disclosed, it can become a source of controversy and tax litigation.

## 1. Corporate Income Taxes

In the absence of a specific tax regime for fintechs, the general tax rules apply. Under the general tax rules, the chargeable income of an incorporated fintech is subject to corporate income tax at the rate of 25%. Tax concessions may be available to reduce the effective tax rate.

In determining the chargeable income, non-capital expenses that are wholly, exclusively and necessarily incurred are generally deductible from revenues unless there is a special provision for its treatment. Examples of deductible expenses include but are not limited to staff costs, products or services costs.

## 2. Value Added Taxes (“VAT”)

VAT is charged by a VAT-registered supplier on all non-exempt supplies, made in or imported into Ghana. This means that unless a supply is expressly exempted from VAT, the tax must, in one way or another, be accounted for and remitted to the Ghana Revenue Authority (“GRA”).

The VAT law has listed some exempt services to include medical services, educational services and financial services. Narrowing down to the definition of financial services as per the VAT law, these include “the provision of insurance; issue, transfer, receipt of or dealings with money whether in domestic or foreign currencies or any note or order of payment of money; provision of credit; or operation of a bank account or an account with similar institution”.

There are many perspectives to the application of VAT to fintechs. First, some stakeholders argue that a critical review of the business model of certain classes of fintechs reveal that they are in the business of providing financial services underpinned by technology. That is, primarily using technology is what distinguishes them from a traditional bank that issues, transfers and deals with money which are financial services exempted from VAT. In this case they challenge regulators for a possible discriminatory tax treatment where despite their product and service offerings being similar to those of the traditional brick and mortar financial institutions, they are expected to charge VAT on their services.

Secondly, should oversight by a particular regulator imply a particular VAT treatment? Fintechs in Ghana are mainly regulated by the Bank of Ghana (“BoG”) and the National Communications Authority (“NCA”), with each regulating different aspects of the industry. Following from this, could the regulation of a fintech company by the BoG imply exemption for financial services similar to financial institutions such as banks?

Thirdly, are fintechs to be pigeon-holed as intermediary service providers (hence not qualifying as financial services per the VAT legislation) and not core financial service providers underpinned by technology? This may be a very simplistic approach and argument disregarding the complex business model that fintechs operate.

To provide clear taxation rules, could the solution be a separate VAT regime that takes into consideration the special nature of fintechs as is the case of the VAT Flat Rate Scheme which is specially for “small scale” retailers? Or as a compromise, would the lawmakers be amenable to considering the e-levy charge as a substitute for the industry with necessary modifications?

It remains to be seen whether the above concerns will be taken into consideration by lawmakers.

## 3. Withholding Taxes (“WHT”)

WHT represents a taxation at source of qualifying payments, be it a final tax or tax on account. The general applicable rates range from 1.5% to 20% depending on the nature of supply, tax residency of the supplier and applicability of a double tax treaty.

Several transactions by resident fintechs would normally be characterised as services and therefore subject to WHT at the rate of 7.5%. This would be a payment on account as the income will be subject to corporate tax with credit provided for the withheld taxes.

There is however an arguably interesting side to WHT on fintechs because of the financial intermediary services they provide. Let us look at the case of payment services providers. The important question to ask would be, should WHT apply on the total transaction amount or the margin component attributable to a fintech? This is not always straightforward as counterparties may not be aware of the intermediary role a fintech company is playing. Any mischaracterisation could lead to serious financial consequences for fintechs. It is true that there would be no issues if the subsequent payments from the fintechs to their principals were exempted from WHT.

The above mischaracterisation may also result where a fintech sells data bundles on behalf of a telecommunication company to other companies.

There are other complex transactions similar to the ones identified earlier where the applicability of WHT remains unclear for fintech companies, further buttressing the need for the legislator to relook at the taxation of this industry and all of its players.

## 4. Other tax considerations

Fintechs dealing with related parties need to comply with transfer pricing regulations and the laws of other countries should they deal with foreign customers and suppliers.

Other general tax considerations would be to have properly established communication with tax authorities, proper maintenance and management of documentation and to keep up to date with tax changes.

## In conclusion

The fintech industry embodies significant opportunities for growth and development of Ghana’s economy. It is however faced with complexities that the current tax regime may need to reevaluate.

In this article we have attempted to discuss some of the gaps our current VAT and WHT regimes could be having that stifles the growth of fintechs and may further prove difficult to comply.

Discussions on the taxation of fintechs is an opportunity for consensus building that requires continued and extensive deliberations that will promote the growth of fintechs as well as not harm the fiscal pot.

### Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

#### Ayesha Bedwei Ibe

Leader, Tax Services  
+233 (30) 2761500  
+233 (24) 4813956  
ayasha.a.bedwei@pwc.com

#### Abeku Gyan-Quansah

Partner, Tax Services  
+233 (30) 2761500  
+233 (20) 8208106  
abeku.gyan-quansah@pwc.com

#### Mary Kwarteng Darko

Associate Director, Tax Services  
+233 (30) 2761500  
+233 (57) 7680892  
mary.kwarteng@pwc.com

