



Welcome to this second edition of **On Point**, an abridged version of our newsletter “The Lead” which aims to give you Ghana Tax News in a snapshot. The maiden edition was published in September 2009.

This edition focuses solely on two new tax initiatives in Ghana in connection with the move by the Government of Ghana to integrate revenue administration and amendment to the rate of royalties in the mining industry.

Ghana Revenue Authority Act, 2009 (Act 791)

The Government of Ghana announced in the 2010 Budget Statement (on 18 November 2009) that it will continue with administrative reforms of the revenue authorities by establishing the Ghana Revenue Authority (GRA) which was initially proposed early in 2009. It therefore sought approval from parliament in early 2010 for the establishment of the GRA.

Background

Following parliamentary approval, the GRA Act - the Ghana Revenue Act, 2009 (Act 791) was passed by parliament and later gazetted on 31 December 2009. It has since become effective.

It is estimated that the process of merging the revenue agencies will last for 2 to 3 years. The integration project

has commenced in earnest with various stakeholder meetings being held. In the meantime, a Commissioner General has been appointed to oversee the operations of the GRA.

The Ghana Revenue Authority would be expected to streamline the domestic tax administration on an operational level as well as simplify and codify the tax laws.

Overview of the new legislation

Prior to the enactment of the GRA Act, revenue administration was based on tax types with the Internal Revenue Service (IRS), Value Added Tax Service (VATS) and Customs, Excise and Prevention Service (CEPS) responsible for administering income tax, valued added tax, import and excise taxes respectively.

With GRA coming into effect and becoming operational, revenue administration by the GRA is being organised on functional basis with the merged IRS and VATS administering domestic taxes including income tax, VAT and excise duties. The CEPS will be responsible for international taxes (i.e. imports, exports) and administrative duties such as administering ECOWAS levies, the Export Development Investment Fund (EDIF) and collecting processing fees.

The main objectives of the GRA include reducing administrative and tax compliance cost and providing a better service to taxpayers; providing efficient collection of revenue and ensuring

greater transparency and integrity. In addition, the GRA seeks to improve information linkage and sharing of information among its divisions, as well as providing common tax procedures that enable tax payers to be governed by a single set of rules.

The Revenue Authority Board (RAB)

The activities of the GRA will be supervised by the RAB which consists of nine (9) members. The RAB members include:

- * The Chairperson;
- * Commissioner-General of the GRA;
- * Representative of the Ministry of Finance (not below Director);
- * A representative of the Ministry of Trade and Industry (not below the rank of a Director);
- * Governor of the Bank of Ghana or his representative (not below the rank of a Deputy-Governor); and
- * Four (4) other persons from the private sector two (2) of whom are women.

The members of the RAB would hold office for four (4) years and be eligible for re-appointment for a period (in aggregate) not exceeding eight (8) years. The RAB is required to meet at least once every three (3) months (quarter) and a quorum of five (5) or more members is required at any meeting of the RAB.

Powers of the Commissioner-General (CG) of the GRA

A new CG has been appointed for the GRA by the President of Ghana. The CG will be responsible for the day-to-day administration of the affairs of the GRA as well as any functions as determined by the RAB. In performing these duties, the CG will also be responsible for the direction and

supervision of the employees of the GRA and may delegate certain functions as deemed fit.

The President of Ghana may appoint Commissioners and other staff that are necessary to assist with performance of the GRA's functions.

Role of Existing Commissioners

It is expected that existing Commissioners of the IRS, VAT Service, and CEPS will remain in their current positions until the new CG is appointed and assumes overall duty of the GRA. Following this, existing Commissioners would operate under the direction of the new CG until replaced.

Practical issues worth considering - What should tax payers expect from the Integration?

From a taxpayer perspective, the establishment of the GRA is more than welcome. The reduction of the existing three revenue collection agencies to one GRA will no doubt reduce administrative burdens of dealing with different revenue agencies at different locations, and increase transparency for taxpayers. It is expected that taxpayers' records and issues will be dealt with in a single location, thereby ensuring the "the one stop shop" concept, and most importantly, all payments made will be tracked by a single body. The new arrangement will further improve monitoring of all taxpayer activities particularly with the enforcement of the use of tax identification numbers by all taxpayers.

Integration of the revenue agencies will also enable potential taxpayers to be drawn into the tax net as concerted efforts would be made by the agencies to get the taxpayers to join the net.

Historically, due to the fact that each revenue agency (IRS, VAT and CEPS) worked in isolation, without enabling each agency to connect to the other, this has resulted in several layers of compliance on the part of willing taxpayers. Potential taxpayers do not want to be inconvenienced by the several layers of tax administration and have stayed out of the tax net. Currently tax payers have multiple contacts across and within the various revenue agencies, it is expected the GRA's mandate of sharing information with its divisions, will ensure closer working between its officials, such that information about a taxpayer's tax affairs will be readily available to aid efficient tax administration and payment and remove the current layered approach to tax administration.

Furthermore, it is anticipated that with the introduction of the GRA, payments made by taxpayers in respect of tax types may have the benefit of being pooled together for administrative purposes. Such that for example, a corporate tax overpayment may be eligible for offset against VAT liability due.



Any Potential Challenges Ahead?

Whilst the establishment of the GRA sets the tone for streamlining of tax operations in Ghana, the early implementation stages may well pose some challenges such as:

- * Confusions about the appropriate procedures for tax payers to follow under the new structure;
- * The GRA may undergo some structural changes including training and reassignment of staff to the appropriate divisions;
- * Co-ordinating the operations of the various divisions of the GRA may require investments into logistics such as Information Technology suites; and
- * Consolidating IT systems and software onto a single platform.

In the short term, the solutions to these challenges lie in communication to, and education of, affected stakeholders and effective management of the change process.

More public education of tax payers about the new GRA would contribute to reducing any misunderstanding as the appropriate procedures to follow at any GRA office would be clearly explained to all tax payers.

Additionally, proposals to streamline tax payments, although expected to benefit taxpayers would no doubt have some implementation challenges such as determining existing taxpayer balances with each revenue agency and collating these balances onto a single platform. Factors such as how the revenue is to be allocated to various agencies will need to be investigated and agreed.

Currently, there are several tax laws operating in Ghana. Each law operates distinctly depending on the tax type and there is minimal interaction among the tax types and administration. In the longer term, there have been proposals to also streamline the tax laws of Ghana

into a single tax Act. As the GRA has now been established, and once it is fully operational, the Government is urged to progress the alignment of the various tax acts into a single act to ensure ease of reference.



Minerals and Mining Amendment Act, 2010 (Act 794)

The Government of Ghana has amended the provisions relating to mineral royalties on natural resources other than petroleum and water under the Minerals and Mining Act, 2006 (Act 703) ("the Act"). The Act previously stipulated that " a holder of a mining lease, restricted mining lease or small scale mining licence shall pay a royalty to the Republic that may be prescribed in respect of minerals obtained from its mining operations, except that the rate of royalty shall not be more than 6% or less than 3% of the total revenue of minerals obtained by the holder".

Previously, the Act provided that the royalty rate should lie between 3% and 6% of the value of minerals obtained. The actual rate of royalty applicable to a holder of a mining lease was determined by reference to specific provisions in the Minerals (Royalties) Regulations, 1987 - L.I 1349 as this was the principal regulation in force for the proper

determination of the actual rates applicable to royalty calculations.

In that Regulation the rate of royalty payable was based on the "profitability" of the mining operations. What constitutes profitability is determined by the operating ratio of the entity as defined in the regulation.

As indicated before, what L.I 1349 did was to enable the rates applicable to royalty calculations/payable to be ascertained. Under the regulations, mining companies that did not meet the minimum threshold paid royalties at the rate of 3%.

Proposed changes to L.I 1349

Recently, the Government proposed a number of changes to the variables used for determination of the royalty rates but these proposals did not materialise.

Minerals and Mining (Amendment) Act, 2010

Eventually, the Minerals and Mining (Amendment) Act, 2010 was passed and gazetted on 19 March 2010 to amend a section of Act 703 which introduced a flat rate of 5% of the total revenue earned from minerals obtained. This clearly is a departure from the L.I 1349 approach which was based on the "profitability" of mining operations. The Amendment Act has therefore eliminated the determination of royalty rates based on profitability and given a flat rate which is independent of profitability. For mining entities that were paying royalties at the rate of 3%, the 5% rate may be rather high.

Effective date

We note from the Amendment Act that the Act was gazetted on 19 March 2010. This becomes the effective date of the

application of the new rate of 5% in the absence of an effective date being announced in the Amendment Act. The date of gazette is effectively the date a legal backing is given to an Act and therefore takes effect.

Implication for mining entities

Under the Act, royalties are required to be paid on quarterly basis based on the value of the minerals obtained. With the coming into force of the Amendment Act on 19 March 2010, it is necessary for the affected entities in the mining industry to identify separately the revenue earned up to 19 March 2010 and apply the provisional rate of 3% prior to the effective date of 19 March and identify separately the revenue

earned from 19 March to 31 March 2010 and use the rate of 5%. After 31 March 2010 the rates applicable on quarterly basis will be 5%.

Conclusion

The Amendment Act imposes a flat rate which is quite high but which seems to resolve the complications involved in the determination of the royalty rate. For purposes of determination of royalties payable in the first quarter of 2010, entities must keep records to reflect pre-amendment and post amendment periods and apply the rates accordingly.

Contact us if you would like to receive a copy of our newsletter in full or to discuss any aspects of this snapshot.

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