

COMMUNICATIONS SERVICE TAX ACT, 2008 (ACT 754)

As Amended by

COMMUNICATIONS SERVICE TAX (AMENDMENT) ACT, 2013 (ACT 864)¹

COMMUNICATIONS SERVICE TAX (AMENDMENT) ACT, 2019 (ACT 998)²

COMMUNICATIONS SERVICE TAX (AMENDMENT) ACT, 2020 (ACT 1025)³

ARRANGEMENT OF SECTIONS

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3. Rate of tax
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REPUBLIC OF GHANA

**THE SEVEN HUNDRED AND FIFTY-FOURTH
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
COMMUNICATIONS SERVICE TAX ACT, 2008**

AN ACT to provide for the imposition of a communications service tax and for related matters.

DATE OF ASSENT: 28th March, 2008.

ENACTED by the President and Parliament:

Section 1—Imposition of communications service tax

(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. [As substituted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 1]

Section 2—Persons liable to pay the tax

(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 775) and Electronic Communications Regulations, 2011 (L.I. 1991) to provide electronic communications services. [As substituted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 1]

Section 3—Rate of the tax

The rate of the tax is five per cent of the charge for the use of the electronic communications service [As substituted by the Communications Service Tax (Amendment) Act, 2020 (Act 1025), s.1]

Section 4—Collection of the tax and payment into Consolidated Fund

(1) The Value Added Tax Service, established under section 36 of the Value Added Tax Act 1998, (Act 546) is responsible for the administration and management of the tax and shall collect and account for the tax and any interest and penalty paid under the Act.

(2) Subject to section 5 the Commissioner of the Value Added Tax Service shall pay the tax collected together with any interest and penalty into the Consolidated Fund.

Section 5—National youth employment support

At least twenty per cent of the revenue generated from the tax shall be used to finance the national youth employment programme. [As substituted by the Communications Service Tax (Amendment) Act, 2020 (Act 1025), s.2]

Section 6—Submission of tax return and time for payment of the tax

(1) Unless otherwise directed by the Commissioner in writing, a service provider shall file a tax return to account for the tax. [As substituted by Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 3]

(2) The tax return shall be in a form prescribed by the Minister and shall state the amount of tax payable for the period and any related matters that may be required.

(3) The Commissioner may require a person to submit to the Commissioner, in addition to the tax return under subsection (1), a further tax return in a prescribed form.

(4) The request by the Commissioner for a further tax return may be made to a person

(a) on that person's own behalf, or

(b) as an agent or trustee of another person.

(5) The return and the tax due for the accounting period to which the tax return relates shall be submitted and paid to the Commissioner not later than the last working day of the month immediately after the month to which the tax return and payment relate.

(6) On application in writing by a service provider, the Commissioner may extend the period within which the tax return may be submitted and payment made, where good cause is shown by the applicant.

(7) The extension shall be communicated to the applicant in writing and shall state the date by which the tax return shall be submitted and the tax for the period paid.

(8) A service provider who without justification fails to submit to the Commissioner the tax return by the due date is liable to a pecuniary penalty of GH¢2,000.00 and a further penalty of GH¢500.00 for each day that the return is not submitted.

Section 7—Payment of interest on outstanding tax

(1) Subject to section 6 (6) a service provider who fails to pay the tax by the due date shall pay monthly interest on the tax due at the rate of one hundred and fifty per cent of the average of the prevailing commercial banks' lending rates as published by the Bank of Ghana.

(2) For the purpose of subsection (1) any part of one month shall be deemed to be one month.

(3) Subject to section 6 (6) where the interest payable under subsection (1) is not paid within one month after the due date, interest shall be paid on the unpaid interest at the same rate and in the same manner as interest on the unpaid tax.

Section 8—Recovery of tax, interest or penalty due

(1) A tax, penalty or any interest due under this Act which remains unpaid after the due date may be recovered by the Commissioner as a debt.

(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). [As substituted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 4]

(3) Where a body, either corporate or unincorporated which is liable for the payment of the tax, or of any penalty or interest that arises under this Act, defaults in payment, in whole or in part after written demand, the directors, partners, and the person in control of the body are jointly and severally liable to pay the sum due.

(4) Where tax, penalty or interest is payable and due under this Act the Commissioner may apply to the Court for an order that compels an individual or business

(a) from whom money is due or is accruing to the person required to pay the tax, interest or penalty, or

(b) who holds money for or on account of the person required to pay the tax, interest or penalty, to pay to the Commissioner that money, or so much of it as is sufficient to discharge the tax, interest or penalty payable and due.

Section 9—Distraint for liability

(1) Where tax, penalty or interest due under this Act remains unpaid after the time by which this Act requires it to be paid, the Commissioner may apply to the Court by motion on notice to the person from whom the payment is due for an order to levy distress

(a) on the goods, chattels and effects of that person, and

(b) on,

(i) the assets, property, building, factory, machinery, plant, tools, means of transport, accessories and all equipment used for the provision of communication service by that person;

(ii) the commodity or items found in premises or land owned by, in use or in possession of that person or of any other person on behalf of or in trust for that person.

(2) The distress order issued under subsection (1) shall be executed on the assets of the person specified in the order and the Value Added Tax Service shall take possession of the property specified in subsection (1), exclusive of all liabilities.

(3) In furtherance of the levy of distress, a person authorised in writing by the Commissioner may execute the order of distress on the goods and assets specified under subsection (1) and where necessary, may break open any building or place in the day-time for the purpose.

(4) The authorised person may seek the assistance of a police officer and that police officer shall assist in the execution of the order of distress.

(5) The property distrained shall be kept for fourteen days at the cost of the owner and if the amount due in respect of the tax, interest or penalties, cost and the charges for and incidental to the distress are not paid, the property distrained may be sold on the orders of the Court.

(6) Where distrained property is sold, there shall be paid out of the proceeds of the sale,

(a) the costs or charges of

(i) the distress,

(ii) maintenance of the distress, and

(iii) the sale, and

(b) the amount due in respect of the tax, interest and penalties

and any residue that remains after these payments shall be paid to the owner of the property but payment to the owner is subject to the prior interest of the Value Added Tax Service which has precedence over other interests.

(7) Where property seized in the execution of the distress warrant is under a mortgage, bill of sale, charged by way of security for debt, or is in any way encumbered, the interest of the Value Added Tax Service has precedence over all the other interests.

Section 10—Recovery in respect of a person under liquidation

Where tax, penalty or interest is due under this Act from a person who is subject to liquidation or bankruptcy proceedings, the liquidator, receiver, or other person responsible for winding up the affairs of the debtor shall not distribute the assets until full payment has been made of the tax, penalty or interest due under this Act.

Section 11—Application of Act 546 to the tax

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. [As substituted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 5]

Section 12—Objections and appeals

Sections 54 and 55 of the Value Added Tax Act, 1998 (Act 546) apply in matters of objections and appeals related to the tax. [As substituted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 6]

Section 13—Evidence in proceedings

- (1) A certificate issued by the Commissioner that
 - (a) a tax return required by this Act has not been submitted or has not been submitted on the specified date, or
 - (b) tax shown as due in any tax return or assessment made under this Act has not been paid,is sufficient evidence in civil or criminal proceedings of that fact unless the contrary is proved.
- (2) A photocopy of a document furnished to the Commissioner or an officer of the VAT Service or the National Communications Authority under the requirements of this Act and certified by the Commissioner, is admissible as evidence in civil or criminal proceedings to the same extent as the original.
- (3) A statement or other information contained in a document produced by a computer is admissible as evidence in civil or criminal proceedings if it is certified as correct by the Commissioner unless the contrary is proved.

Section 14—Directives and powers of the Minister and the Commissioner

- (1) The Minister may give policy directives that the Minister considers necessary to the Commissioner for the effective implementation of this Act.
- (2) Subject to the provisions of this Act, the Commissioner may in writing give administrative directives that the Commissioner considers necessary for the implementation of the provisions of this Act.
- (3) The Commissioner may request any person in writing to provide security that the Commissioner considers adequate for the protection of revenue.
- (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); [As substituted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 7 (a)]
- (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. [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 7 (b)]

Section 15—Regulations

The Minister may by legislative instrument, make Regulations generally for the purpose of giving effect to the provisions of this Act and may in particular make Regulations to prescribe

- (a) the form of the tax return; and
- (b) the records to be kept in respect of the tax.

Section 16—Interpretation

In this Act unless the context otherwise requires

"accounting period" means one calendar month;

"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 Valued Added Tax, the Ghana Education Trust Fund Levy 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 Valued Added Tax, the Ghana Education Trust Fund Levy and the National Health Insurance Levy;

(c) where the charges for electronic communications service usage is partly for money consideration, the open market value excluding the Valued Added Tax, the Ghana Education Trust Fund Levy 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, the Ghana Education Trust Fund Levy and the National Health Insurance Levy.[As substituted by the Communications Service Tax (Amendment) Act, 2019 (Act 998), s. 3]

"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; [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (i)]

"Commissioner" means the Commissioner of Value Added Tax appointed under section 44 of the Value Added Tax Act 1998, (Act 546);

"Commissioner-General" means the person appointed under section 13 of the Ghana Revenue Authority Act, 2009 (Act 791); [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (ii)]

"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" [As substituted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (a) (ii)]

"communications system" means a system for the conveyance through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy or light energy of

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for imparting whether as between persons and things of a matter in the form of sounds or visual images;
- (d) signals serving for the actuation or control of machinery or apparatus; and communications equipment situated in Ghana; and
 - (i) connected to but not comprised in a communications system; or
 - (ii) connected to and comprised in a communications system which extends beyond the boundaries of Ghana.

"communication service provider" means a person licensed, authorised or required to be licensed to provide communication services by the National Communications Authority under section 13 and 14 of the National Communications Authority Act, 1996 (Act 524);

"Court" means the District, Circuit or High Court;

"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; [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (iii)]

"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; [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (iii)]

"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; [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (iii)]

"Minister" means the Minister responsible for Finance;

"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; [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (iv)]

"prescribed" means prescribed by Regulations made under this Act;

"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; [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (v)]

"recharges" includes any plan, scheme or form by which users receive additional electronic communications services from service providers; [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (v)]

"service" means communications service;

"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. [As substituted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (a) (iii)]

"supply" means any means by which a user receives electronic communications services from a service provider; [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (vi)]

"tax return" means the records kept and required to be submitted to the Commissioner to account for the communications service tax imposed under section 1 of this Act;

"tax" means the communications service tax imposed in section 1:

"tax period" means one calendar month.

"user" means a customer or a subscriber of electronic communications network or service or broadcasting service and includes a customer that is an operator or provider of electronic communications network or service; and [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (vii)]

"value added service" includes a service that combines applications provided to users with telecommunications, but does not include any public electronic communications service. [As inserted by the Communications Service Tax (Amendment) Act, 2013 (Act 864), s. 8 (b) (vii)]

Date of Gazette Notification: 28th March, 2008.