Executive summary

The Income Tax Bill, 2013, which was passed by Ghana’s Parliament on 24 July 2015, was assented to by the President on 1 September 2015. The Act was numbered 896 and published in the Official Gazette on 1 September 2015. The Act did not specify any date of commencement. Thus, in accordance with the provisions of the Constitution of the Republic of Ghana (Constitution, 1992), the Act entered into force on 1 September 2015, its date of publication. In exercise of a power granted to the Minister responsible for Finance under the Act, the Minister for Finance & Economic Planning has scheduled the full implementation of the Act to commence in January 2016.

The Act was enacted to:

- Consolidate the laws relating to income tax
- Simplify the income tax law provisions and make it user friendly
- Address various forms of tax base erosions on employment income, gift tax and interest paid on residential mortgages
This Alert highlights some major changes from the Internal Revenue Act, 2000, Act 592 (now repealed by Act 896), including:

1. Capital allowances granted to a person are required to be utilized by the person only in the year in which they are granted. Capital allowances not utilized are to be written off. This places a period limitation on the utilization of capital allowances.

2. Income attributable to a Ghanaian permanent establishment (PE) of a nonresident person, irrespective of the source of the income, is now required to be included in the assessable income of said PE in Ghana of the nonresident person. This indicates a shift from the source-based approach of taxing income to the worldwide income approach.

3. Gift tax and capital gains tax have been abolished. Gifts received in respect of employment are required to be included in employment income. Gains derived from the realization of capital assets and liabilities of a business, as well as gifts received by a person in respect of the business are required to be included in business income. The effect is that capital gains and gifts received in respect of a business will be taxable at the same rate as corporate income. In the same vein, capital losses incurred due to the realization of a capital asset or liability of a business are tax deductible against business income.

4. Gains derived from the realization of investment assets such as shares or securities in a company, an amount derived as consideration for accepting a restriction on the capacity to conduct the investment, winnings from the lottery and a gift received by a person in respect of an investment are to be included in investment income.

5. Businesses can deduct a research and development (R&D) expenditure whether the expenditure is revenue or capital in nature.

6. Unrelieved losses made by persons in a specified priority sector can be carried forward for five years. Unrelieved losses made by persons in all other sectors can be carried forward for three years.

7. The thin capitalization ratio has been increased to 3:1 from the previous ratio of 2:1.
### Detailed discussion

This table sets forth the differences between the New Act and the Old Act regarding key tax provisions.

<table>
<thead>
<tr>
<th>Assessable income of a nonresident person</th>
<th><strong>New Act (Act 896)</strong></th>
<th><strong>Old Act (Act 592 as amended)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable income of a nonresident person</td>
<td>Income connected to the Ghanaian permanent establishment of the nonresident person, irrespective of the source of income, is included in the assessable income of a nonresident person.</td>
<td>The assessable income of a nonresident person included only income accruing in or derived from Ghana or income derived through a permanent establishment situated in Ghana.</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Income of resident persons</th>
<th><strong>New Act (Act 896)</strong></th>
<th><strong>Old Act (Act 592 as amended)</strong></th>
</tr>
</thead>
</table>
| Income of resident persons | Resident persons are subject to tax on their worldwide income except in the case of an individual where:  
- The individual is employed by a nonresident employer; or  
- The individual is employed by a resident employer and where the individual is present in a foreign country for 183 days or more during the year of assessment. | Residents were subject to tax on income accruing in, derived from, brought into or received in Ghana. |

<table>
<thead>
<tr>
<th>Exemptions - general</th>
<th><strong>New Act (Act 896)</strong></th>
<th><strong>Old Act (Act 592 as amended)</strong></th>
</tr>
</thead>
</table>
| Exemptions - general | Taxation of trusts has been specifically provided for in the new Act. A distribution of a resident trust is exempt from taxation if the distribution is in the hands of the beneficiary of the trust. | There were no specific provisions dealing with the taxation of trusts with the exception of the exemption from tax on interest, dividend or:  
- Any other income of an approved unit trust scheme or mutual fund  
- Any other income payable under an approved unit trust scheme or mutual fund to a holder or member of that scheme |

<table>
<thead>
<tr>
<th>Severance pay</th>
<th><strong>New Act (Act 896)</strong></th>
<th><strong>Old Act (Act 592 as amended)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Severance pay</td>
<td>Severance Pay which is exempt from tax has now been replaced with the word “Redundancy pay” in the new Act. This is consistent with the term used in the Labor Act.</td>
<td>Severance pay was used in the Old Act. This term was used in the Old Labor Act in operation at the time of promulgation of Act 592.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employment income</th>
<th><strong>New Act (Act 896)</strong></th>
<th><strong>Old Act (Act 592 as amended)</strong></th>
</tr>
</thead>
</table>
| Employment income | Payments made to employees on a non-discriminatory basis that, by reason of their size, type and frequency, are unreasonable or administratively impracticable for the employer to account for or to allocate to the individual has been excluded as income from employment.  
A provision of accommodation by an employer carrying on petroleum operations to that person at a place or site where the field operation of the business is carried on is not to be considered as a taxable benefit for the purpose of employment income.  
Other payments, including gifts received in respect of the employment have been included as income from employment. | Act 592 did not provide for this.  
This was previously provided for in a Petroleum Agreement.  
Gifts received were taxed separately under Gift Tax – a separate chapter under Act 592. |
### Business income
Additions to income from business include:
- Gains from the realization of capital assets and liabilities of the business
- A gift received by the person in respect of the business
- Amounts derived as consideration for accepting a restriction on the capacity to conduct the business

The Old Act did not provide for these as part of business income.

### Investment income
The following have been added to income from investment:
- A gain from the realization of investment assets such as shares or securities in a company, a beneficial interest in a trust or an interest in land or buildings excluding the primary private residence of an individual provided the residence has been owned by the individual continuously for the three years before disposal and lived in on a daily basis for at least two of those three years.
- An amount derived as consideration for accepting a restriction on the capacity to conduct the investment
- Winning from lottery
- A gift received by the person in respect of the investment

Under the Old Act, gains realized from the disposal of shares were subject to capital gains tax at the rate of 15% unless exempt. Also, realization of a taxable gift was not treated as investment or business income but subjected to gift tax at the rate of 15%.

### Repairs and improvements
Expense incurred in respect of repair and improvement of a depreciable asset irrespective of it being of capital nature or otherwise is tax deductible. The deductible expense, however, for a year of assessment shall not exceed 5% of the written down value of the pool at the end of the year.

The excess expense for which the deduction is not allowed is added to the depreciation basis of the pool to which it relates.

Expense of a capital nature was not tax deductible.

### Financial instruments
For tax purposes, accounting for financial instruments should follow the generally accepted accounting principles.

Financial instruments include:
- Debt claim or obligation
- A derivative instrument
- A foreign currency instrument

For tax purposes, foreign exchange gain or loss not of capital nature was included in income or deducted from income when realized.

### Capital allowance
Capital allowances are required to be utilized only in the year in which they are granted. Capital allowances not utilized are to be written off.

Capital allowances not utilized in the year they were granted were carried forward.
| Research and Development (R&D) expenses | R&D expenses incurred are deductible regardless of the expense being of capital nature. | Only R&D expenditures which were not capital in nature were allowed to be deducted. |
| Capital losses | Capital losses incurred due to the realization of a capital asset or liability of a business is tax deductible provided:  
  - The asset is used for the production of income  
  - In the case of a liability, the debt obligation is incurred in borrowing money used for the purchase of an asset which is used for the production of income  
  - The liability is wholly, exclusively and necessarily incurred in the production of income. | Capital losses on debt obligations were not tax deductible. |
| Unrelieved losses | Unrelieved losses made by persons in a specified priority sector can be carried forward for five years.  
Unrelieved losses made by persons in all other sectors can be carried forward for three years. | Only persons engaged in the business of farming, manufacturing mainly for export, mining, agro processing, tourism, information and communication technology could carry forward losses for five years.  
Loss incurred by a venture capital financing company from the disposal of share invested in a venture capital subsidiary could be carried forward for five years. |
| Thin capitalization | The thin capitalization ratio has been increased to 3:1. | The thin capitalization ratio was 2:1. |
| Financial cost | Deductibility of financial costs other than interest for a year of assessment is limited to the sum of:  
  - The financial gain to be included in calculating the income of the person from the business or investment; and  
  - 50% of the income of the person from business or investment excluding financial gain or financial cost deducted.  
Any excess financial cost which cannot be deducted in a given year of assessment may be carried forward in the order in which it is incurred and treated as incurred during any of the following five years of assessment. Deductibility of the excess portion carried forward will be subject to the limitation rules noted above. | Financial costs which were incurred wholly, exclusively and necessarily for the production of income and were not of a capital nature and were also not subject to thin capitalization rules were deductible. |
| Finance leases and installment sales | Payments made under a finance lease or in acquiring an asset under an installment sale are to be treated as interest and a repayment of capital under a loan made by the lessor or seller to the lessee or buyer. | Lease rentals paid or payable by a lessee under a finance lease were deductible to the extent that the leased asset was used for the production of income and the expense was wholly, exclusively and necessarily incurred for the production of income. |
### Change of ownership of entities

Under the change of control/ownership rule, the period within which limitations on the deductibility of loss carry forward, bad debts and financial cost has been increased to three years.

The change of ownership/control rule applied where there was a change of more than 50% of the underlying ownership of an entity as compared to the ownership in the previous year of assessment.

### Taxation of companies

The following are treated as a company for tax purposes:
- A partnership in which at least 20 of the partners have limited liability for the debts of the partnership
- A trust with at least 20 beneficiaries whose entitlements to participate in the income or capital of the trust are divided into units such that the entitlements are determined by the number of units owned.

The meaning of a “company” was limited to a company or corporation incorporated in Ghana or elsewhere. No partnership or trust was treated as a company for tax purposes.

### Special industries

Under the new Act, the following have been classified as special industries:
- Petroleum
- Minerals and Mining
- Financial
- Telecommunication

Part VI of the Act deals exclusively with the taxation of persons falling under each of the industries stated above.

There was no such classification provided in Act 592.

### Permanent establishment (PE)

The definition of a Ghanaian PE has been extended to cover:
- The provision of services in the country
- A place in Ghana where an agent performs any function on behalf of the business of a nonresident person:
  - Including, in the case of an insurance business, the collection of premiums or the insurance of risks situated in Ghana; but
  - excluding a case involving a general agent of independent status with its own legal personality acting in the ordinary course of business as such

In addition, “a foreign PE” has been introduced in the new Act and defined as “a fixed place of business of a resident person situated in a foreign country where the business is conducted continuously for at least six months, but excludes any place at which only activities of a preparatory or auxiliary nature are conducted”

PE was defined under Act 592 as “a place where a person carries on business, and:
- A place where a person carries on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such
- A place where a person has, is using, or is installing substantial equipment or machinery; or
- A place where a person is engaged in a construction, assembly, or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to such project”

A foreign PE was not recognized.
<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
<th>Previous Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withholding tax rates</td>
<td>The threshold for applying withholding tax on payments for goods and services to resident persons has been increased to GHS 2,000.</td>
<td>The threshold was GHS 500 under Act 592.</td>
</tr>
<tr>
<td>Consequential amendment of the Banking Act, 2004 (Ac 673)</td>
<td>Section 84(3)(i) of the Banking Act has been substituted by Section 137 of the Income Tax Act, 2015 (Act 896). A bank may be required to provide information on the bank records of a client of that bank by the following means: - Upon the request by the Commissioner-General of Ghana Revenue Authority or automatic exchange of financial information for tax purposes with the competent authority of another jurisdiction as shall be specified in the Regulations enacted under Act 896 - Make a report or provide additional information on a suspicious transaction to the Financial Intelligence Centre set up under the Anti-Money Laundering Law. No such amendment was provided under Act 592.</td>
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<tr>
<td>Anti-treaty shopping provision</td>
<td>The new Act has no specific anti-treaty shopping provision which bars a person from availing itself of the benefits and exemptions provided in the Double Tax Treaties if certain underlying ownership conditions are not satisfied. A person is required to satisfy the underlying ownership condition before the person can avail himself/herself of the benefits and exemptions provided in the Income and Capital Gains Tax Treaties. Specifically, Act 592 requires that more than 50% of the underlying ownership of the person must be held by individuals who are themselves residents of the contracting state before the treaty benefits and exemptions can apply.</td>
<td></td>
</tr>
<tr>
<td>Interpretation of a business</td>
<td>A business is interpreted in the new Act to include a trade, profession, vocation or isolated arrangement with a business character and a past, present or prospective business. A business was defined to include a trade, profession or vocation.</td>
<td></td>
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<tr>
<td>Corporate tax rate for persons in the hotel industry</td>
<td>The income tax rate is 22%. The Income tax rate was 20%.</td>
<td></td>
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<tr>
<td>Withholding tax rates</td>
<td>Interest paid to individuals shall be taxed at 1% and in the case of any other interest, 8%. Payment of endorsement fee to a resident individual is 10%. Payment for the supply or use of goods to a resident is 3%. Payment for the supply of services to a resident is 15%. Payments by a resident person for unprocessed precious minerals located in Ghana or won from Ghana attracts 10% withholding tax. General withholding tax rate on goods was applicable unless exempt.</td>
<td>Interest paid was subject to 8% withholding tax. Interest paid to individuals by resident financial institutions was exempt income. Payment of endorsement fee to a resident was subject to 20%. Payment for the supply or use of goods to a resident was subject to 5%. Payment for the supply of services to a resident was subject to 5%.</td>
</tr>
</tbody>
</table>
### Withholding certificate

Withholding agents are required to issue withholding certificates in respect of taxes withheld from payments:

- In the case of withholdings from employment income, the certificate shall cover the period within the Year of Assessment (YOA) that the individual was employed and shall be served on the employee by 30 January after the YOA,
- In the case of other withholding payments, within 30 days for each Calendar month.

Withholding tax certificates were issued by the Ghana Revenue Authority.

### Assessments

The power of the Commissioner-General to make an assessment expires within six years, unless there is discovery of new information, fraud, willful default or serious omission by or on behalf of the taxpayer.

The Commissioner General was able within three years after the service of assessment, to make an additional assessment amending an assessment previously made. However, the Commissioner-General could make an additional assessment anytime in cases of fraud or gross or willful neglect by or on behalf of the taxpayer or discovery of new information in relation to the tax payable.

### Presumptive taxation

Presumptive tax may apply where:

- The chargeable income of a resident individual consists exclusively of income from a business having its sources from within Ghana and:
  - The individual is not registered for Value Added Tax (VAT) and the average of the annual turnover for three consecutive years does not exceed twenty thousand Cedis; or
  - The individual has annual turnover of more than twenty thousand Cedis from the business and is not required to register for VAT purposes.

The following individuals are excluded from presumptive taxation:

- An individual who has a professional qualification
- An individual who is engaged in a business prescribed by regulations that has a high profit turnover ratio
- An individual who has more than one business with more than one business outlet
- An individual in a partnership
- An individual can however elect for presumptive tax payments to be made by a method other than by instalments or as a percentage (3%) of turnover.

Presumptive tax rules were not provided for.
### Extension of time to pay tax

Extension of time to pay tax is permissible but an extension shall not exceed six months. The taxpayer must apply to the Commissioner-General in writing seeking such extension of time to pay the tax.

Extension of time for paying tax was permissible at the discretion of the Commissioner-General and upon conditions imposed by him.

### Interest and penalties

<table>
<thead>
<tr>
<th>Failure to maintain records</th>
<th>The penalty is:</th>
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<tr>
<td></td>
<td>• Where the failure is deliberate or reckless, 75% of the tax attributable to that period; or</td>
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<tr>
<td></td>
<td>• In any other case, the lesser of the amount referred to above, and 250 currency points (GHS 250).</td>
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</tbody>
</table>

A penalty equaled to 5% of the amount of tax payable by that person for the year.

<table>
<thead>
<tr>
<th>Failure to furnish return</th>
<th>Failure to file return of income by the due date attracts a penalty equal to:</th>
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<tbody>
<tr>
<td></td>
<td>• Four currency points (GHS 4) in the case of entities or</td>
</tr>
<tr>
<td></td>
<td>• Two currency points (GHS 2) in the case of an individual</td>
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<tr>
<td></td>
<td>for each day of default.</td>
</tr>
</tbody>
</table>

A company or self-employed person that failed to furnish a return of income within the time required was liable to pay a penalty of four currency points in the case of a company and two currency points in the case of a self-employed person in respect of each day during which the default continues.

<table>
<thead>
<tr>
<th>Failure to pay tax on the due date (corporate tax)</th>
<th>Interest of 125% of the statutory rate, compounded monthly, is applied to the amount of tax outstanding at the start of the period.</th>
</tr>
</thead>
</table>

Various penalty rates were provided for failure to pay tax on due date.

<table>
<thead>
<tr>
<th>Understating estimated tax payable by instalment</th>
<th>Interest on the tax due from the period from the date of the first installment Where the chargeable income estimate is less than 90% of the actual, the taxpayer is liable to pay interest on the tax due from the period the first installment of the year is payable until the date by which the person files a return of income for the year of assessment. The interest payable shall be calculated at 125% of the statutory rate, compounded monthly, applied to the difference between:</th>
</tr>
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<tr>
<td></td>
<td>• 90% of the total amount that would have been paid by way of installments during the year of assessment to the start of the period had the person’s estimate equaled the correct amount (actual chargeable income); and</td>
</tr>
<tr>
<td></td>
<td>• The amount of income tax paid by instalments during the year of assessment to the start of the period.</td>
</tr>
</tbody>
</table>

Where interest is imposed, the time during which an assessment is suspended following an objection by the taxpayer or an extension of time to file returns is granted or an extension of time to pay tax is granted is discarded in determining the time.
<table>
<thead>
<tr>
<th>Failure to comply with the Act</th>
<th>Where this failure results or, if undetected, may result in an underpayment of tax in an amount exceeding GHS 200, the person commits an offense and is liable on summary conviction and to a fine of not less than GHS 2400 and not more than GHS 4800; and in any other case, to a fine of not less than GHS 120 and not more than one GHS 2400.</th>
<th>Where this failure occurred or, if undetected, may result in an underpayment of tax in an amount exceeding GHS 500, the person committed an offense and was liable on summary conviction and to a fine of not less than GHS 600 and not more than GHS 3600; and in any other case, to a fine of not less than GHS 120 and not more than one GHS 1200.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to pay tax</td>
<td>✦ Where the failure is to pay an amount in excess of GHS 2000, the person commits an offense and is liable on summary conviction to a fine of not less than GHS 2400 and not more than GHS 12000 or imprisonment for a term of not less than three months and not more than one year, or both; and ✦ In any other case, to a fine of not less than GHS 600 and not more than GHS 2400 or imprisonment for a term of not less than one month and not more than three months, or both.</td>
<td>✦ Where the failure was to pay an amount in excess of GHS 100, the person committed an offense and was liable on summary conviction to a fine of not less than GHS 300 and not more than GHS 1200 or imprisonment for a term of not less than three months and not more than one year, or both; and ✦ In any other case, to a fine of not less than GHS 60 and not more than GHS 300 or imprisonment for a term of not less than one month and not more than three months, or both.</td>
</tr>
<tr>
<td>Making false or misleading statements</td>
<td>✦ A fine of double the amount of tax underpayment that may result, where the statement or omission is made without reasonable excuse and the inaccuracy of the statement had gone undetected. ✦ A fine of not less than GHS 600 and not more than GHS 2400 or to a term of imprisonment of not less than one month and not more than three months, or both the fine and imprisonment, in any other case. ✦ A fine of triple the amount of tax underpayment that may result where the statement or omission is made knowingly or recklessly and the inaccuracy of the statement had gone undetected or to a fine of not less than GHS 600 and not more than GHS 2400 or to a term of imprisonment of not less than six months and not more than one year, or both the fine and imprisonment, in any other case.</td>
<td>✦ A fine of double the amount of tax underpayment that may result, where the statement or omission is made without reasonable excuse and the inaccuracy of the statement had gone undetected. ✦ A fine of not less than GHS 600 and not more than GHS 2400 or to a term of imprisonment of not less than one month and not more than three months, or both the fine and imprisonment, in any other case. ✦ A fine of triple the amount of tax underpayment that may result where the statement or omission is made knowingly or recklessly and the inaccuracy of the statement had gone undetected or to a fine of not less than GHS 600 and not more than GHS 2400 or to a term of imprisonment of not less than six months and not more than one year, or both the fine and imprisonment, in any other case.</td>
</tr>
<tr>
<td>Impeding tax administration</td>
<td>A fine of not less than GHS 1200 and not more than GHS 12,000 or to a term of imprisonment of not less than six months and not more than two years, or both the fine and the imprisonment.</td>
<td>A fine of not less than GHS 300 and not more than GHS 2400 or imprisonment for a term of not more than two years, or both.</td>
</tr>
</tbody>
</table>
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