Following the passage of the Value Added Tax Act, 2013, Act 870 (as amended) in 2013, Ghana’s Finance Minister has issued the Value Added Tax (VAT) Regulations, 2016, L.I. 2243 (the “Regulations”). The Regulations, which came into force on 4 July 2016, amplifies the provisions in the Act.

This Alert highlights how some of the key changes introduced by the VAT Act, 2013, Act 870 (as amended) are to be treated.

- Two or more corporate bodies, with one controlling the other(s), or one company controlling the other members in the group may apply to the Commissioner-General (CG) of the Ghana Revenue Authority (the GRA) to be registered as a group, provided each entity is a registered body corporate in Ghana and has an established place of business in Ghana.
- The CG may issue a warrant in the manner and form as he determines to lock up or seal off the business premises of a person who fails to apply for registration within 30 days after being served a notice by the CG to register for VAT and the National Health Insurance Levy (NHIL).
A Ministry, Department, Agency, statutory body, District Assembly or other entity of Government which carries on any of the following taxable activity is required to register for VAT and NHIL:

- Auction
- Hiring of equipment
- Renting of space

Or

- Any activity commonly conducted for profit

The CG may, in writing, permit a nonresident person providing telecommunication services or electronic commerce to:

- Register for VAT
- File returns

Or

- Account for VAT by electronic means

The Regulations set forth the conditions that must be present for a supply to qualify as a “transfer of a business as a going concern.” One such condition is the requirement for the going concern to be an income-generating activity capable of separate operation and which should be operating or capable of operating following the transfer and should not be a dormant or a prospective business.

For the purposes of determining the consideration in respect of the value for a taxable supply, any discount or rebate is acceptable only where the discount or rebate is made on a non-discriminatory basis and is also available to every recipient of the supply.

Where a transaction involves goods or services supplied in the country by a nonresident person, the supply will be deemed to have been made in Ghana provided that:

- The transaction is made in the course of a business carried on in the country; and
- The person is qualified for registration for VAT at the time of the transaction

The Regulations provides a list of financial services for which fees, commissions and similar charges imposed are subject to VAT and NHIL. See Appendix A for the list of financial services which are subject to VAT and NHIL.

The time of supply for imported goods is:

- The time at which the import duties on the goods become due under the Customs Act, 2015 (Act 891)
- In the case of goods removed from an export-processing zone, the time at which the import duties on the goods become due; and
- In any other case, when the goods are brought into the country

Input tax incurred on motor vehicles shall be deductible in the following cases:

- Where the motor vehicle is purchased or imported by a taxable person who is in the business of dealing in or hiring of motor vehicles for the purposes of the business
- Where a motor vehicle, other than a motor car, is purchased or imported by a taxable person wholly, exclusively and necessarily for use in the business

A registered person is required to keep VAT records for a minimum period of six years and may only destroy the records after six years with the written permission of the CG.

Where a business opts for each branch or division to be registered separately, each branch or division registered separately shall maintain separate accounting records for the purpose of the tax and shall file returns accordingly.

VAT and NHIL incurred on entertainment expenses are generally not deductible. The Regulations defines entertainment expenses to include:

- Food served at year-end lunches and parties
- Hiring of venues for functions
- Expenses on free meals at workplace canteen
- Business lunches, night club expenses or sporting events
- Beverages, meals entertainment shows or other hospitality supplied to customers and clients

Persons who are entitled to tax relief are required to pay the tax and apply for a refund.
For a debt to be considered irrecoverable, the CG must be satisfied of all the following conditions:
- The taxable person has undertaken action for recovery of the debts
- The action for the recovery has exhaustively proven futile
- The taxable person has made all the necessary entries in the book of accounts

Auctioneers who make taxable supply of goods and services under an auction shall be required to charge output VAT, account and pay for the output VAT whether or not the tax charge is inclusive of the total cost or price charge to the bidder or purchaser.
Appendix A - List for financial services

Financial services in the banking sector for which fees, commissions and similar charges imposed are subject to VAT and NHIL under the provisions of the Act include services relating to:

1. Current accounts, foreign and local
2. Bank drafts, payment orders
3. Stopped checks and returned checks
4. Commission on turnover
5. Overdraft processing or renewal fees
6. Revolving acceptance credit
7. Arrangement fee for facilities
8. Statements and certificates of balance
9. Clearing charges
10. Checks for collection
11. Standing orders
12. Telephone banking
13. Safe custody
14. Check books including sale of check leaflets and replacement of lost check books
15. Issuance of debit and credit cards
16. Revolving credits
17. Collateral management
18. Transfer of documents to other banks
19. Guarantees, bonds, tender, performance
20. Request for forex drafts
21. Outwards transfer: swift or telex - drafts or money orders
22. Travellers checks, drafts
23. Check lodgements for corporate bodies and third parties only
24. Evacuation fees, cash-in-transit
25. Unpaid standing order
26. Closure of accounts
27. Remote banking services including:
   - Online banking, internet
   - Electronic statements
   - E-clients
   - Phone banking
   - Short messaging service banking
   - Mobile banking
   - Monthly subscriptions
   - Financial transaction fees
28. Lending fees including:
   - Commitment fee, arrangement fee, processing fee, facility fee and other similar fee
   - Processing fee
   - Property valuation fee; open market value
   - Guarantee commission
   - Bid security
   - Bank credit letter, letter of intent
   - Mobilization guarantee
   - Retention guarantee
   - Performance bond
   - Default or restructured
29. Other loans, excluding salary advance but including:
   - Arrangement fees
   - New loans
   - Top-ups
   - Early settlement fees
30. Letters of credit, imports including:
   - Establishment commission
     - arrangement fee and
     - presentation under 1/c drawings
   - Amendments in the nature of:
     - increase in amount
     - extension of period
     - extension of period - another quarter; and
     - discrepancy
   - Other amendments
31. Documentary bills for collection, imports including:
   - Handling charges - customers
   - Negotiation commission
     - advice of fate
     - bills deleted
     - protest
   - Payment commission in the nature of per quarter holding charges
   - Prior approval, customers in respect of:
     - own resources
     - telex or cable charges
     - swap charges
   - Customers allocated funds from bank in relation to:
     - exchange
     - telex or cable charges
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