what ghana's revenue mobilisation plans mean for your taxes in 2023

n. dowuona & co

framework

Central to Ghana's IMF staff-level agreement is sustainable revenue mobilisation. The Government of Ghana hopes to achieve this through a range of measures, including enhancing the efficiency of taxation and revenue collection systems, digitising processes to reduce paperwork and congestion, providing tax education and awareness, strengthening audit and investigation capacities, reducing exemptions, cutting down on fraud and evasion, exploring new revenue sources, and expanding the tax base.

The Ghana Revenue Authority (GRA) raised a record GHS 75.54 billion in tax revenue last year, exceeding its revised revenue target of GHS 71.94 billion by GHS 3.60 billion. Although this fell short of the original 2022 revenue target by approximately six per cent (6%), it represented a thirty-one and a half per cent (31.5%) nominal increase over the tax revenue collected in the 2021 financial year.

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However, this year's revenue target is a staggering GHS 206 billion, which represents a one hundred and fifty per cent (150%) increase on the original 2022 target of GHS 80.3 billion. This ambitious target is even more sobering, given the challenging macroeconomic climate in 2023.

GRA appears up for the challenge and has already sent a strong signal to the market that it means business. In January alone, GRA issued assessments exceeding USD 1 billion to large corporates, including MTN Ghana, Tullow, Kosmos, and Goldfields, for back taxes. MTN Ghana's gigantic assessment of GHS 8.2 billion was subsequently withdrawn. However, the other reviews are still outstanding, though disputed by Tullow Oil PLC, Gold Fields Ltd and Kosmos Energy Ltd. On 14 February 2023, Tullow Oil PLC announced that it had referred its disputed tax claims to international arbitration in London.

This year, tax planning and compliance must take centre stage for Ghanaian business boards and managers. Against this backdrop, here is a recap of some recent fundamental changes that decision-makers must consider.

key new taxes, levies, rates, penalties

- **new marginal tax rate for top earners**

Income is taxed at graduated progressive rates ranging from zero per cent (0%) for individuals earning GHS 365 and below to thirty per cent (30%) for individuals earning above GHS 20,000 per month. The government proposes to revise individual income tax rates to accommodate the minimum wage for 2023 as the basic tax-free income and introduce a marginal tax rate of thirty-five per cent (35%) for top earners. When passed into law, income will be taxed at zero per cent (0%) for individuals earning GHS 402 and below to thirty-five per cent (35%) for individuals earning above GHS 50,000 per month.

- **review of upper limits of vehicle benefits**

The government has also indicated its intention to review the upper limits for quantifying the motor vehicle benefits upwards to account for inflation. Employees who enjoy vehicle or fuel-only benefits will be required to pay five per cent (5%) of their total cash emoluments up to a maximum of GHS 625 per month. In comparison, those who enjoy both vehicles and fuel benefits pay ten per cent (10%) of their total emoluments up to a maximum of GHS 1250 per month. Employees who enjoy vehicles with drivers and fuel will be required to pay twelve and a half per cent (12.5%) of their total cash emoluments up to a maximum of GHS 1,500 per month when the law is passed.

- **the growth and sustainability levy[6]**

The government is proposing to rename the National Fiscal Stabilisation Levy (NFSL) the Growth and Sustainability Levy (GSL) under the Growth and Sustainability Levy Bill, 2022, currently before parliament. When passed into law, the levy will apply to all entities as follows:

– Five per cent (5%) on profit before tax for Category A entities, which comprises those currently paying the NFSL and six additional sectors;

– One per cent (1%) of gross production for Category B entities, which comprises entities operating in the mining and upstream oil and gas sectors; and

– Two and a half per cent (2.5%) on profit before tax for Category C entities, which comprises all other entities which do not fall under Categories A and B.

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- **increase in temporary concessional tax rates**

For persons engaged in agriculture, rural banking, waste processing, [rental of] residential premises, unit trusts, mutual funds, venture capital, young entrepreneurs in specified industries and free zones enterprises, the concessional tax rate has been increased from one per cent (1%) to five per cent (5%)[1].

key new taxes, levies, rates, penalties

- **introduction of minimum chargeable income**

Additionally, the government has proposed to implement a minimum chargeable income system. A person may be required to compute and pay tax on a minimum chargeable income of five per cent (5%) of turnover where the person has been declaring losses for the previous five (5) years of assessment of their total income when the law is passed. This minimum chargeable income requirement, however, does not apply to a person within the first five (5) years of commencement of operations or a person engaged in farming.

- **loss of exemptions**

For free zone companies, non-compliance could also trigger additional taxes. GRA is now mandated to recover three hundred per cent (300%) of all taxes due from a free zone enterprise which does not export a minimum of seventy (70%) of the output of the enterprise or the relevant percentage as specified in the licence issued to the enterprise by the Ghana Free Zones Authority.

"GRA has recently been very active in enforcing this requirement, and has shut several branches of some of Ghana's retailers for purported non-compliance."

- **application for tax waivers**

Under the Exemptions Act, a person is now prohibited from negotiating or entering into an agreement to grant a tax exemption except with the prior written approval of the Minister of Finance. A tax exemption agreement that is entered into without the prior written approval of the Minister of Finance is void. An investor that seeks to invest in a priority area may still apply to the Ghana Investment Promotion Centre (GIPC) for relevant tax exemptions - clearly stating the cost details of the investment and the tax exemptions required - and the GIPC must then forward the application to the Minister of Finance after it has determined that the investment for which the tax exemptions are being requested is in a priority area of economic investment. The Minister of Finance will enter into negotiations with the prospective investor to agree on the cost details of the investment, the exact scope and details of the exemptions to be granted, and the commensurate equity stake that the state may take in the investment in return for the revenue forgone in granting the exemptions.

If negotiations are successfully concluded, the Minister of Finance must procure the necessary approvals from Cabinet and Parliament for the investment incentives agreement to be signed between the Ministry of Finance and the prospective investor.

- **freeze on tax waivers for foreign companies[1]**

Also, enterprises registered by the Ghana Investment Promotion Center (GIPC) whose plant, machinery, equipment, or parts are not zero-rated under the Customs Act no longer enjoy the privilege of applying for exemption from import duties and related charges. The government may grant a specially negotiated tax exemption for strategic investment in exchange for a commensurate equity stake in the investment project. A business that cedes an equity stake to the government will have an unqualified right to repurchase it at the prevailing market price.

key new taxes, levies, rates, penalties

- **the unification of loss carried forward provisions**

Currently, under the Income Tax Act[1], all businesses are generally able to carry forward an unrelieved loss for any of the previous three (3) years of assessment and businesses operating in specified priority sectors may carry forward an unrelieved loss for any of the last five (5) years of assessment. Businesses may also carry forward unrelieved foreign losses.

The government is now proposing to unify the provisions on carry forward losses to ensure that all businesses are able to carry forward their tax losses for any of the previous five (5) years of assessment, irrespective of the sector they are engaged in. The government also proposes restricting foreign exchange loss deduction to actual losses. This means that taxpayers will be limited to only foreign exchange losses that have been realised.

- **changes in VAT**

The headline rate of value-added tax (VAT) has been increased from twelve and a half per cent (12.5%) to fifteen per cent (15%) calculated on the value of the import or taxable supply of goods or services. However, supplies by a wholesaler or retailer of goods who makes taxable supplies of not less than GHS 200,000 but not exceeding GHS 500,000 at the end of any period of twelve months will continue to be taxed at a flat rate of three per cent (3%). The National Health Insurance Levy (NHIL) of two and a half per cent (2.5%), the Ghana Education Trust Fund (GET Fund) Levy of two and a half per cent (2.5%) and the COVID-19 Health Recovery Levy (CHRL) of one per cent (1%) will continue to be payable by companies on the value of goods and services supplied to other persons or imported into Ghana.

- **higher excise duty rates**

The government proposes increasing excise duty rates for cigarettes and tobacco products, wine, malt drinks and spirits and imposing excise duty on electronic cigarettes, electronic cigarette liquids, sweetened beverages, and electronic smoking devices. The Excise Tax Stamp (Amendment) Bill 2022 is currently before parliament to increase the list of products that must be affixed with an excise tax stamp to attract excise duty and ensure revenue generation for the government.

- **elimination of benchmark value discounts on imports of general goods and used vehicles**

The thirty per cent (30%) benchmark value discount on the Free on Board (FOB) value (import values) of general goods and ten per cent (10%) on Home Delivery Value (HDV) of motor vehicles has been completely reversed. As of January 1, 2023, the valuation of general goods and used motor vehicles would align with the World Trade Organisation (WTO) Valuation Agreement, WTO Customs Valuation Compendium, and the Customs Act.

changes in process and what does it mean for compliance

- **e-vat**

Businesses are now required to issue tax invoices through an electronic Certified Invoicing System, which must be integrated into the invoicing system of the GRA (e-VAT invoices)[1]. Businesses that fail to issue e-VAT invoices, integrate their invoicing system with that of GRA or issue false e-VAT invoices will, in addition to being liable to a fine of not more than GHS 1,200 or a term of imprisonment of not more than 6 months or to both, also be liable to pay a penalty of an amount of GHS 50,000 or three times the amount of tax involved, whichever is higher.

GRA has recently been very active in enforcing this requirement and has shut down several branches of some of Ghana's retailers for purported non-compliance.

- **taxpayers' portal**

The taxpayers' portal, which is also available as an app, is an online self-service system which allows taxpayers to file returns, initiate payments of taxes, view receipts and tax credits and tax statements, apply for tax clearance certificates, withholding exemptions and tax refunds and make other requests to a taxpayer's tax office.

- **ghana.gov**

Ghana.gov is a digital service and revenue collection platform created to provide a single access point to the Government of Ghana's services for the public sector. The service portal seeks to deliver processing of all payments and transfers (both electronic and cash) against predefined service flows of each MDA and MMDA and manage post-payment workflow, customer notification, feedback and service ratings, thereby enabling the government to fulfil its goal of creating a cash-lite economy.

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some relief

- **lower electronic transfer levy**

The headline e-levy rate has been reduced from one and a half per cent (1.5%) to one per cent (1%) of the transaction value.

The e-levy applies to mobile money transfers between accounts on the same electronic money issuer or from an account on one electronic money issuer to a recipient on another electronic money issuer and to transfers from mobile money accounts to bank accounts, as well as from bank accounts to mobile money accounts. lower electronic transfer levy The headline e-levy rate has been reduced from one and a half per cent (1.5%) to one per cent (1%) of the transaction value. The e-levy applies to mobile money transfers between accounts on the same electronic money issuer or from an account on one electronic money issuer to a recipient on another electronic money issuer

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- **new double taxation agreements**

In addition to the existing double taxation agreements (DTAs) with Belgium, Switzerland, Denmark, Mauritius, United Kingdom, Singapore, Germany, Czech Republic, France, Italy, South Africa, Morocco and the Netherlands, Ghana has recently signed DTAs with Norway, Malta, Ireland and the United Arab Emirates. These new agreements are yet to come into force. Still, when they do, they will provide preferential rates on dividends, royalties, technical or management service fees, interest withholding, and other benefits.

what to watch out for

- **unified property rate platform**

Implementing the unified property rate platform program will be fast-tracked in 2023[1]. The government expects an estimated amount of GHS 165.4 million from implementing this policy.

- **broader application of anti-avoidance rules**

Anti-evasion rules are applicable in Ghana. To determine tax liability, the Commissioner-General must re-characterise or disregard an arrangement entered into or carried out as part of a tax avoidance scheme if it is fictitious or does not have a substantial economic effect or if its form does not reflect its substance. Tax avoidance is defined to include an arrangement whose primary purpose is to avoid or reduce tax liability. Although these provisions are not new, we see the GRA increasingly willing to apply them to a wide array of transactions, and we expect this trend to increase in the coming year and beyond.

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- **the price of appealing your assessment**

In the recent cases of KWASI AFRIFA V GRA[1]and RICHARD AMO-HENE V GRA[2], the Supreme Court dismissed a constitutional challenge to the "pay now, argue later" provisions in section 42(5) of the Revenue Administration Act, 2016 (Act 915),

which, generally requires taxpayers to pay thirty per cent (30%) of the taxes in dispute (or one hundred per cent (100%) in the case of import duties) before an objection can be considered by the GRA.

The Court concluded that this provision did not create a fetter to the due hearing of a tax objection and did not conflict with the Ghanaian constitution, in particular noting that section 42(6) allows the Commissioner General to exercise discretion to waive, vary or suspend the requirements of section 42(5) pending the determination of the objection and that the Commissioner General's exercise of such discretion must be reasonable in accordance with the relevant public law principles, failing which a judicial review may be possible.

These judgements have strengthened GRA's resolve in relation to the enforcement of section 42(5) requirement. However, the GRA does, in some circumstances, exercise its discretion to reduce or waive the thirty or one hundred per cent (30 or 100%) payment requirement, particularly in relation to large tax bills and has shown a willingness to do so in exceptional cases, where the taxpayer has a history of compliance and is cooperative.

- **tax appeal boards**

The Ministry of Finance and Economic Planning recently inaugurated the new independent tax appeals board (ITAB), responsible for adjudicating disputes between taxpayers and the GRA. The ITAB gives aggrieved taxpayers a forum to appeal tax objection decisions by the GRA before resorting to court.

The ITAB must either confirm, reduce, increase, or annul the assessment appealed against or make any other order as it deems fit. A further appeal may be filed in court where the appellant or the GRA is dissatisfied with the decision of the tax appeal board.

- **capital gains withholding tax**

Under the current regime, individuals and companies are effectively charged different capital gain tax rates. The gains from the realisation of assets and liabilities for individuals are treated as an isolated transaction and taxed at 15% of the net gain realised. Individuals must self-declare their gains by filing a Capital Gains Tax Return with the GRA. For businesses, the capital gains are included in the business' annual chargeable income and taxed accordingly.

The government has indicated its intention to introduce a return for gains on the realisation of assets and liabilities to be submitted within thirty (30) days of realisation to the GRA. The government is also proposing to introduce a withholding tax rate of three per cent (3%) and ten per cent (10%) of the consideration received for payments in respect of the realisation of assets and liabilities for residents and non-residents, respectively, as well as review the current optional rate for individuals for realisations of investment assets from fifteen per cent (15%) to twenty-five per cent (25%)[5] when the Income Tax (Amendment) (No. 2) Bill, 2022 is passed into law.

- **new VAT thresholds**

The government has announced that it is proposing to review the VAT threshold and exemptions. These proposals are still under consideration, and no laws have yet been enacted. The Government has not indicated the new threshold or the nature of the VAT exemptions it intends to review.

NanaAma Botchway, Managing Partner

NanaAma is the founder of n. dowuona & company. She is ranked as a leading lawyer in Legal 500, Chambers & Partners, and the International Financial Law Review. She has advised on numerous significant investments and divestments in Ghana and in other parts of Africa including the USD 200 million sale of Fan Milk International, the acquisition, development and divestment of the Movenpick Ambassador Hotel and Leapfrog Strategic African Investment's USD 180 million investment in the Enterprise Insurance Group. NanaAma is a graduate of Princeton University's Woodrow Wilson School Undergraduate Program, New York University's Stern School of Business and Columbia University School of Law.

Linda Lydia Lutterodt, Pupil

Linda is a pupil at N. Dowuona & Company. Her focus areas are corporate and commercial, property and construction and dispute resolution. She has experience in incorporating local and external companies and assisting with their regulatory compliance. She has also assisted in resolving significant commercial disputes.

Linda obtained a Bachelor of Arts in Sociology and Information Studies from the University of Ghana, Legon and a Bachelor of Laws degree from Mountcrest University College.

@ndowuonaandcompany
www.ndowuona.com