

# DETERMINANTS OF COMMUNICATION SERVICE TAX IN GHANA

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**Abstract:** The attempt by Ghana Government to increase revenue generation has proposed the introduction of five (5) new bills in parliament for deliberation and acceptance. The Communication Service Tax Bill ("CSTB") is one of five (5) Bills which have recently been approved by Parliament and waiting Presidential assent. The 2019 Amended Communication Service Tax Bill proposed tax rate of 9% an increase of the previous 6% proposed in 2003 which is to be paid together with the communications service charge to communication service providers by consumers of the service. The Bill provides that CST is to be levied on charges payable by a user of an Electronic Communication Service ("ECS") other than private ECS. The persons liable to pay the tax are the users of the service and are supposed to include users who receive ECS from a source outside Ghana. The tax liability is triggered once a person makes any supply ECS regardless of whether or not that person is permitted or authorized to provide ECS.

**Keywords:** ECS - Electronic Communication Service, CST- Communication Service Tax, CSTB- Communication Service Tax Bill.

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## 1. INTRODUCTION

The Government of Ghana in its attempt to increase revenue generation has introduced five (5) new Bills before Parliament for deliberations and approval. The Communication Service Tax Bill ("CSTB") is one of five (5) Bills which have recently been approved by Parliament and waiting Presidential assent.

The Communication Service Tax ("CST") was introduced in 2008 as a tax to raise additional revenue from communications services rendered by mobile operators to their customers.

This is imposed by this Act a tax to be known as the communications service tax to be levied on charges payable by consumers for the use of communication service and the tax shall be levied on all communications service usage charged by communication service providers with Class I licenses as provided in the National Communications Regulations 2003 (L. I. 1719). The tax shall be paid together with the communications service charge to communication service providers by consumers of the service with the tax rate of 6% of the charge for the use of the communication service.

In the process of implementing the Communication Service Tax Act, the telecommunications companies ("Telcos") raised administrative and legal objections on the Ghana Revenue Authority's ("GRA") resolve to collect Communication Service Tax from the Telcos on local interconnection services culminating in the landmark judgment handed down by the Commercial Division of the Accra Fast Track High Court in favor of the Telcos. (i.e Scancom Limited, now MTN, Ghana Telecom Co Ltd, now Vodafone, and Milicom Ghana Limited, also known as TiGo.

The judgment effectively barred Ghana Revenue Authority and Government of Ghana from collecting Communication Service Tax on interconnects services. It is considered that the Communication Service Tax Bill ("CSTB") is a direct response of Government and the Ghana Revenue Authority in terms of their inability to collect CST on interconnect services.

The main objective of the CSTB is to clarify the scope and coverage of the CST and to explicitly include interconnects services within the tax base. The CSTB is also meant to end the controversy over whether or not CST is applicable on interconnect services provided by one telecommunication company to another.

The understanding from Parliamentary proceedings of 9 July 2013 was that some amendments have been made to the CSTB. These amendment included the following :

- The section that required CST to apply on ECS received by users from sources outside Ghana has been removed from the CSTB. This implies that recipients of ECS from outside Ghana will no longer be required to pay CST;
- Section 24 of the existing Law has been updated to include additional powers for the Minister responsible for Finance. The Ministers shall have the power to establish monitoring mechanisms for verifying the actual revenue that accrue to the service providers for purposes of computing CST. The Ministers shall also be given physical access to the physical network nodes of the service provider's network. Penalties will apply to service providers who refuse to grant access to the Ministers or their appointed agents.

## 2. RELATED WORKS

According to Svetalekh (2018), Excise Department began to collect excise tax from telecommunication business in 2003. Telecommunication business is issued as a business under permission or concession of the state and is collected by 10% of revenue of mobile phone service provider and collected 2 % of revenue of home phone service provider. However, the cabinet has resolution to deduct the excise tax that mobile phone service providers, private sector, pay for revenue sharing to Telephone Organization of Thailand (TOT) and Communications Authority of Thailand (CAT). It reduces burden of mobile phone service provider and prevent them to push tax burden towards consumers. Later in 2007, the cabinet abolished to bring excise tax deduction from revenue sharing of mobile phone service providers to TOT and CAT. Furthermore, telecommunication business had the exemption of excise tax since 2007. It causes decrease of excise tax revenue collection about 15,000 million baht (384.61 million euro).

According to Peters (2011), the federal excise tax on telephone use (IRC Section 4251) began in 1898 as one of many excise taxes enacted to raise revenue for the Spanish-American War. The tax has been repealed, reinstated, expired, extended and changed. It was made permanent in 1990. It has outlived its original intent yet has stayed to provide revenue for the general fund. Many sessions of Congress have looked at its repeal in the last decade. The current proposal in the 112th Congress is H.R. 428 which again attempts to repeal the tax.

Ford (2014) Suggest that, Taxes on communications services are often very high and discriminatory, exceeding sales taxes in many jurisdictions. Tuerck et al (2007) also claim these taxes are regressive in nature. Numerous estimates of state and local taxes on communications services compute average tax rates of around 10%, with many states having rates much higher. Taxes raise prices, and studies suggest that communications taxes are often paid entirely by consumers. If so, then broadband prices after the expiration of the tax moratorium will rise from  $P$  to  $P(1 + t)$ , where  $t$  is the state and local ad-valorem tax rate.

## 3. IMPLEMENTATION

The proposed amendment had various means of comparing the previous act with the current bill suggesting various interpretations with an increase in the tax rate to 9%.

### a) Proposed Provisions

Imposition of communication service tax

Clause 1 of the Bill provides that CST is to be levied on charges payable by a user of an Electronic Communication Service ("ECS") other than private ECS. Specifically, CST would be levied on:

- ECS supplied by service providers
- Charges payable on ECS received by users from sources outside Ghana.

CST is also applicable on the supply of any form of recharges which includes any plan, scheme or form by which users receive additional ECS from service providers.

## b) Current Provisions

In Section 1 of the Communication Service Tax Act, 2008 (Act 754) "existing Law", CST is levied on charges payable by consumers for the use of communication service.

## c) Comments

The CSTB appears to widen the scope of the tax. For instance, the term "consumers" in the existing Law has been replaced with "users". This seeks to include operators or providers of electronic communication network or services as long as they use electronic communication and thus become "users" in that sense. Similarly, the term "communication service" in the existing Law has been phased out and in line of it is "ECS". This is intended to clearly capture interconnect services under the scope of CST and all communication services that are electronic in nature. This is because, the definition of electronic communications includes interconnect services.

Further, in the CSTB, the term "communication service provider" in the pertaining Law has now been replaced with the term "service provider". Finally, the scope of CST has also been widened to include charges payable on ECS received by users from sources outside Ghana. This effectively also brings to closure any disputes on whether international interconnect is subject to CST. However, CST does not apply to "Private ECS"<sup>3</sup>.

## a) Proposed Provisions

Persons liable to pay the tax

- Clause 2 of the CSTB requires the tax to be paid by the user of the service.
- Also, the persons liable to pay CST have been widened to include users who receive ECS from a source outside Ghana.
- Further, in Clause 2 of the CSTB, the tax liability is triggered once a person makes any supply ECS regardless of whether or not that person is permitted or authorized to provide ECS under the Electronic Communications Act, 2008 (Act 755) and its Regulations.

## b) Current Provisions

There is a similar provision in Section 2 of existing CST law which provides that CST shall be paid together with service charge to communication service providers by consumers of the service. However, this provision is silent on the application of CST on consumers who receive communication service from sources outside Ghana

## c) Comments

The CSTB states that in the case of ECS received outside this country, the tax shall be paid by the user who received the service. This provision is one of the reasons why discussion on the CSTB has stalled in the Parliament of Ghana. As there is no clarity on whether the "user" here refers to the final consumer or the telecom network operators? Further, CST will now apply to any supply of ECS regardless of the eligibility of the service provider to provide ECS under the Electronic Communications Act, 2008 (Act 755) and its Regulations.

## a) Proposed Provisions

Replacement of "communication service providers" by "service providers"

## b) Current Provision

In the existing Law, the term "communications service providers" refers to those issued with Class license as provided in the National Communications Regulations, 2003

## c) Comments

There is no longer any reference to the NCR LI in the CSTB. The statute or legislation referred to is the Electronic Communications Act ("ECA"), 2008 (Act 775) and its Regulations. This therefore means that once the services being provided by a person meets the definition of electronic communication service, that person would be required to charge CST and account for it. The change from the NCR LI to the ECA is meant to widen the scope of CST and to remove any legislative challenges inherent in the NCR LI.

## a) Proposed Provisions

Records, related matters, offences and penalties.

In Clause 5 of the Bill, while sections 29 and 30 and Part XII of the Value Added Tax Act 1988 (Act 564) ("VAT Act") have been maintained, Part IX of the VAT Act which relates to recovery of tax due, interest and others have been excluded in the applicable provisions for management of CST. The existing Law provided that Part IX of the VAT Act was applicable for the management of the CST regime with the necessary modifications as appropriate.

## b) Current Provisions

This effectively means that when the Bill is passed in its current form, the GRA may not be able to exercise its powers of garnishment and distraint for liability powers.

## c) Comments

However, in terms of recovering the tax due including penalties and interest, under section 8 of CSTB, the GRA can still collect such amounts without reference to Part IX of the VAT Act which is being amended.

## a) Proposed Provisions

Objections and Appeals

Clause 6 of the Bill excludes part X of the VAT Act which relates to the administration of VAT to be applied in matters of objections and appeals related to the tax.

## b) Current Provision

The existing Law required that sections 54 and 55 and part X of the VAT Act be applicable in matters of objections and appeals related to the tax.

## c) Comments

The aim of this clause is to exclude the administrative set up of the VAT Service from the existing CST Law as the VAT Service has now been fully integrated into the GRA. There is however a significant omission in the CSTB in that the C-G of the GRA is not required to pay CST amounts collected into the Consolidated Funds as this legislative directive is contained in Part X of the VAT Act that is being amended.

## a) Proposed Provisions

Widening the scope of "charge for electronic communications service usage"

In clause 16, charge for ECS usage means the following in all cases, excluding VAT and

National Health Insurance Levy:

The amount chargeable by a service provider for ECS usage where the charge for ECS is for money consideration, the consideration where the charge for ECS is partly for money consideration, the open market value in the case of promotion, protocol, personal use, bonus, gift and similar suppliers, the charge shall be the open market value.

## b) Current Provision

In the existing Law, the term "charge for communications service usage" means the amount chargeable by a communication service provider for communication service usage, other than VAT including National Health Insurance Levy

## c) Comment

The CSTB has clearly included promotions, bonuses and gifts within the definition of "charge for ECS". This implies that service providers are required to charge and account for CST on promotions, bonuses and gift offers which they run. Recipients/beneficiaries of promotional ECS services or bonuses might see a reduction of the value ECS they would receive due to the inherent CST in the value of the offers they receive.

#### 4. CONCLUSION

The inclusion of interconnect services in the tax base of CST will lead to an increase in taxes payable by Telcos. It is expected that since telecommunication services have become a necessity for most users, the additional tax burden will most likely be passed onto final users. Consequently, pushing the additional tax burden onto consumers will increase the cost of using such electronic communication services in Ghana.

However, if all the costs are not passed onto final consumers, then it will also affect the operating cost of the Telcos and will adversely affect the ability of these Telcos to reinvest excess profits in capital expenditure meant to improve service quality among others.

In summary, while it is expected that this CSTB will clarify the existing CST law in respect of the taxation or non-taxation of interconnect services within the tax base, the issue of which fund the CST amount has to be paid it and who the true “user” is in terms of international interconnect needs to be properly addressed. Also, while Government is highly expectant of increased tax revenue from CST, a careful balance has to be sought so that in the likely event that the Telcos actually passes on the additional tax burden onto the users, it does not negatively affect the overall tax revenues of Government. In any case, however one looks at the CSTB, it would negatively affect government’s tax revenues (either a reduction on CST revenues or corporate income taxes of Telecoms as a result of taking up additional costs).

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