

ACT 546
VALUE ADDED TAX ACT, 1998

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ACT 546
VALUE ADDED TAX ACT, 1998(1)

AN ACT to provide for the imposition of value added tax and to provide for related matters.

Imposition of Value Added Tax

1. Imposition of tax

(1) A tax to be known as value added tax is hereby imposed and shall in accordance with this Act be charged on

- (a) every supply of goods and services made in Ghana,
- (b) every importation of goods, and
- (c) supply of any imported service,

other than exempt goods and services.

(2) Unless otherwise provided in this Act, the tax shall be charged on supply of goods and services where the supply is a taxable supply and made by a taxable person in the course of business.

(3) The tax shall be charged and payable on the importation of goods and for that purpose the laws and regulations applicable to the collection of customs duties and any other taxes on importation of goods shall apply with such modifications as are necessary.

(4) The charge made under this section is the output tax.

2. Persons liable to pay the tax

Except otherwise provided in this Act, the tax shall be paid

- (a) in the case of a taxable supply, by the taxable person making the supply,
- (b) in the case of imported goods, by the importer, and
- (c) in the case of imported service, by the receiver of the service.

3. Rate of the tax

(1) Except as otherwise provided in this Act, the rate of the tax is twelve and a half percent calculated on the value of the taxable supply of the goods, services or import.²⁽²⁾

(2) Unless otherwise directed by the Commissioner in writing, a taxable person who is a retailer of goods shall account for the Value Added Tax payable under this section at a flat rate of 3% calculated on

the value of the taxable supply.^{2a(3)}

Taxable Person

4. Taxable person

(1) A taxable person is a person registered under section 5.

(2) The Commissioner shall notify a taxable person when registered and shall issue a certificate of registration which shall be exhibited at the principal place of business of the taxable person.

(3) The effective date of registration as a taxable person is the date specified in the certificate of registration issued by the Commissioner.

5. Registration as taxable person

(1) A person is registered as a taxable person if that person is a person who makes a taxable supply of goods or services and in the case of a retailer of goods that person is a person whose business turnover exceeds

(a) €100 million over a twelve month period, or

(b) €75 million over a nine month period, or

(c) €50 million over a six month period, or

(d) €25 million over a three month period,

whichever is achieved earliest.³⁽⁴⁾

(2) For the purpose of determining the thresholds under subsection (1), separate businesses under the same ownership may be treated as owned by one person.

(3) A person who qualifies as a taxable person or has grounds to believe that that person will qualify as a taxable person shall apply on the form prescribed by the Regulations for registration by the Commissioner.

(4) A person who is not registered, but who is liable to apply to be registered under this Act, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration arose.

(5) An applicant shall make the application within thirty days of becoming qualified or having reason to believe that the applicant will so qualify.

(6) The Commissioner may in writing notify a person that that person has within a tax period specified in the notice made taxable supplies

(a) in excess of the turnover figures, or

(b) below the turnover figures,

specified in subsection (1) and is registrable as a taxable person or not registrable and shall act accordingly by registering or cancelling the registration.

(7) A national, regional, local or any other authority or body which carries on a business activity which makes it registrable as a taxable person shall apply for registration.

(8) A group of taxable persons may, with the approval of the Commissioner be treated for the

purposes of the tax as one designated taxable person where each member of the group undertakes to be jointly and severally liable for a contravention under this Act or the Regulations.

(9) A taxable person whose business is structured into distinct divisions may apply to the Commissioner for each division to be registered for the tax.

(10) Despite any other provision of this section,

- (a) a business with a turnover below the registrable level provided in subsection (1) may apply voluntarily to be registered by the Commissioner, and
- (b) the Commissioner may in writing notify and register a class or category of businesses specified in the notice as registrable under this Act.

(11) The Commissioner shall register a person who qualifies under subsection (10) as a taxable person unless the Commissioner

- (a) is satisfied that that person does not have a fixed place of abode or business; or
- (b) has reasonable grounds to believe that that person
 - (i) will not keep proper accounting records relating to the business activity carried on by that person, or
 - (ii) will not submit regular and reliable tax return as required by or under this Act, or
 - (iii) is not a fit and proper person to be registered.

6. Register and particulars of taxable persons

The Commissioner shall keep a register in which shall be recorded the particulars of taxable persons.

7. Change in business

(1) A taxable person shall notify the Commissioner in writing

- (a) if the business ceases to operate or is sold or moves; or
- (b) if there is a material change in the ownership of the business; or
- (c) of a change,
 - (i) in the name or address of that person, or
 - (ii) in the circumstances which disqualify that person for registration, or
 - (iii) of a material nature in the business activities or in the nature of taxable supplies being made.

(2) The notification shall be made within thirty days of the cessation sale, move, change of ownership or any other change.

8. Cancellation of registration

(1) The registration of a taxable person shall be cancelled by the Commissioner where the Commissioner is satisfied that the registered person does not exist.

(2) A taxable person shall apply in writing for the cancellation of the registration if that person ceases to carry on the business in relation to which the registration was made.

(3) A cancellation shall take effect from the end of the tax period in which the registration is cancelled.

(4) A taxable person whose registration is cancelled under this section shall be regarded as having made a taxable supply of the goods on hand including capital goods, and is liable for output tax at the time the registration is cancelled on the goods in respect of which that person received input tax credit under section 24; the output tax payable being based on the open market value of the goods at the time the registration was cancelled.

(5) The obligations and liabilities of a person under this Act and the Regulations, including the submission of returns required under section 28, in respect of anything done or omitted to be done by that person while a taxable person shall not be affected by the cancellation of that person's registration.

(6) The Commissioner shall serve a notice in writing on a person of the decision to cancel or refuse to cancel a registration under sections 4 to 8 within thirty days

(a) of the making of the decision, or

(b) of receipt of the application.

Supply of Goods and Services

9. Supply of goods

Subject to this Act and the Regulations, a **“supply of goods”** means an arrangement under which the owner of the goods will part with possession of the goods including provision of goods by sale, barter, lease transfer, exchange, gift or similar disposition.

10. Supply of services

(1) Subject to this Act and the Regulations, **“supply of services”** includes a supply which is not a supply of goods or money, and

(a) the performance of services for another person,

(b) the making available of a facility or an advantage, or

(c) tolerating a situation or refraining from the doing of an activity.

(2) A supply of services made by an employee to the employer because of the employment is not a supply made by the employee.

11. Mixed supplies

(1) A supply of services incidental to the supply of goods is part of the supply of goods.

(2) A supply of goods incidental to the supply of services is part of the supply of services.

(3) A supply of services incidental to the import of goods is part of the import of the goods.

12. Supply by agent

(1) A supply of goods or services made by a person as agent for another person who is the principal is a supply by the principal.

(2) Subsection (1) does not apply to an agent's supply of services as agent to the principal.

Taxable Supplies

13. Taxable supply

(1) Except otherwise provided in this Act or the Regulations, a taxable supply is a supply of goods or services made by a taxable person for consideration in the course of or as a part of the business activities and includes

- (a) the processing of data or supply of information or similar service,
- (b) the supply of staff,
- (c) the acceptance of a wager or stake in any form of betting or gaming including lotteries and gaming machines,
- (d) the making of gifts or loans of goods,
- (e) the leasing or letting of goods on hire,
- (f) the appropriation of goods for personal use or consumption by the taxable person or by any other person,
- (g) the sale, transfer, assignment, or licensing of patents, copyrights, trademarks, computer software, and other proprietary information, and
- (h) exports of non-traditional products.

(2) A supply is made as part of a person's business activities if the supply is made by that person as part of or incidental to an economic activity which that person conducts.

(3) Where a person produces goods by processing or treating another person's goods, the supply of the goods shall be regarded as a supply of goods.

(4) The supply of a form of power, heat, refrigeration or ventilation shall be regarded as a supply of goods.

(5) A supply is made for consideration, if the supplier directly or indirectly receives payment wholly or partly in money or in kind from the person supplied or any other person.

14. Exempt supply

(1) The supply of the goods and services specified in the First Schedule is an exempt supply and not subject to the tax.

(2) Where a supply is an exempt supply under paragraph 19 of the First Schedule, both the transferor and transferee shall notify the Commissioner in writing of the details of the transfer.

15. Zero-rated supply

Output tax shall be at zero on the supply of the goods and services specified in the Second Schedule.

16. Exempt import

An import of goods is an exempt import if the goods are exempt under the First Schedule and classified as exempt import in conformity with the Harmonised Commodity Description and Coding System also known as "the Harmonised System".⁴⁽⁵⁾

17. Relief supply

Subject to clause (2) of article 174 of the Constitution, there shall be relief from the tax on taxable supply to the individuals, organisations and businesses specified in the Third Schedule.

Time and Place of Supply

18. Time of supply

- (1) Except as otherwise provided in this Act or the Regulations, a supply of goods or services occurs,
- (a) where the goods or services are applied to own use, on the date on which the goods or services are first applied to own use;
 - (b) where the goods or services are supplied by way of gift, on the date on which ownership in the goods passes or the performance of the services is completed;
 - (c) in any other case the earliest of the date on which
 - (i) the goods are removed from the taxable person's premises, or from other premises where the goods are under the taxable person's control, or
 - (ii) the goods are made available to the person to whom they are supplied, or
 - (iii) the services are supplied or rendered, or
 - (iv) receipt of payment is made, or
 - (v) a tax invoice is issued.

(2) Where under subsection (1) (c) (iv) and (v), payment is received or a tax invoice is issued for part of the supply, this section shall apply only to the part of the supply represented by the payment of the tax invoice.

(3) Where supplies are made on a continuous basis or by metered supplies, the time of supply shall be the determination of the supply or the first meter reading following the introduction of the tax and subsequently at the time of each determination or meter reading.

(4) The supply of goods under a hire purchase agreement or finance lease occurs on the date the goods are made available under the agreement or lease.

(5) Where

- (a) goods are supplied under a rental agreement, or
- (b) goods or services are supplied under an agreement or law which provides for periodic payments,

the goods or services shall be treated as successively supplied for successive parts of the period of the agreement or as determined by that law, and each successive supply occurs on the earlier of the date on which payment is due or received.

(6) For the purposes of this section, where two or more payments are made or are to be made for a supply of goods or services, other than a supply to which subsection (4) or (5) applies, each payment shall be regarded as made for a separate supply to the extent of the amount of the payment on the earlier of the dates that the payment is due or received.

(7) In this section the term “**rental agreement**” means any agreement for the letting of goods other than a hire purchase agreement or finance lease.

(8) Where the supply of goods or services is ancillary to another supply, the time of supply of the ancillary supply shall be deemed to be the same as the time of supply for the main goods or service.

19. Issue of tax invoice

(1) A taxable person shall on making taxable supply of goods or services issue to the customers or the persons supplied, tax invoices in the form prescribed by the Regulations.

(2) A taxable person on issuing tax invoices shall retain a copy of each invoice in a serial number order.

20. Place of supply

(1) The place of supply of goods shall be the place from which the goods are supplied.

(2) Unless otherwise provided in the Regulations, the place of supply of a service is the supplier’s place of business or the place from which the service is supplied or rendered.

Taxable Value

21. Value of taxable supply

(1) The value of a taxable supply is,

- (a) where the supply is for money consideration, the amount of the consideration with the addition of the duties and taxes but excluding the tax, and
- (b) where the supply is not for money consideration or is only partly for money consideration, the open market value of similar supply excluding the tax.

(2) For the purposes of this Act, the open market value of a supply of goods or services means the value determined under subsection (1) (a), if the supplier, purchaser or any other person concerned in the transaction were completely independent of each other and did not in any way influence the transaction.

(3) Where the open market value of a taxable supply cannot be determined under subsection (2), the open market value of the supply shall be the amount that, in the opinion of the Commissioner having regard to all the circumstances of the supply, is the fair market value of the supply.

(4) The taxable value of

- (a) a taxable supply of goods under a hire purchase agreement or finance lease,
- (b) a taxable supply of goods by way of an application to own use,
- (c) a taxable supply for reduced consideration, or
- (d) a taxable supply described in section 8 (4),

is the open market value of the goods or services at the time the supply is made, excluding, in the case of a hire purchase agreement or finance lease, the interest or finance charges.

(5) Where a taxable supply is made without a separate amount of the consideration being identified as a payment of the tax, the taxable value of that supply shall be the amount of the consideration paid excluding the tax.

(6) For the purposes of subsection (1), “**similar supply**” in relation to a taxable supply, means a supply that is identical to or closely or substantially resembles the taxable supply, having regard to the characteristics, quality, quantity supplied, functional components, reputation of and materials comprising the goods or services which are the subject of the taxable supply.

22. Taxable value for determining the tax on imported goods

The value for determining the tax chargeable on taxable imports shall be the import value calculated in accordance with sections 29 to 35 of the Customs, Excise and Preventive Service (Management) Act, 19935(6) with the addition of the import duties and taxes but excluding the tax.

23. Adjustments

- (1) In relation to a taxable supply by a taxable person, the provisions of this section shall apply, where
- (a) the supply is cancelled, or
 - (b) the nature of the supply has been fundamentally varied or altered, or
 - (c) the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to an offer of a discount or for any other reason, or
 - (d) the goods or services or part have been returned to the supplier.
- (2) Where, in addition to the conditions in subsection (1), the taxable person making the supply has
- (a) in giving a tax invoice in relation to the supply the amount shown on the invoice as the tax charged on the supply is incorrect because of the occurrence of any one or more of the events mentioned in subsection (1), or
 - (b) filed a return for the period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply because of the occurrence of any one or more of the events mentioned in subsection (1),

the taxable person making the supply shall make an adjustment as provided under subsections (3) and (4).

(3) Where the output tax properly chargeable in respect of the supply exceeds the output tax actually accounted for by the taxable person making the supply, the amount of the excess shall be regarded as tax charged by the person in relation to a taxable supply made in the tax period in which the events referred to in subsections (1) and (2) occurred.

(4) Subject to subsection (6), where the output tax actually accounted for exceeds the output tax properly chargeable in relation to that supply, the taxable person making the supply shall be allowed a credit for the amount of the excess in the tax period in which the events referred to in subsections (1) and (2) occurred.

(5) The credit allowed under subsection (4) shall for the purpose of this Act be treated as a reduction of output tax.

(6) A credit shall not be allowed under subsection (4) where the supply has been made to a person who is not a taxable person, unless the amount of the excess tax has been repaid by the taxable person to the recipient, whether in cash or as a credit against any amount owed to the taxable person by the recipient.

24. Credit for deductible input tax

(1) At the end of the accounting period provided for in this Act or prescribed by the Regulations, a taxable person may deduct from the output tax due for the period, tax on goods and services purchased in Ghana or goods and services imported by that person and used wholly, exclusively and necessarily in the course of the business, subject to the following conditions:

- (a) the supply is a taxable supply,
- (b) in respect of purchases made in Ghana, the taxable person is in possession of a tax invoice issued under this Act, and
- (c) in respect of importation or removal of goods from bonded warehouse, the taxable person is in possession of the relevant customs entries indicating that the tax was paid.

(2) The tax deducted from the output tax under subsection (1) shall be known as deductible input tax.

(3) Unless otherwise provided in this Act, an input tax deduction shall not be made on purchases or imports in respect of exempt supplies by the taxable person.

(4) A input tax deduction shall not be taken more than once nor shall it be taken after the expiration of a period of three years from the date the deduction accrued.

(5) A taxable person does not qualify for input tax deduction in respect of taxable supply or import of motor vehicles or vehicle spare parts unless the taxable person is in the business of dealing in or hiring of motor vehicles or selling vehicle spare parts; provided that motor vehicles and spare parts used wholly, exclusively and necessarily for the business shall qualify for input tax deduction.

(6) A taxable person does not qualify for input tax deduction in respect of taxable supply in respect of entertainment including restaurant, meals and hotel expenses unless the taxable person is in the business of providing entertainment.

(6A) A taxable person to whom subsection (2) of section 3 applies does not qualify for input tax deduction or tax credit.^{5a(7)}

(7) Where a taxable supply to, or an import of goods by, a taxable person is partly for business use and partly for personal or other use, the amount of input tax allowed as a credit shall be restricted to that part of the supply that relates to the business use.

(8) If goods for which a credit has been allowed under this Act cease to be applied to taxable transactions before the end of their life, the goods shall be treated as sold at the time of the cessation for the open market value.

(9) In the case of a taxable person who regularly resells used goods purchased from consumers, the Commissioner may determine the procedures for allowing that person an input tax credit.

(10) The Minister may, by legislative instrument, prescribe other classes, types or description of goods and services on which input tax is non-deductible.

25. Refund or credit of excess tax paid

(1) Where the amount of input tax which is deductible exceeds the amount of output tax due in respect of the accounting period, the excess amount shall be credited by the Commissioner to the taxable person except in the case of

- (a) exports, where the Commissioner may refund the excess credit to the taxable person where

that person's exports exceed 25% of the total supplies within the accounting period and the total export proceeds have been repatriated by the importers' banks to the exporters' authorised dealer banks in Ghana, and

- (b) the supplies specified in items 2, 3, 4 and 5 of the Second Schedule to this Act where the Commissioner may refund the excess credit to the taxable person. 5b(8)

(2) A refund under subsection (1) shall be made to the taxable person where the excess credit remains outstanding for a continuous period of three months or more.

(3) A taxable person who is registered from a specified effective date and who has in stock on the effective date goods on which the tax has been paid may claim credit or refund of the tax in the form prescribed by the Regulations, where the supply or import occurred not more than four months prior to the date of the registration, or, in the case of capital goods, the goods have been held for a period not exceeding six months from the date of registration.

(4) For the purpose of this section, a completed refund or credit claim form together with the relevant tax invoices or in the case of imported goods the relevant customs document for tax paid, shall be submitted to the Commissioner by the taxable person, but where the Commissioner subsequently rejects the claim, the tax previously treated as credit or refund shall be recovered by the Commissioner in accordance with this Act.

26. Deductible tax for mixed taxable and exempt supply

(1) A taxable person who makes both taxable and exempt supplies may deduct the input tax on the taxable purchases and imports which can be directly attributed only to the taxable supplies made but where the fraction in this subsection and subsection (2) is less than five percent, the taxable person may not take credit for any input tax for the period.

(2) Where a taxable person has made both taxable and exempt supplies, but cannot directly attribute the input tax to the taxable and exempt supplies under subsection (1), that person may deduct as input tax an amount that bears the same ratio as the taxable supplies bear to the total supplies, applying the apportionment formula specified in the Fourth Schedule.

(3) Where in applying the formula the fraction under subsections (1) and (2) is less than five percent, the taxable person may not take any credit for the input tax for the period.

(4) Where in applying the formula under subsection (1) and (2) the fraction is more than ninety-five percent, the taxable person may take credit for the input tax for the period.

(5) The Commissioner may approve or direct alternative methods of apportioning input tax where the Commissioner considers that the methods described in this section will result in an unreasonable calculation of the input tax which may be deducted.

27. Time for payment of refund

(1) Where a taxable person is entitled to a refund of tax under this Act, the refund shall be paid by the Commissioner on an application by the taxable person within thirty days of receipt of the application subject to the conditions that

- (a) the previous returns have been submitted by the due dates with no tax for any periods outstanding, and
- (b) the tax, penalties and interest from previous tax periods have been paid by the due dates.

(2) Where the conditions specified in subsection (1) have not been fulfilled the Commissioner shall reject the claim for refund and shall inform the applicant accordingly in writing within thirty days of receipt of the application.

Tax Return, Records and Assessment

28. Submission of tax return and date of payment of the tax

(1) Unless otherwise directed in writing by the Commissioner, a taxable person shall account for the tax each calendar month on a tax return.

(2) The tax return shall be in the form prescribed by the Regulations and shall state the amount of tax payable for the period, the amount of input tax credit refund claimed, and any other matters as may be prescribed.

(3) In addition to the return required under subsection (2), the Commissioner may require a person whether a taxable person or not, to submit whether on that person's own behalf or as an agent or trustee of another person to the Commissioner, further or other returns in the prescribed form as and when required by the Commissioner for the purposes of this Act.

(4) A return shall be submitted to the Commissioner not later than the last working day of the month immediately following the month to which the return relates.

(5) On application in writing by a taxable person, the Commissioner may, where good cause is shown by the taxable person, extend the period in which a tax return is to be submitted.

(6) The payment of the tax due in the accounting period shall be made to the Commissioner not later than the last working day of the month immediately following the accounting period to which the return relates.

(7) A taxable person directed to make a tax return other than at the end of the accounting period shall be informed of the date by which the return and payment shall be made to the Commissioner.

(8) A taxable person who without justification fails to submit to the Commissioner the tax return on the due date is liable to a pecuniary penalty of one million cedis and a further penalty of five-thousand cedis for each day that the return is not submitted.

(9) Regulations may provide further for matters relating to tax returns and issues of tax invoices.

29. Records to be kept for purposes of the tax

(1) A taxable person shall keep the records and books of account that the Minister may by the Regulations prescribe and as the Commissioner may direct and shall produce them at the place and time that the Commissioner may by general notice published in the *Gazette* or a national newspaper or in writing to a taxable person, require.

(2) In respect of the records to be kept under subsection (1), a taxable person shall not destroy any book, document, account or record which is less than six years old, without the written permission of the Commissioner.

(3) A permission granted under subsection (2) shall specify the book, document, account or records to which the permission relates.

(4) On an application being made under subsection (2), the Commissioner may within six months after the receipt of the application, examine the books, documents, accounts and records to which the

application relates and after the expiration of the six months the applicant may proceed to destroy the books, documents, accounts or records whether the Commissioner has examined them or not.

(5) Despite the provision in subsection (4), where in the opinion of the Commissioner the examination required may extend for a period of more than six months, the Commissioner shall take an inventory of the relevant documents and keep them or as the Commissioner may direct until the examination is completed.

30. Assessment of the tax and correction of return

(1) Where a taxable person fails to submit the tax return by the date provided under this Act or the Regulations or the Commissioner has grounds to believe that a return is incorrect or that a lawful tax has not been paid, the Commissioner

- (a) may, based on available information, assess the tax due, and
- (b) shall notify the assessment in writing to the taxable person stating that the tax shall be paid within twenty-one days of the date of the notice,

but the Commissioner shall not raise an assessment after a period of three years unless fraud has been determined by law.

(2) Where a taxable person notified of tax assessment under subsection (1) provides information which the Commissioner accepts as justifying the withdrawal or amendment of the assessment, the Commissioner may withdraw or amend the assessment.

(3) An amended assessment shall be paid within fourteen days of the date of the amendment.

(4) Where a taxable person is not satisfied with the return submitted, that person may apply in writing to the Commissioner to make an addition or alteration to the return and the application shall state in detail the grounds on which the application is made and shall be submitted not more than three months after the submission of the original return.

Recovery of Due Tax, Interest and other Liabilities

31. Recovery of tax due

(1) A tax due under this Act, a penalty and an interest which remains unpaid after the due date under this Act or under any other enactment in respect of value added tax may be recovered by the Commissioner as a debt.

(2) An amount shown on an invoice as tax on a supply of goods or services shall be recoverable as tax due from the person issuing the invoice, whether or not

- (a) the invoice is a tax invoice issued under this Act or in accordance with the Regulations, or
- (b) an amount of tax is chargeable on the supply, or
- (c) the person issuing the invoice is a taxable person.

(3) Where a body corporate or unincorporated which is liable for the payment of the tax, or of the penalties or interest arising 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.

32. Payment of interest on outstanding tax

(1) A taxable person who fails to pay a tax payable by the due date shall be charged interest at the prevailing Bank of Ghana discount rate plus one-quarter of that rate for a month on the tax due if it remains unpaid for a part of the month after the date on which it is payable.

(2) Where the interest charged under subsection (1) is not paid by the due date, interest shall be charged on the unpaid interest in the same manner as interest is charged on unpaid tax.

(3) An interest charged under this section and a penalty payable that remains unpaid shall be recoverable as a debt by the Commissioner in accordance with this Act.

33. Garnishment

Where a tax, penalty or an interest is due and payable from a taxable person the Commissioner may on an application to the Court seek an order for

- (a) an individual or a business from whom or which money is due or is accruing or may become due to the taxable person, or
- (b) an individual or a business who or which holds or who or which may subsequently hold money for or on account of the taxable person,

to pay to the Commissioner that money, or a part of it that is sufficient to discharge the tax, interest or penalty due and payable.

34. Distraint for liability

(1) The Commissioner may in writing authorise the levying of distress in accordance with this section.

(2) Where a tax, penalty or an interest due under this Act remains unpaid after the time by which this Act requires it to be paid the Commissioner may in writing and with notice to the taxable person authorise the levying of distress

- (a) on the goods, chattels and effects of the taxable person; and
- (b) on
 - (i) the assets, property, building, factory, machinery, plant tools, means of transport and communication, accessories, animals, and the goods used in Ghana in the manufacture, production, sale or distribution of the taxable supplies,
 - (ii) the commodity or items found in the premises or the lands owned by or in use or in possession of the taxable person or of a person on behalf and or in trust for the taxable person.

(3) The written authority of the Commissioner to distraint under this Act shall be a warrant as in the Form A provided in the Fifth Schedule and shall be the authority to levy by distress the amount of any tax penalty or interest due.

(4) The distress warrant so taken shall be executed on only the assets of the taxable person and the Service shall take possession of the properties specified in subsection (2) exclusive of the liabilities.

(5) For the purpose of levying the distress, a person authorised in writing by the Commissioner may execute the warrant of distress on the goods and assets of the taxable person specified under subsection (2) wherever the property may be and where necessary break open a building or place in the day-time for

the purpose.

(6) The authorised person shall call to assistance a police officer and that police officer when required shall assist in the execution of the warrant of distress and in levying the distress.

(7) The distress so taken may at the cost of its owner be kept for fourteen days, and if the amount due in respect of the tax, interest or penalties and the cost and charges of and incidental to the distress are not then paid the property distrained may be sold.

(8) There shall be paid out of the proceeds of the sale, first the costs or charges of the distress and incidental to the sale and keeping of the distress, next the amount due in respect of the tax and penalties, and the residue shall be paid to the owner of the property and a payment to the owner shall be made subject to the prior interest of the Service which shall have precedence over any other interests.

(9) Where property seized in the execution of the distress warrant is under a mortgage, bill of sale, charged by way of security for a debt, or is in any way encumbered, the sale of the property shall be made subject to the prior interest of the Service which shall have precedence over any other interests.

35. Recovery in respect of a person under liquidation

(1) Where a tax, penalty or an interest is due from a taxable or other person who is subject to liquidation or bankruptcy proceedings, the liquidator, receiver, or the 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.

(2) The Commissioner shall be deemed to be a creditor within the meaning of section 261 (6) of the Companies Act, 1963 (Act 179) for the purpose of this section.

Administration of Value Added Tax

36. Establishment of Value Added Tax Service

There is established by this Act a public service within the meaning of paragraph (d) of clause (1) of article 190 of the Constitution to be known as the Value Added Tax Service.

37. The functions of the Service

The Service is responsible for the administration and management of the value added tax imposed by this Act and is responsible, except otherwise provided in this Act, for the collection of and accounting for the taxes, penalties and interest payable under this Act.

38. Members of the Service

The Service shall consist of

- (a) the persons employed for the Service, and
- (b) any other public officers transferred or seconded to the Service.

39. Governing body of the Service

(1) There is established by this Act the Value Added Tax Service Board which is the governing body of the Service.

(2) The Board shall consist of the following members appointed by the President in accordance with

article 70 of the Constitution,

- (a) the chairman and six other persons,
- (b) one representative of the Minister for Finance, and
- (c) the Commissioner of the Service appointed under section 44.

(3) The President shall in appointing the chairman and the six other members consider the integrity, knowledge, expertise and experience of the persons and in particular their knowledge in matters relevant to the functions of the Service.

40. Qualifications of members of the Board

(1) A person is not qualified to be a member of the Board who

- (a) is not a citizen;
- (b) has been adjudged or otherwise declared
 - (i) bankrupt under any law in force in Ghana and has not been discharged,
 - (ii) to be of unsound mind or is detained as a criminal lunatic under a law in force in Ghana; or
- (c) has been convicted
 - (i) for high crime under the Constitution or high treason or treason or for an offence involving the security of the State, fraud, dishonesty or moral turpitude, or
 - (ii) for any other offence punishable by death or by a sentence of not less than ten years; or
- (d) has been found by the report of a commission or a committee of inquiry to be incompetent to hold public office or is a person in respect of whom a commission or a committee of inquiry has found that while being a public officer that person acquired assets unlawfully or defrauded the state or misused or abused office, or wilfully acted in a manner prejudicial to the interest of the State and the findings have not been set aside on appeal or judicial review; or
- (e) is under sentence of death or any other sentence of imprisonment imposed on him by a Court; or
- (f) is otherwise disqualified by any law for the time being in force.

(2) A person shall not be taken to be disqualified to be a member of the Board under paragraph (c) or (d) of subsection (1) if

- (a) ten years or more have passed since the end of the sentence or the date of the publication of the report of the commission or committee of inquiry, or
- (b) he has been pardoned.

41. Functions of the Board

The Board shall

- (a) ensure the effective, efficient and optimum collection of the taxes, penalties and interest due to the State under this Act,

- (b) generally control the management of the Service on matters of policy,
- (c) recommend to the Minister policies for effective management of value added tax,
- (d) ensure that the amounts collected by the Service are paid into the Consolidated Fund unless otherwise provided by law,
- (e) draw up a scheme of service and the terms and conditions of service as well as the remuneration of employees of the Service in consultation with the Public Services Commission,
- (f) perform any other duties that it considers relevant and expedient for the collection of the tax.

42. Tenure of office of Board members

(1) The chairman and other members of the Board other than the Commissioner of the Service and the representative of the Minister for Finance, shall hold office for a period of three years and are eligible for re-appointment except that a member shall not be on the Board for more than three terms in succession.

(2) Members of the Board may be paid the allowances determined by the Minister.

43. Meetings of the Board

(1) The Board shall meet at least every three months at the times and places determined by the chairman.

(2) A special meeting of the Board may be called by the chairman and shall be called by the chairman at the written request of any three members of the Board.

(3) The chairman shall preside at the meetings of the Board, and in the absence of the chairman, a member of the Board elected by the members present from among their number shall preside.

(4) The quorum for a meeting of the Board is five including the chairman or the Commissioner.

(5) The Board may co-opt a person to act as an adviser at its meeting but a person co-opted is not entitled to vote at the meeting on a matter for decision by the Board.

(6) The validity of the proceedings of the Board shall not be affected by a vacancy in its membership or by a defect in the appointment or qualification of any of its members.

(7) Subject to this Act the Board shall regulate its own procedure.

44. Commissioner of Value Added Tax and his functions

(1) The head of the Service is the Commissioner of Value Added Tax who shall be appointed by the President in accordance with article 195 of the Constitution.

(2) Subject to the direction of the Board on matters of policy, the Commissioner is responsible for the administration of the Service.

(3) The Commissioner may subject to the conditions that the Commissioner may impose, authorise any other officer of the Service to perform a function that may be performed by the Commissioner under this Act or the Regulations other than delegating authority under this subsection.

45. Deputy Commissioners and their functions

(1) There shall be appointed for the Service a number of Deputy Commissioners that the President

considers necessary.

(2) The Deputy Commissioners shall be appointed by the President in accordance with article 195 of the Constitution.

(3) The Deputy Commissioners shall perform the functions that the Board in consultation with the Commissioner may determine.

46. Secretary to the Board

(1) There shall be a secretary to the Board who shall be appointed by the President in accordance with article 195 of the Constitution.

(2) The secretary shall arrange the business of the Board record and keep the minutes of meetings of the Board, and perform any other functions directed by the Board or the Commissioner.

47. Internal Auditor

(1) There shall be appointed for the Service a chief internal auditor who shall be responsible for the internal audit of the Service.

(2) The chief internal auditor shall be appointed by the President in accordance with article 195 of the Constitution.

(3) The chief internal auditor is responsible to the Commissioner for the performance of functions.

(4) The chief internal auditor shall at intervals of three months, prepare and submit to the Commissioner a report on the internal audits carried out during the period of three months immediately preceding the preparation of that report.

(5) Without prejudice to the general effect of subsection (4) of this section, the chief internal auditor shall make in each report the necessary observations as to the conduct of the affairs of the Service during the period to which the report relates.

(6) The chief internal auditor shall send a copy of each report prepared under this section to

- (a) the Minister,
- (b) the Auditor-General, and
- (c) the Chairman of the Board.

(7) The section shall be read and construed as one with the Internal Audit Agency Act, 2003 (Act 658) and where there is a conflict, this Act shall prevail.

48. Other staff of the Service

(1) There shall be appointed for the Service any other staff that are necessary for the proper and efficient performance of the functions of the Service.

(2) There may be engaged for the Service the consultants and experts that the Board considers necessary.

49. Delegation of power of appointment

The President may in accordance with article 195 (2) of the Constitution, delegate the power of appointment of public officers under this Act.

50. Expenses of the Service

Parliament shall provide to the Service the moneys that are required for performing the functions of the Service, and for the payment of salaries and any other expenditure.

51. Accounts and audit

(1) The Board shall keep proper books of account and proper records in relation to them and the form approved by the Auditor-General.

(2) The financial year of the Service shall be the same as the financial year of the Government.

(3) The books and accounts of the Service shall each year be audited by the Auditor-General.

(4) The Auditor-General shall forward a copy of the report to the Board within six months of the end of each financial year.

(5) The Service shall keep separate records and accounts for

- (a) taxes, penalties and interests collected and paid into the Consolidated Fund,
- (b) funds provided for the administration of the Service under section 50, and
- (c) the Refund Account provided for under section 53 (2).

52. Annual reports

(1) The Board shall submit to the Minister

- (a) a report on the activities and operations of the Service for each financial year within six months of the end of the financial year to which the report relates, and
- (b) detailed estimates of its revenue and expenditure for the next financial year within three months before the beginning of that financial year.

(2) The Minister may at any time call for returns of revenue or revised estimates from the Commissioner.

(3) The Minister shall within three months of the receipt of the report from the Board submit a report on that report to Parliament.

53. Payment of tax into Consolidated Fund

(1) The tax, interest and penalties collected under this Act shall be paid into the Consolidated Fund in accordance with the financial regulations.

(2) Despite subsection (1) the Minister may with the approval of Parliament set aside a percentage that Parliament may approve in an account designated as the Value Added Tax Refund Account out of which a refund is due under this Act, proven overpayment of tax, payment made by non-taxable persons and payments made on non-taxable supply can be refunded.

Objections and Appeals

54. Objection to decision of an officer other than the Commissioner

(1) A person who is dissatisfied with a decision of an officer of the Service other than the

Commissioner, may lodge an objection with the Commissioner within thirty days after notice of the decision has been served, or on that person becoming aware of the decision.

(2) The Commissioner may for good cause, such as absence from the country of the dissatisfied person, sickness or any other reasonable cause, accept an objection lodged out of the time stipulated under subsection (1).

(3) The objection shall be in writing and shall specify in detail the grounds on which it is made.

(4) The Commissioner shall make a decision on an objection within thirty days after receipt of the objection where the relevant documents are made available and where necessary, after interviewing the objector.

55. Appeal to court

(1) A person dissatisfied with the decision of the Commissioner may lodge an appeal with a Court with jurisdiction to hear and determine tax disputes.

(2) The appeal shall be lodged by the aggrieved person within thirty days after being notified of the decision of the Commissioner.

(3) An appeal lodged with the Court shall not be heard unless and tax return due under this Act and the Regulations have been submitted and the tax assessed or due has been paid; except that the Court may waive the requirement to pay all or part of the tax due before hearing the appeal.

(4) Where after hearing the appeal the appellant is found to be entitled to a refund of tax, interest shall be paid on the refund at the prevailing Bank of Ghana discount rate at the time of payment of the refund.

Offences and Penalties

56. Failure to register

(1) A person commits an offence if that person fails to

- (a) apply for registration as required under section 5, or
- (b) notify the Commissioner of a change in his business as required under section 7, or
- (c) apply for cancellation of registration as required under section 8.

(2) If the failure is deliberate or reckless that person is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment and where the failure is for any other reason, to a fine not exceeding two hundred and fifty units or a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

57. Failure to issue tax invoice

A person who fails to issue a tax invoice as required under section 20 for goods supplied or services rendered commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment.⁶⁽⁹⁾

58. False or misleading statement

(1) A person commits an offence if that person in a matter relating to the tax

- (a) makes a statement to an officer of the Service which is false or misleading in any material particular, or
- (b) omits from a statement made to the officer a matter or thing without which the statement is misleading in a material particular.

(2) Where the statement or omission was made knowingly or recklessly that person is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment; and in any other case, is liable on conviction to a fine not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding one year.

(3) It is a defence for the accused to prove that the accused did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading having regard to the circumstances of the case.

(4) For the purpose of this section, a statement made to an officer of the Service includes a statement made in writing, orally or in any other form to the officer acting in the performance of functions under this Act and the Regulations and statements made

- (a) in an application, a certificate, declaration, notification, return, an objection or any other document made, prepared, given, filed or furnished under this Act or the Regulations, or
- (b) in an information required to be furnished under this Act or the Regulations, or
- (c) in answer to a question asked by an officer of the Service.

59. Falsification and alteration of documents

A person who

- (a) forges, falsifies or wilfully uses a forged or falsified certificate or other document required by or under this Act, or by or under the directions of the Commissioner or any instrument used in the transaction of any business or matter relating to the tax, or
- (b) alters a document or an instrument relating to the tax after it has been officially issued, or forges the seal, signature, initials or other mark of or used by an officer for the verification of a document or an instrument or for the security of the tax or relating to a tax payable under this Act, or
- (c) on a document or an instrument required for the purposes of this Act forges or imitates the seal, signature, initials or any other mark, of or made use of by any other person whatsoever, whether with or without the consent of that person,

commits an offence and is liable on summary conviction to a minimum fine of one hundred penalty units and not exceeding five hundred penalty units or to a term of imprisonment not exceeding five years or both the fine and the imprisonment and the goods involved in the commission of the offence shall be forfeited to the State.

60. Evasion of tax payment

(1) A person who is knowingly concerned with or takes steps with a view to fraudulent evasion of the tax payable by that or any other person, commits an offence and is liable on summary conviction to a fine

not exceeding three times the tax being evaded or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

(2) A person who acquires possession of or deals with goods, or accepts the supply of goods or services having reason to believe that the tax on the supply of the goods or services has not been, or will not be paid or that tax has been, or will be, falsely reclaimed, commits an offence and is liable on summary conviction to a fine not exceeding three times the amount of tax involved or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

61. Failure to maintain proper records

A person who fails to maintain proper records as required under this Act and the Regulations commits an offence and is liable on summary conviction to

- (a) a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment where the failure was deliberate or reckless, or
- (b) in any other case, to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

62. Obstruction of officer of the Service

A person who obstructs the Commissioner or an officer authorised by the Commissioner in the performance of functions under this Act, assaults or refuses to grant access to that person's premises to the officer in the performance of functions commits an offence and is liable on summary conviction to a fine of not less than twenty-five penalty units or more than two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

63. Offences relating to officers

(1) An officer of the Service who in connection with functions under this Act takes or seeks, directly or indirectly a payment or any other reward, whether pecuniary or otherwise, on account of anything relating to the office or employment, including the failure to carry out proper duties, commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years or a fine not exceeding three times the value of the tax involved and shall be dismissed from the Service.

(2) A person who directly or indirectly offers to an officer a payment or any other reward, whether pecuniary or otherwise, in order to induce the officer not to perform the officer's proper functions commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years or a fine not exceeding three times the tax involved, or to both the imprisonment and the fine.

(3) A person who for the purposes of this Act or the Regulations impersonates an officer of the Service commits an offence and is liable on summary conviction to a term of imprisonment of not less than six months and not exceeding three years.

64. Protection of officers

Subject to the Constitution an officer of the Service is not liable for an act in respect of a matter or thing done in good faith in the performance of a function under this Act or the Regulations.

65. Relationship of the Service and other public services

(1) A Commissioner of any of the Revenue Services shall authorise the provision of an information about the taxes and duties for which the Commissioner is responsible on the request of the Commissioner of another Revenue Service.

(2) The requests may be made when the information requested will assist the Commissioner seeking the information to fulfil statutory responsibilities and the information shall be provided without undue delay.

(3) The Commissioner may require an officer in the employment of a local authority, any other public body, or private institution to supply the particulars that may be required in respect of the tax and which may be in the possession of that officer or person.

(4) A person who is so required by the Commissioner shall give orally or in writing, as may be required, the information demanded by the Commissioner for the purpose of enabling the Commissioner to make an assessment or to collect the tax.

66. Taking of samples

(1) An officer may take samples of goods from the possession of a person where the officer considers it necessary to protect revenue against mistake or fraud.

(2) The officer shall provide a receipt for the samples taken, and the samples may, except where there is an offence, be returned to the owner or be disposed of by the Commissioner with the consent of the owner.

67. Power of inspection and warrants

(1) For the purpose of performing a function given by or under this Act, an officer may at a reasonable time enter premises used for business purposes, including premises, where taxable goods are stored; and the officer may open a packaging and may inspect and take stock of the goods and examine business records, accounts, and correspondence on the premises.

(2) Where the Commissioner is satisfied that there are reasonable grounds to suspect that any premises may contain taxable goods on which the tax has been evaded or fraudulently over-claimed, or documents or any other evidence of failure to pay the tax legally due, the Commissioner may authorise an officer to seek a warrant to search the premises and things and persons in the premises.

(3) A search of a business premises, persons or things in the premises shall not be made by an officer under this section, except under a warrant issued by a judge or Chairman of a Tribunal.

(4) The authorised officer may for the purpose of entering the premises use reasonable force as may be necessary.

(5) A female shall not be searched except by a female.

(6) When performing functions under this section an officer may remove goods or documents or any other evidence which the officer has reasonable grounds to believe will provide assistance in assessing the tax due, or have been, or will be, the subject of, or relevant to, the commission of an offence under this Act or the Regulations.

(7) The officer shall provide a receipt for anything removed.

68. Power to seal off premises

(1) The Commissioner or an officer authorised by the Commissioner may apply to a Court for an

order to seal off, lock up, or in any other physical manner prevent a person from entering or gaining access to the premises of a person or taxable person who, where there are reasonable grounds to believe that that person has not paid the tax due or has made a false claim for repayment of the tax.

(2) Where a person who qualifies as a taxable person fails to apply for registration, the Commissioner may notify and direct the person in writing to apply to be registered within thirty days after service of the notice on that person.6a(10)

(3) Where a person notified by the Commissioner fails to apply for registration, the Commissioner may issue a warrant as in Form B of the Fifth Schedule to lock up or seal off the business premises of that person until the person applies for registration.6b(11)

(4) The Commissioner or an officer in the discharge of duties under this section or another section of this Act may seek the assistance of a police officer.6c(12)

69. Provision of information

(1) Where an officer of the Service has reasonable grounds to believe that an offence has been or will be committed in relation to the supply of goods or services under this Act, the officer may demand that

- (a) a person concerned in whatever capacity in the supply of the goods or services, or
- (b) a person to whom the supply is made,

shall produce the records and documents relating to the supply of the goods or services and that person shall comply.

(2) A person or taxable person shall on request by an officer provide the information and answer any questions relating to subsection (1).

70. General penalty

A person who does an act or makes an omission which constitutes a contravention of a provision of this Act for which a penalty is not provided or is concerned in the doing or making of the act or omission, or who does that act or makes that omission with intent to facilitate evasion of the tax personally or by any other person, commits an offence and is liable on summary conviction to a fine not exceeding three times the revenue or tax involved in the commission of the offence or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

71. Penalty for unauthorised collection of the tax

A person, whether a taxable person or not who unlawfully charges and collects the tax on supply of goods or services commits an offence and is liable on summary conviction to a fine not exceeding ten times the amount of tax or revenue involved in the commission of the offence or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

72. Compounding of offences

(1) Where a person commits an offence under this Act which amounts to failure to pay the tax or which results in loss of revenue to the Republic, the Commissioner may at any time before proceedings are commenced in the Court, compound the offence and order that person to pay a sum of money not exceeding three times the amount of tax or revenue involved in the commission of the offence.

(2) The Commissioner shall only compound an offence under this section if the person concerned admits in writing the commission of the offence.

(3) Where the Commissioner compounds an offence under this section, the order referred to in subsection (1),

- (a) shall be in writing and specify the offence committed, the sum of money to be paid, and the due date for the payment, and shall have attached the written admission referred to in subsection (2),
- (b) shall be served on the person who committed the offence, and
- (c) shall be enforced in the same manner as an order of a Court for the payment of the amount stated in the order.

(4) Where the Commissioner compounds an offence under this section, that person is not liable for prosecution in respect of the offence.

Miscellaneous Provisions

73. Evidence in proceedings

(1) A certificate by the Commissioner stating that

- (a) a person or taxable person was or was not registered on any date by or under this Act, or
- (b) a return required by or under this Act has not been made or had not been made by any date, or
- (c) the tax shown as due in a return or an 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 any other member of the Service under the requirements of this Act and certified to that effect by the Commissioner, is admissible as evidence in civil or criminal proceedings to the same extent as would the original document.

(3) A statement or any other information contained in a document produced by a computer is admissible as evidence in civil or criminal proceedings provided it is certified as correct by the Commissioner unless the contrary is proved.

74. Regulations

(1) The Minister may, by legislative instrument, make Regulations for the implementation of this Act.

(2) Without prejudice to subsection (1), Regulations may be made

- (a) prescribing anything that is required to be prescribed under this Act,
- (b) relating to time of supply for such goods and services as may be prescribed in the Regulations,
- (c) relating to the form of tax return and payment,
- (d) in respect of time and method of claiming refund of tax,
- (e) in respect of issue of tax invoices and their production to officers,
- (f) for forms to be issued for the purposes of this Act,
- (g) in respect of records to be kept,

- (h) for the apportionment of input tax between taxable and exempt supplies, where applicable,
- (i) for the recovery, where applicable, of any tax paid on goods in stock at the start of business on the effective date of the tax,
- (j) for the application of special schemes for the collection of the tax in specified cases.

75. Directives and other powers of the Commissioner

(1) Subject to this Act and the Regulations, the Commissioner may in writing give the necessary administrative directives for the implementation of the provisions of this Act and the Regulations.

(2) The Commissioner may for the protection of revenue in writing request a taxable person to provide adequate security.

76. Interpretation

In this Act, unless the context otherwise requires,

“accounting period” means one calendar month;

“application to own use” in relation to goods, means applying the goods to personal use including personal use by a relative or any other non-business use;

“betting” means risking money or any other property in forecasting the outcome of some event;

“Board” means the Value Added Tax Board established under section 39;

“business” means a corporate body, individual, partnership or any organisation carrying on a form of commercial activity;

“citizen” means a citizen of Ghana;

“Commissioner” means the Commissioner of the Value Added Tax Service;

“consideration”, in relation to a supply of goods or services, means the total amount in money or kind paid or payable for the supply by a person, directly or indirectly, including the duties, levies, fees and charges paid or payable on, or by reason of, the supply other than the tax, reduced by the discounts or rebates allowed and accounted for at the time of the supply;

“Court” means a court of competent jurisdiction;

“exempt import” has the meaning in section 16;

“exempt supply” means a supply of goods or services to which section 14 applies;

“finance lease”, in relation to goods, includes the lease of goods where

- (a) the lease term exceeds seventy-five percent of the expected life of the goods, or
- (b) the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease, or
- (c) the estimated residual value of the goods to the lessor at the expiration of the lease term including the period of an option to renew is less than twenty percent of its fair market value at the commencement of the lease;

“gaming” has a similar meaning to “betting”;

“gaming machine” means a machine capable of accepting money or tokens risked in forecasting

the outcome of some event or events;

“goods” includes all kinds of movable and immovable property, thermal and electrical energy, heating, gas, refrigeration, air conditioning and water, but does not include money;

“hire purchase agreement” means an agreement that is a hire purchase agreement within the meaning of the Hire Purchase Act, 1974;7(13)

“importer” in relation to import of goods includes the person who owns the goods or any other person who is for the time being in possession of or beneficially interested in the goods; and in relation to goods imported by means of a pipeline, includes the owner of the pipeline;

“input tax” means tax payable by a taxable supply of goods and services or import;

“lotteries” means a scheme whereby the right is purchased to take part in a draw by lottery for a prize;

“Minister” means the Minister responsible for Finance;

“officer” includes a member of the Value Added Tax Service performing functions under this Act or the Regulations or delegated by a senior officer of the Service, or any other person appointed or authorised by an officer to perform a function connected with the tax, and an officer performing a function under this Act on behalf of the Commissioner;

“output tax” means the tax chargeable under section (4) in respect of taxable supply;

“prescribed” means prescribed by or under this Act or the Regulations;

“registered” means registered under section 5;

“Regulations” means the relevant Regulations made under this Act;

“relative”, in relation to an individual, includes an ancestor of the individual, a descendant of the individual’s grandparents, or the spouse of the individual;

“return” means a return of tax due, or claim for tax refund;

“Revenue Services” means the Customs, Excise and Preventive Service, the Internal Revenue Service and the Value Added Tax Service;

“sales tax” means the tax on sale of goods provided under Part Four (a) of the Customs, Excise and preventive Service (Management) Act, 1993;8(14)

“Service” means the Value Added Tax Service;

“the tax” means value added tax;

“tax invoice” means an invoice issued on supply of taxable goods and services in accordance with this Act or the Regulations;

“taxable person” is a person registered under section 5 and includes an individual, partnership, group of persons, company or corporations registered by the Commissioner under that section;

“tax period” means one calendar month;

“taxable transaction” means a taxable supply or an import of goods or services that is subject to tax under this Act;

“VAT Flat Rate Scheme” means a Value Added Tax collection and accounting mechanism that applies a marginal tax percentage representing net VAT payable on the value of taxable goods

supplied.8a(15)

77. Consequential amendment

On the date that the value added tax becomes chargeable under this Act, the Customs, Excise and Preventive Service (Management) Act, 1993(16) shall be deemed to be amended as follows:

- (a) in section 24;
 - (i) by the repeal of paragraph (c) of subsection (2),
 - (ii) by the deletion of the word “sales” in paragraph (a) of subsection (4),
- (b) by the repeal of sections 60 to 64, and
- (c) by the deletion of the words “sales tax” wherever they appear in the Law.

78. Repeal, savings and transitional provisions

(1) On the date that the value added tax becomes chargeable under this Act the following Acts shall cease to be applicable and shall be deemed to be repealed:

- (a) the Customs, Excise and Preventive Service (Management) (Amendment) (No. 2) Act, 1995 (Act 500),
- (b) the Service Tax Act, 1995 (Act 501), and
- (c) the Service Tax (Amendment) Act, 1997 (Act 529).

(2) Despite the repeal under subsection (1), a person is liable to register

- (a) for sales tax under the Customs, Excise and Preventive Service (Management) Act, 1993,10(17)
- (b) for service tax under the Service Tax Act, 1995 (Act 501),

before the coming into force of this Act shall on the coming into force of this Act be deemed to be liable for registration under this Act.

(3) Despite the repeal under subsection (1) the repealed enactments shall remain in force

- (a) for the purpose of verifying the relevant tax returns, and
- (b) for the assessment and recovery of the arrears or penalty payable under the repealed enactments.

79. Commencement

(1) Subject to subsection (2) of this section, this Act shall come into force on the date it is published in the *Gazette* after the presidential assent.

(2) The liability for the payment of the tax shall come into force on the date that the Minister shall specify in the *Gazette* and the mass media and shall be a date not later than 31st December, 1998.

(3) The Minister shall give at least thirty days, notice in the *Gazette* and mass media of the date for the payment of the tax.

SCHEDULES

First Schedule

PART ONE EXEMPT SUPPLIES

[Sections 14 and 16]

<i>Item Number</i>	<i>Description</i>
1. Live animals	Cattle, sheep, goat, swine and poultry but excluding horses, asses, mules, hinnies and similar exotic animals.
2. Animals, livestock, poultry and fish imported for breeding purposes.	Live asses, mules, and hinnies, live bovine animals, live swine, live sheep and goats, live marine mammals, live fish and aquatic invertebrates.11(18)
3. Agricultural and aquatic food product in its raw state. Produced in Ghana.	Fish, crustaceans, and molluscs, (but excluding ornamental fish). Vegetables and fruits, nuts, coffee, cocoa, shea butter, maize, sorghum, millet, tubers, guinea corn and rice.
4. Seeds, bulbs rootings, and other forms of propagation.	Of edible fruits, nuts, cereals, tubers and vegetables.12(19)
5. Agricultural inputs.	Chemicals including all forms of fertilisers, acaricides, fungicides, nematicides, growth regulations pesticides, veterinary drugs and vaccines, feed and feed ingredient.
<i>Note:</i> Products under items 3 and 4 shall be considered as in their original or raw state even if they have undergone simple processes of preparation or preservation such as freezing, chilling, drying, salting, smoking, stripping or polishing.	
6. Fishing equipment.	Boats, nets, floats, twines, hooks and other fishing gear. Inputs (imported) for fishing nets and twines.13(20)
7. Water.	Supply of water excluding bottled and distilled waters.
8. Electricity.	Domestic use of electricity up to a minimum consumption level prescribed in regulations by the Minister. Compact Fluorescent Lamps (CFL).14(21)

9. Printed matter—(Books and newspapers). Fully printed or produced by any duplicating process, including atlases, books, charts, maps, music, but excluding newspapers (imported), plans and drawings, scientific and technical works, periodicals, magazines, trade catalogues, price lists, greeting cards, almanacs, calendars and stationery.
10. Education. The supply of educational services at any level by an educational establishment approved by the Minister for Education. Fully assembled computers imported or procured locally by educational establishments that are approved by the Minister for Education.15(22) Laboratory equipment for educational purposes and library equipment.
11. Medical supplies and service – pharmaceuticals. (a) Medical Services,
(b) Pharmaceuticals;
(i) Essential drugs as listed under Chapter 30 of the Harmonised Systems Commodities Classification Code, 1999, produced or supplied by retail in Ghana;
(ii) Imported special drugs determined by the Minister for Health and approved by Parliament as specified in the First Schedule A.16(23)
12. Transportation. Includes transportation by bus and similar vehicles, train, boat and air.
13. Machinery. Machinery, apparatus, appliances and parts thereof, designed for use in:
(a) veterinary, fishing and horticulture,16a(24)
(b) industry,
(c) mining as specified in the mining list and dredging, and
(d) railway and tramway.
(e) agriculture (excluding locally manufactured agricultural machinery and other agricultural implements or tools)16b(25)
14. Crude oil and hydrocarbon products. Petrol, diesel, liquefied petroleum gas, kerosene and residual fuel oil.

15. Land, buildings and construction.	<p>(a) Land and buildings; the granting assignment or surrender of an interest in land or building; the right to occupy land or buildings, excluding hotel accommodation, cost of housing, storage and similar occupancy incidental to the provision of the relevant sources;17(26)</p> <p>(b) Civil engineering work;</p> <p>(c) <i>Repealed.</i>18(27)</p>
16. Financial services.	Provision of insurance; issue, transfer, receipt of, or dealing with money (including foreign exchange) or any note or order of payment of money; provision of credit; operation of any bank (or similar institution) account; but excluding professional advice such as accountancy, investment, and legal.
17. Goods for the disabled.	Articles designed exclusively for use by the disabled.
18. Transfer of going concern.	The supply of goods as part of the transfer of a business as a going concern by one taxable person to another taxable person.
19. Postal Services.	Supply of postage stamps.
20. Salt.	Denatured salt, compressed salt used in animal feeding and salt for human consumption including table salt.
21. Mosquito net.	Mosquito nets of man-made textile material whether or not impregnated with chemicals.19(28)
22. Musical instruments.	Musical instruments listed under Chapter 92 of the Harmonised Commodities Classification Code.20(29)
23. Telephone sets.	Telephone sets, including mobile or cellular phones and satellite phones as specified under the First Schedule to the Customs, Excise and Preventive Services (Duties and Other Taxes) AAct 1996, (Act 512). 21(30)

First Schedule A22a(31)
SELECTED IMPORTED SPECIAL DRUGS

1. Acetylcysteine Inj. 200mg/ml
2. Aminophyline Injection, 250mg/10ml

3. Antileprosy Pack (Clofazimine Tablet, 100mg: Dapsone Tablet, 50mg Rifampicin Capsule, 300mg)
4. Antirabies immunoglobulins Inj. 1000IU/5ml (Bovine)
5. Antirabies immunoglobulin Inj. (Human)
6. Anti-snake venom, Polyvalent Inj.
7. BCG Vaccine Injection
8. Carbamazepine Tablets, 200mg
9. Chlorpromazine Tablet, 100mg
10. Chlorpromazine Tablet 25mg
11. Chlorpromazine Tablet 50mg
12. Diagnostic Strips – Glucose
13. Diagnostic Strips – Multipurpose
14. Diagnostic Strips – Protein
15. Diagnostic Tablets – Glucose
16. Diagnostic Tablets – Ketones
17. Diphtheria + Pertussis + Tetanus vaccine Injection
18. Ethosuximide Syrup 250mg/5ml
19. Ethosuximide Tablet, 250mg
20. Glibenclamide Tablet, 5mg
21. Glyceryl Trinitrate Sublingual Tablet, 500mg
22. Haloperidol Inj. 50mg
23. Hepatitis B Vaccine Injection
24. Hydralazine Inj. 20mg/Ampoule
25. Imipramine Tablet, 25mg
26. Isoniazid + Thioacetazone Tablet, 300mg/150mg
27. Insulin Isophane Inj. 100 units/ml 10ml
28. Insulin Lente Inj. 100 units/ml 10ml
29. Insulin soluble, 100 units/ml/10ml
30. Isoniazid Tablet, 6mg
31. Ivermectin Tablet, 6mg
32. Measles Vaccine Injection
33. Meningococcal Vaccine Injection
34. Metformin Tablet, 500mg
35. Metformin Tablet, 850mg
36. Nifedipine Capsule, 10mg
37. Nifedipine Capsule, 5mg (slow release)
38. Nifedipine Tablet, 10mg (slow release)
39. Nifedipine Tablet, 20mg (slow release)
40. Oxygen (Medicinal Gas) Inhalation
41. Phenytoin Inj. 50mg/ml

42. Phenytoin sodium Tablet, 100mg
43. Poliomyelitis Vaccine Oral solution
44. Pyrazinamide Suspension, 125mg/ml
45. Pyrazinamide Tablet, 500mg
46. Quinine Inj. 40mg/ml in 5ml
47. Quinine Tablet, 300mg
48. Rabies vaccine Injection
49. Rifampicin + Isoniazid Suspension, 75 + 50mg/5ml
50. Rifampicin + Isoniazid Tablet, 150mg + 100mg
51. Salbutamol Inhaler, 200 dose 100mcg/metered dose
52. Salbutamol Nebulizer Solution, 5mg/ml as sulphate
53. Salbutamol Sulphate Inj. 50mcg/ml
54. Salmeterol Inhaler, 120 doses 25mcg/metered dose
55. Streptomycin Inj. 1gm
56. Tetanus Immunoglobulin Injection, 250IU/ml
57. Tetanus Vaccine Injection, 40IU/5ml
58. Tetracycline Eye Ointment 1% 5gm
59. Timolol Maleate Eye Drops 0.5%
60. Tuberculin (PPD) Injection
61. Valproate Sodium Capsule, 200mg
62. Valproate Sodium syrup, 200mg/5ml
63. Yellow Fever Vaccine Injection 20 doses
64. Yellow Fever Vaccine Injection 10 doses
65. Zidovudine + Lamivudine Tablet, 300mg + 150mg
66. All other anti-retroviral drugs approved for use in Ghana.

Second Schedule
ZERO-RATED SUPPLIES

[Section 15]

1. Export of taxable goods and services.
2. Goods shipped as stores on vessels and aircrafts leaving the territories of Ghana.
3. Locally produced textbooks and exercise books.
4. Locally manufactured agricultural machinery and other agricultural implements or tools.
5. Locally produced pharmaceuticals as determined by the Minister for Health and approved by Parliament.22b(32)

Third Schedule
RELIEF SUPPLIES

[Section 17]

1. President of the Republic of Ghana.
2. For the official use of any Commonwealth or Foreign Embassy, Mission or Consulate (relief applies only to VAT on imported goods).
3. VAT-registered manufacturers for raw materials at importation, subject to the condition that:
 - (i) the manufacturer is a member in good standing of the Association of Ghana Industries;
 - (ii) the manufacturer has submitted all previous tax returns and paid the tax, penalties and interest from previous tax periods;
 - (iii) the Commissioner is satisfied that the manufacturer has met the conditions in subparagraphs (i) and (ii) of this paragraph and other compliance requirements of this Act and has listed the manufacturer in a register published by the Commissioner with a validity period of six months effective 1st January of each year;
 - (iv) the imported raw materials will be applied solely and exclusively for the manufacturing operations of the relief beneficiary.²⁽³³⁾³
4. For the use of a permanent member of the Diplomatic Service of any Commonwealth or Foreign Country, exempted by Parliament from the payment of Customs duties (relief applies only to VAT on imported goods):

Provided that with regard to items 2 and 3 of this Schedule a similar privilege is accorded by such Commonwealth or Foreign Country to the Ghana representative in that country.
5. For the use of an international agency or technical assistance scheme where the terms of the agreement made with the Government include exemption from domestic taxes.
6. Emergency relief items approved by Parliament.

Fourth Schedule
APPORTIONMENT INPUT TAX

[Section 26 (2)]

For the purpose of determining the deductible input tax under subsection (2) of section 26, the following formula shall apply:

$$\frac{A \times B}{C}$$

where

A is the total amount of input tax for the period, and

B is the total amount of taxable supplies made by the taxable person during the period, and

C is the total amount of all supplies made by the taxable person during the period.

Fifth Schedule

WARRANT OF DISTRESS UNDER VALUE ADDED TAX ACT, 1998 (ACT 546)

[Section 34 (3)]

To

I Commissioner of VAT by virtue of the powers vested in me by section 34 (3) of the VAT Act, 1998 (Act 546) do hereby authorise you to collect and recover the sum of due for tax/penalty/interest from VAT debtor of and for the recovery of this sum I authorise you, with the aid if necessary of your assistants, to levy this sum forthwith by distress together with the costs and charges of and incidental to the keeping of the distress on all distrainable things specified under section 34 (2) of the Value Added Tax Act, 1998 (Act 546) the property of and belonging to the said debtor wherever they may be found and on all such distrainable things as specified under the said section 34 (2) used in Ghana in the manufacture, production, sale or distribution of any taxable supplies which you may find in any premises or on any land owned by or in possession of the said taxable person on his behalf or in trust for him.

For the purpose of levying the distress you are hereby authorised to call to your assistance any police officer to break open any building or place in the day time.

Given under my hand at this day of, 20.....

.....
Commissioner of VAT

FORM B24(34)

WARRANT OF SEAL OFF UNDER VALUE ADDED TAX ACT, 1998 (ACT 546)

[Section 68 (3)]

To

I Commissioner of VAT by virtue of the powers vested in me by section 68 (3) of the VAT Act, 1998 (Act 546) do hereby authorise you to seal off, lock up or in any physical manner prevent or any person from entering or gaining access to the business premises of until applies

for registration under section 5 of the Value Added Tax Act, 1998 (Act 546). For the purpose of executing this warrant you are hereby authorised to request a police officer to assist to secure or break open any building or place.

Dated this day of

.....

Commissioner of VAT

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 16th March, 1998 and notified in the *Gazette* on 18th March, 1998.

2 (Popup - Footnote)

2. Amended by section 1 of the Value Added Tax (Amendment) Act, 2000 (Act 579).

3 (Popup - Footnote)

2a. Added by section 2 of the Value Added Tax (Amendment) Act, 2007 (Act 734).

4 (Popup - Footnote)

3. Amended by the Value Added Tax (Amendment) Act, 2001 (Act 595).

5 (Popup - Footnote)

4. Amended by section 1 of the Value Added Tax (Amendment) Act, 2002 (Act 629).

6 (Popup - Footnote)

5. P.N.C.L. 330.

7 (Popup - Footnote)

5a. Inserted by section 1 of the Value Added Tax (Amendment) Act, 2007 (Act 734).

8 (Popup - Footnote)

5b. Amended by section 1 of the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).

9 (Popup - Footnote)

6. Amended by section 2 of the Value Added Tax (Amendment) Act, 2002 (Act 629).

10 (Popup - Footnote)

6a. Amended by section 2 of the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).

11 (Popup - Footnote)

6b. Added by section 2 of the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).

12 (Popup - Footnote)

6c. Added by section 2 of the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).

13 (Popup - Footnote)

7. [N.R.C.D. 292](#).

14 (Popup - Footnote)

8. [P.N.D.C.L. 330](#).

15 (Popup - Footnote)

8a. Added by section 3 of the Value Added Tax (Amendment) Act, 2007 (Act 734).

16 (Popup - Footnote)

9. [P.N.D.C.L. 330](#).

17 (Popup - Footnote)

10. [P.N.D.C.L. 330](#).

18 (Popup - Footnote)

11. Substituted by section 3 of the Value Added Tax (Amendment) Act, 2002 (Act 629).

19 (Popup - Footnote)

12. Amended by section 3 of the Value Added Tax (Amendment) Act, 2002 (Act 629).

20 (Popup - Footnote)

13. Added by section 1 of the Value Added Tax (Amendment No. 2) Act, 2004 (Act 671).

21 (Popup - Footnote)

14. Added by the Value Added Tax (Amendment) Act, 2003 (Act 639).

22 (Popup - Footnote)

15. Inserted by the Value Added Tax (Amendment) Act, 2003 (Act 639).

23 (Popup - Footnote)

16. Substituted by the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).

24 (Popup - Footnote)

16a. Amended by section 3 of the Value Added Tax (Amendment) Act, 2006 (Act 696).

25 (Popup - Footnote)

16b. Added by section 3 (b) of the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).

26 (Popup - Footnote)

17. Added by section 3 of the Value Added Tax (Amendment) Act, 2002 (Act 629).

27 (Popup - Footnote)

18. By section 3 of the Value Added Tax (Amendment) Act, 2002 (Act 629).

28 (Popup - Footnote)

19. Added by section 3 of the Value Added Tax (Amendment) Act, 2002 (Act 629).

29 (Popup - Footnote)

20. Added by section 1 of the Value Added Tax (Amendment No. 2) Act, 2004 (Act 671).

30 (Popup - Footnote)

21. Added by the Value Added Tax (Amendment) Act, 2008 (Act 752).

31 (Popup - Footnote)

22a. FIRST SCHEDULE B renumbered by section 5 of the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).

32 (Popup - Footnote)

22b. Added by section 6 of the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).

33 (Popup - Footnote)

23. Added by section 2 of the Value Added Tax (Amendment) Act, 2004 (Act 671).

34 (Popup - Footnote)

24. Inserted by section 7 of the Value Added Tax (Amendment) (No. 2) Act, 2008 (Act 765).