

Ghana establishes Independent Tax Appeals Board

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Executive summary

The *Revenue Administration (Amendment) Act, 2020, Act 1029* (the Act) was passed into law by Ghana's Parliament and assented to by the President on 6 October 2020. The Act establishes an Independent Tax Appeals Board. It also addresses a shortfall in tax liability without payment of a penalty and other related matters.

This Alert summarizes the key provisions in the Act.

Detailed discussion

Establishment of an Independent Tax Appeals Board

The Act establishes an Independent Tax Appeals Board (ITAB) whose functions, among others, are to hear and determine appeals against decisions of Ghana's Commissioner-General (CG) with respect to objections to tax decisions under the *Revenue Administration Act, 2016, Act 915* (as amended) (RAA).

A person who is dissatisfied with a tax decision affecting him directly may object to the decision within 30 days of being notified of the tax decision. After consideration of the objection, the RAA directs the CG to vary the tax decision in whole or part or disallow the decision and respond to the objector giving reasons within 60 days. However, where the CG does not respond within 60 days, the taxpayer may treat the decision of the CG as unfavorable. Prior to the amendment, a person dissatisfied with the tax decision of the CG could only seek redress through the courts.

ITAB has been introduced as another layer in the tax dispute resolution process to provide an aggrieved taxpayer the right to be heard by it before seeking redress through the court system. The Act provides that a person who is dissatisfied with the decision of the CG may, within 30 days, appeal against the decision to the ITAB.

Composition of ITAB

The composition of ITAB is expected to instill taxpayer confidence and reduce the amount of litigation. Membership of ITAB is comprised of the following:

- a. A chairperson of not less than 10 years' experience in tax practice who is a lawyer of not less than 10 years standing at the Ghana Bar or a retired Superior Court Judge
- b. Two retired officers of the Ghana Revenue Authority (GRA) not below the rank of Chief Revenue Officer, who qualify for appointment as tax consultants
- c. Two other persons with the same qualification as the chairperson in (a)
- d. Two representatives of the Chartered Institute of Taxation, Ghana, nominated by the Institute, each of whom has not less than 10 years of tax practice
- e. Two representatives of the Institute of Chartered Accountants (Ghana), nominated by the Institute, each of whom has not less than 10 years of practice
- f. Two representatives from the private sector who are women

Tenure of office of the members of ITAB

- ▶ A member shall hold office for a period of not more than four years from the date of appointment and is eligible for re-appointment for only one additional term. However, where a matter before ITAB is pending on the date of expiry of the tenure of office, ITAB shall continue to discharge its duties for a period of not more than six months from the date of expiry of the tenure of office for purposes of disposing of the matter.
- ▶ A member may resign from the office at any time in writing addressed to the Minister.
- ▶ A member who is absent from three consecutive meetings of ITAB without sufficient cause ceases to be a member thereof.
- ▶ The Minister may revoke the appointment of a member by a letter addressed to the member.

Disclosure of interest

A member of ITAB who has an interest in a matter before it is required to disclose in writing the nature of that interest and shall be disqualified from participating in the deliberations in respect of the matter.

Other related matters

The source of funding for ITAB is the sum of funding approved by Parliament. The approved funding must be applied for the purpose for which it was established and in accordance with the directions of the Minister.

The Act sets forth, among others, how the business of ITAB is to be carried out, how proceedings of ITAB must be conducted, including the hearing and withdrawal of an appeal, and the delivery of decisions by ITAB.

The Act makes it clear that an appeal to the Court will not operate as a stay of execution of an order of ITAB unless otherwise ordered by the Court.

The Act provides indemnity to members of ITAB, the Executive Secretary and any other person empowered to perform a function under the Act for acts or omissions done in good faith during the performance of a function under the Act.

The Board has not been appointed yet. This is expected to be done soon.

Payment of a shortfall in tax liability without payment of a penalty

A person who makes a false or misleading statement in a material particular to a tax officer or makes a material omission in a statement made to a tax officer shall be liable to:

- ▶ A penalty which shall be cumulatively increased by 20% for each subsequent application of this section to the person within the last five years.
- ▶ A penalty shall not be imposed on a person who voluntarily discloses an inadvertent error to the CG before the error is discovered by a tax officer or before the next tax audit of that person.

Nonetheless, the non-payment of penalty for payment of a tax liability shortfall shall not apply under the following instances:

- ▶ Where the person has been assessed by the CG in respect of the tax or any matter relating to the tax.
- ▶ Where the person liable to pay the tax does not make full disclosure and declares and pays the accrued liabilities before the conclusion of the audit or investigation.

Or

- ▶ Where the person liable to pay the tax has been notified by the CG or by a person acting for or on behalf of the CG of an enforcement action relating to the failure to comply with an enactment administered by the CG unless that person immediately pays off any taxes assessed or due.

For additional information with respect to this Alert, please contact the following:

Ernst & Young Advisory Services Limited, Accra

- ▶ Robin McCone robin.mccone@gh.ey.com
- ▶ Isaac Sarpong isaac.sarpong@gh.ey.com

Ernst & Young Société d'Avocats, Pan African Tax - Transfer Pricing Desk, Paris

- ▶ Bruno Messerschmitt bruno.messerschmitt@ey-avocats.com
- ▶ Alexis Popov alexis.popov@ey-avocats.com

Ernst & Young LLP (United Kingdom), Pan African Tax Desk, London

- ▶ Byron Thomas bthomas4@uk.ey.com

Ernst & Young LLP (United States), Pan African Tax Desk, New York

- ▶ Brigitte Keirby-Smith brigitte.f.keirby-smith1@ey.com
- ▶ Dele Olagun-Samuel dele.olaogun@ey.com

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