PRIVATE ENTERPRISE FEDERATION (P.E.F)

POSITION PAPER

GAPS PRESENT AND OPPORTUNITIES AVAILABLE TO THE PRIVATE SECTOR

INCOME TAX ACT, 2015 (ACT 896) AS AMENDED

IKERN and Associates

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Introduction

The Private Sector is that part of an economy that is neither owned nor controlled by the state or Government but, is run, by individuals (Investopedia, 2016). The private sector therefore encompasses all profit making businesses and, to stretch the definition, all not-for-profit and charitable entities which, like the private sector, is not owned or controlled by the Government, formally known as the Voluntary sector.

According to a research by Harvard (2007) and the Lowy Institute (2016), most free-market economies (except for countries like the People's Republic of China, where Government exerts considerable power over the economy) have the private sector creating and maintaining most jobs. Ghana is no different. For instance, according to the 2010 Ghana National Population and Housing Census, the private sector accounts for 93 percent of the economically active persons. This sector provides opportunities to a relatively large number of Ghanaians and therefore needs an enabling environment to thrive and promote national development. Taxation is key to creating that enabling environment for private businesses to thrive and promote that needed national development.

Over the years in Ghana, most entities in the private sector have either not been aware of the provisions of the tax laws or have not been able to understand the laws well enough to take advantage of the opportunities provided in the tax laws. Consequently, these private enterprises may have been paying more tax than they ought to if they were aware of the tax incentives applicable to them. In certain instances the entities incur penalties that they could have avoided because they were not aware of their compliance obligations under the tax laws.

With Ghana's tax revenue flowing mainly from the private sector, it stands to reason that the various tax incentives and compliance obligations will be made clearer and easier for all persons in the private sector by means of continuing tax education by way of tax seminars.

In view of the above knowledge gaps noted , the Private Enterprise Federation ("PEF"), seeks to review the new Income Tax Act, 2015 (Act 896) as amended ("ITA" or "the Act"), educate members and other stakeholders on the gaps created by the introduction of the new Act which repealed the Internal Revenue Act, 2000 (Act 592) as amended ("IRA"), as well as share with private sector players the opportunities available to the sector in the current Income Tax Act, with particular emphasis on the following areas:

- Loss Carry-forwards;
- Capital Allowances;
- Withholding Tax;
- Tax Administration;
- Other changes affecting taxpayers;
- Return on Income and Assessments;
- Employment Income Tax and Personal Reliefs; and
- Other opportunities and "Watch-out Areas"

In this paper, the approach has been to compare the provisions of the ITA with the repealed IRA. As a prelude to doing the comparisons between the two tax acts, it is also useful to provide some highlights of selected principles of taxation under the current ITA that will aid members appreciation of the issues noted.

Fundamental Principles of Taxation

Income tax is payable by all persons who have chargeable income for a year of assessment from within and outside of Ghana, as well as persons who receive final withholding payment during the year. Final withholding payments are payments that do not attract tax on account but suffer tax once in the hands of the payer to the recipient. The tax rates applicable to persons depend on whether the persons are resident for tax purposes or non-resident for tax purposes as well as the type of payments made to such persons. It is important to note that under the ITA, resident persons are taxable on their worldwide income. This principle emanates from the provision of s. 111 of the ITA which is to the effect that the income of a resident person derived from a foreign source is taxable in Ghana.

For purposes of the ITA, a person has been defined to mean (i) an individual; or (ii) an entity. An individual is a natural person whiles an entity refers to a company, partnership or trust. It is important to distinguish between a resident and non-resident individual because the ITA taxes them differently (i.e. different rates of tax apply to them).

Residency of Persons

Resident persons are defined in section 101 of the Act to mean;

1) In the case of an individual, a resident individual is:
   - i. a citizen of Ghana. A resident person does not include a citizen of Ghana who has a permanent home outside of the country and lives in that home for the whole of that year);
   - ii. present in the country during that year for an aggregate period of 183 days or more in any twelve-month period that commences or ends during that year;
   - iii. an employee or an official of the Government of Ghana posted abroad during that year; and
   - iv. a citizen who is temporarily absent from Ghana for a period of not more than 365 continuous days, where that citizen has a permanent home in Ghana.

2) A company is resident in Ghana for a year of assessment if:
   - i. that company is incorporated under the Companies Act, 1963 (Act 179); or

ii. The management and control of the affairs of the company are exercised in Ghana at any time during that year. Thus, a company that may not have been incorporated under the Companies Act, 1963 (Act 179) but has its management and control of its affairs exercised in Ghana at any time during the year, will be obliged to formally set up in Ghana.

3) For partnerships, a partnership is deemed to be resident if any of the partners resided in Ghana at any time during the year.
The income of a partnership is taxed on the partners themselves and not on the partnership.

4) Trusts will be deemed as resident in Ghana in the year of assessment if:
   i. that trust is established in Ghana
   ii. a trustee of the trust is resident in Ghana at any time during that year; or
   iii. a person resident in the country directs or may direct senior managerial decisions of the trust at any time during the year, whether the directive is given:
      a. alone or jointly with other persons; or
      b. directly or through one or more interposed entities.

For the purpose of this Act, a "trust" means any arrangement under which a trustee holds assets. A trustee means an individual or body corporate holding assets in a fiduciary capacity for the benefit of identifiable persons or for some object permitted by law; whether or not:

a. the assets are held alone or jointly with other individuals or bodies corporate; or
b. the individual or body corporate is appointed or constituted trustee by personal acts, by will, by order or declaration of a court or by other operation of the law.

Trustees may include:

a. an executor, administrator, tutor or curator;
b. a liquidator, receiver, trustee in bankruptcy or judicial manager;
c. a person having the administration or control of assets subject to a usufruct, fideicommissum or other limited interest;
d. a person who manages the assets of an incapacitated individual; and
e. a person who manages the assets under a private foundation or other similar arrangements.

It is important to note the following about a trust:

- A trust is liable to tax separately from the beneficiaries of the trust;

- A distribution of a resident trust is exempt from taxation if the distribution is in the hands of the beneficiary of the trust;
- A distribution of a non-resident trust is included in calculating the income of the beneficiary of the trust; and
- A gain on the disposal of the interest of a beneficiary in a trust is included in calculating the income of the beneficiary.

Risk:

It is possible for persons to become trustees without knowing the tax implications, especially persons who hold assets in fiduciary capacity for others and who do not engage in it as a business.

A person who is not a resident as explained above for a year of assessment will be deemed as a non-resident person.

Change of Residence and Tax Implications

A person who is resident in the country during a year of assessment is deemed to be resident for the whole of that year. Further, an individual (i.e. non-citizen) who becomes resident as a result of the 183-day rule, is deemed to be resident from the start of the 183rd day period.

Where a resident person ceases to be resident, assets (other than domestic assets) owned by that person immediately before that person became non-resident is considered as realised by that person on the date the person became non-resident and taxable on a sum equal to the market value of that asset at the time of the deemed realisation.

In addition to the persons (i.e. individual & entities defined above), a Ghanaian **Permanent Establishment (P.E)** is also liable to tax as though it was a resident local company.

Permanent establishments

Permanent establishments are classified by the Act either as a Ghanaian or a foreign permanent establishment.

A foreign permanent Establishment is a fixed place of business of a resident person situated in a foreign country where the business is conducted continuously for at least six (6) months, excluding a place at which only activities of a preparatory or auxiliary nature is conducted. The Act does non tax foreign permanent establishments but however brings Ghanaian permanent establishment into the domain of taxation

A Ghanaian Permanent Establishment (taxable) includes:

a. A place in the country where a non-resident person carries on business or that is at the disposal of the person for that purpose.
b. A place in the country where a person has, is using or installing substantial equipment or substantial machinery; and

c. A place in the country where a person is engaged in a construction, assembly or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to that project.
d. The provision of services in the country.
e. A place in the country where an agent performs any function on behalf of the business of a non-resident person:
    a. including, in the case of an insurance business, the collection of premiums or the insurance of risks situated in Ghana, but
    b. excluding a case involving a general agent of independent status with its legal personality acting in the ordinary course of business.

Basis of Taxation

Under Act 896, the incomes of all resident persons (as defined above) is taxable in Ghana whether the income is earned in Ghana or outside Ghana (Worldwide basis of Taxation).

Types of Income Assessable to Tax under the ITA

The assessable income of a person is categorised under either of the following three (3) main headings: Employment Income, Business Income or Investment Income.

Employment Income: These are the **gains and profits** of an individual from his or her employment. Thus any income and benefits of an individual as a result of his status as an employee of a person is taxable as part of the person's employment income. Employment income is related specifically to individuals and includes salary, wages, overtime and bonuses, allowances and gifts received due to the person's status as an employee.

Business Income: These are the gains **and** profits of a person from business conducted by that person. This relates to all and any benefits associated with the operations of a business (whether registered or unregistered). Business income includes service fees, consideration received from trading stocks, gifts received by the business and proceeds from the realisation of assets.

Investment Income: Investment income is the gains **and** benefits accruing to a person from conducting investment for the year. This includes dividends, interests, gains from realisation of investments and lotto winnings. Investment income may accrue to both individuals and entities.

Method of Accounting for Tax Purposes

In accordance with section 19 of the ITA, a person shall account for transaction in accordance with the Generally Accepted Accounting Principles (GAAP).

In ascertaining the income of an individual from an employment, investment or business, the individual shall use the cash basis of accounting and in accounting for income tax, companies shall use the accrual basis. Entities other than companies shall account for incomes on either cash or accrual basis, whichever reflects most clearly, the income of those entities.

Cash Accounting: Under cash accounting basis, a person derives an amount when payment is received by, or made available to, or in favour of that person. Expenses are likewise incurred only when the expense or amount is paid by that person.

Accrual Accounting: Under accrual accounting, a person derives an amount when the amount is receivable by the person (is entitled to receive the amount) and incurs an expense when the amount or expense is payable by that person (there is a present obligation to pay that amount).

It is important to consider the various areas of the tax laws that have changed, the opportunities that have been created by the change for taxpayers and some "watch-out" areas taxpayers should beware of in order to avoid the risk of paying interests, penalties and even suffer prison terms.

In this paper,

- **S.** refers to Section number in the tax laws;
- **Par**. Refers to paragraph of a schedule to the ITA;
- **F** means final tax;
- **NF** means Not-Final tax; and
- **CP** means currency point.

What has changed? - Gaps Created by the Introduction of the ITA (ITA vis-à-vis IRA)

A comparison of the repealed Internal Revenue Act, 2000 (Act 592) and the new Income Tax Act, 2015 (Act 896) will enable us identify what has changed and the implications of these changes on taxpayers.

Loss Carry Forward

This provision enables taxpayers to deduct current year tax losses from future taxable profits on a "first-in-first-out" (FIFO) basis for a specified number of years.

The following changes and/or inclusions have been made to the Act:

#	Provision under Act 592 (IRA)	Provisions under Act 896 (ITA)	Implication for Taxpayers
Gaps (Changes)			
		Loss Carry Forward (Backward)	
1	Losses were carried forward on a FIFO basis for 5 years – Specified industries including mining, manufacturing for export, farming, information and communication technology-software	Unrelieved loss from business & <u>investment</u> (condition attached) in **specified priority* sectors for any 5 years – *S. 17(1a & 3);* Entities that are parties to a long-term contract may also carry forward losses under	Act 896 has provided for loss carry forward for Investment incomes as well. This was not in Act 592. Key issue is the specified priority area to utilise losses have not been expressly stated in Act 896.

	development, agro-processing and tourism.	*S. 24*; Qualifying Venture Capital entities may also carry forward losses on disposal of their venture investment per *6th Sch. (par 7).*	It does appears likely that industries in agro-processing, manufacture for exports, ICT (software development) may loss the right to utilise tax losses for 5 years if Act 896 does not make any express provisions. They may however qualify to utilise the loss for 3 years.
New Provisions (Inclusions)			
2	Unavailable	Unrelieved loss from business & investment (condition attached) in all other sectors for any 3 years – *S17(1b & 3)*	All other businesses not in the specified priority sectors can also deduct unrelieved losses from future taxable profits up to 3 years.
		Ring-Fencing	
3	Was available in practice	Losses maintain their identity – If the loss were a profit, and would have been taxed at a reduced rate, that loss can only be deducted against profit taxable at that reduced rate. Same applies to exempted incomes. – *S17(2a & b)*	Taxpayers can only deduct business losses that would have been taxed at for example at 20% against taxable profit in an ensuing year that is taxable also at 20%.
4	Unavailable	Contrary to the ring-fencing of the deductibility of tax losses, a tax loss from business may be deducted from investment income but, loss from investment shall only be deducted from investment incomes – S17(4)	This gives taxpayers the opportunity to reduce their future investment income, even with business losses from prior years. However, investment losses cannot be set against business profits.

Note:

Specified Priority Sectors inferred from the Income Tax Act, 2015 (Act 896) will include:

- Petroleum Operations – Part VI Division I;
- Mineral and Mining Operations – Part VI Division II;
- Banking Business, General and Life Insurance (financial Institutions) – Part VI Division III;

- Retirement and Savings Funds – Part VI Division IV; and
- Public, Mutual and Non-profit Causes – Part VI Division V.

Please, note that, the Specified Priority Sectors above-mentioned are inferences made from the ITA. The Ghana Revenue Authority or the Minister of Finance is yet to clarify the Specified Priority Sectors in a practice note or a regulation..

Capital Allowances (C.A)

Capital Allowances are tax deductions granted in lieu of accounting depreciation. For the purpose of ascertaining the income of a person from a business for a year of assessment, the capital allowances are to be deducted.

The following inclusions and changes have been made to the provisions relating to capital allowance in the Income Tax Act:

#	Provision under Act 592 (IRA)	Provisions under Act 896 (ITA)	Implication for Taxpayers
Gaps (Changes)			
		Carry Forward of Capital Allowances	
1	Capital Allowance granted may be carried forward until a time it is utilised – forever. This was not expressly stated in Act, 592 but the practice was to carry forward capital allowance indefinitely.	Capital allowance granted for a year shall **not be deferred**, but deducted in that year.	Making it mandatory for all capital allowance to be deducted in the year will result in creating tax losses for that year which may be carried forward for up to 5 years depending on the specified sector rule. Act 896 has effectively reduced the life-span of Capital Allowances to 3 and 5 years since losses have "sunset clauses" attached to them.
		Class of Assets	
2	Six (6) Assets	Five (5) Assets	Class three (3) Assets – Mining & Petroleum related depreciable assets have been treated in *S.65* and *S.79* of Act 896.
3	Class1 Assets – Computers and data handling equipment	Class 1 Assets – Computers and data handling equipment **together with peripheral devices**	There is a resolution of the arguments of whether mouse, projectors, printers etc. form part of class 1 assets or class 4 under the IRA.

Calculating the Allowance			
4	Class 6 – **A/D * C/365**	Class 5 – **1 divided by the useful life of the depreciable asset**	Has made it easier for taxpayers to understand and comply with in calculating their capital allowances**.**

Note: Conditions required for a person to be granted capital allowance under the ITA includes: (1) It must relate to a depreciable asset, (2) the asset must be owned by the person, (3) the asset must be in use by the person in the production of income as at the end of the year. The person does not need to notify the Commissioner-General within 30 days of bringing the asset into use. This was a condition under IRA which has now been discarded by the ITA.

Withholding Tax

The withholding tax regime requires that persons, when making payment for employee services (employment), goods, works or services to resident and non-resident persons, withhold a percentage of the payment and remit same to the Ghana Revenue Authority (GRA) by the 15th of the following month.

Changes made to withholding taxes by the introduction of the ITA includes:

#	Provision under Act 592 (IRA)	Provisions under Act 896 (ITA)	Implication for Taxpayers
Gaps (Changes)			
Payments subjected to Tax by Withholding			
1	Payments made to employees; Payments made for goods; Payments made for services; Other payments……	Payments made to employees; Payments made for goods; Payments made for services; Other payments……… Payments made for works; Lottery winnings; Commission to resident lotto agent; and Any other prescribed by regulation.	The law has widened the scope of payments that are subject to withholding tax. Payments that hitherto were exempted from withholding tax no longer enjoy such state.
2	The Commissioner-General shall, on receipt of an amount paid issue to the withholding agent in favour of the payee a tax credit certificate. – *S.89(1)*	A withholding agent shall prepare and serve on a withholdee a withholding certificate, in the prescribed form. – *S.118(1)*	Responsibility for preparing the TCCs now lies with the withholding agent – ***better? Or recipe for fraud? Is GRA prepared for the consequences?***

3	A withholding agent shall deliver to the payee a tax credit certificate setting out the amount of tax withheld together with a statement of the amount of the payment from which tax has been withheld. *S. 89(2)*	A withholding agent shall deliver to the payee a tax credit certificate setting out the amount of tax withheld together with a statement of the amount of the payment from which tax has been withheld **and shall be served on the withholdee within thirty days after the end of the month.** *S.118(1 & 2)*	There is now a deadline for submitting TCCs to withholdees. ***Good News – Sort of....***

Income Tax Rates				
#	**Type of Payment - Resident Persons**	**IRA (592)**	**ITA (896)**	**Remarks**
1	Interest paid by a resident financial institution or to an individual on GoG bonds	Exempt	Exempt	No changes
2	Interest (excluding individuals & resident financial institutions)	8% - **NF**	8% - **NF**	No changes
3	Dividend paid by a resident company	8% - **F**	8% - **F**	No changes
4	Rent paid for residential property	8% - **F**	8% - **F**	No changes
5	Rent paid for non-residential property	15% - **F**	15% - **F**	No changes
6	Fees for lecturing, invigilating, supervising an examination, or part-time teaching or lecturing	10% - **F**	10% - **F**	No changes
7	Endorsement fees	10% - **F**	10% - **F**	No changes
8	Fess or allowances, to a resident director, manager, trustee or board member of a company of a company or trust	20% - **NF**	20% - **NF**	No changes
9	Commission to resident lotto receiver or agent, sales agent, resident insurance sales or canvasing agent	10% - **NF**	10% - **NF**	No changes
10	Lottery winnings	N/A	First GH¢ 2,592- nill &exceeding GH¢2592-5% - **NF**	Brings lottery winnings into the domain of taxation.
11	**Payment of supply or use of goods (value exceeding GH¢500_IRA, GH¢2,000_ITA in a year)**	5% - **NF**	3% - **NF**	Reduction in rate.
12	Payment for supply of any works (value exceeding **GH¢500_IRA**, **GH¢2,000_ITA** in a year)	5% - **NF**	5% - **NF**	No changes

#	Type of Payment - Resident Persons – (Cont'd)	IRA (592)	ITA (896)	Remarks
13	**Payment for supply of services (value exceeding GH¢500_IRA, GH¢2,000_ITA in a year) to an individual**	5% - **NF**	7.5% for entities and 15% for individuals - **NF**	Increase in WHT on individual service providers.
14	**Payment for supply of services (value exceeding GH¢500_IRA, GH¢2,000_ITA in a year) to an entity**	5% - **NF**	7.5% - **NF**	2.5% increase. Impact on service entity's working capital? Reimbursables are not withholding payments and should not attract withholding tax.
15	**Natural resource payments**	15% - **NF**	15% - **NF**	
16	Unprocessed precious minerals located in or won from Ghana	-	3% - **NF**	There was no withholding tax on this under Act 592
17	Payments received by a person who conducts a relevant transport business, carrying passengers, cargo, mail, movable tangible assets that are embarked in Ghana, renting containers and related equipment	15% - **NF**	15% - **NF**	No changes
19	Payments to a subcontractor under a petroleum agreement	5%	15% - **F**	Was increased in ITA.

#	Type of Payment – Non-Resident Persons	IRA (592)	ITA (896)	Remarks
20	Dividend	8% - **F**	8% - **F**	No changes
21	Royalties, natural resources payments and rent	15% - **F**	15% - **F**	No changes
22	Management and technical services and endorsement fees	20% - **F**	20% - **F**	No changes
23	Repatriated branch profit	10% - **F**	8% - **F**	Same as dividend WHT now…
24	Interest income	8% - **F**	8% - **F**	No changes
25	Service fee with a source in Ghana paid to a non-resident person	20% - **F**	20% - **F**	No changes
26	Insurance premium with a source in Ghana paid to a non-resident person	5% - **F**	5% - **F**	No changes
27	Income from telecommunication, shipping and air transport	15% - **F**	15% - **F**	No changes

28	Payment to non-resident individuals for income derived or accrued in Ghana	20% - **F**	20% - **F**	No changes
29	Payments to non-residents for supply of goods or works	20% - **F**	20% - **F**	No changes

Note that the withholding taxes applicable between resident persons and non-resident persons where a double taxation agreement exists between the contracting countries, the provisions made in the Double Taxation Agreement (DTA) will override the provisions made in the ITA. Currently, Ghana has DTAs with eight (8) countries including: France, The United Kingdom, Germany, South Africa, Belgium, Switzerland, Italy and the Netherlands.

Note also, that the dates for remitting to the GRA the taxes withheld from payments has not changed. However, the threshold beyond which payments made by a withholding agent shall attract withholding tax has changed from GH¢500 under the IRA to GH¢2,000 under the ITA.

Some of the questions asked in this regard are: "**IN WHAT FORM SHOULD THE WITHHOLDING AGENT PREPARE THE TAX CREDIT CERTIFICATES**?", "**WHAT ARE THE ADMINISTRATIVE PROCEDURES INVOLVED**?" and "**IS GRA SIDE-LINED FROM THE TCC PROCESS?"**

Tax Administration

Tax administration relates to the practices and procedures instituted by tax laws (ITA) to facilitate tax collection and guide taxpayers to comply with the Tax Laws. Tax administration includes procedures for tax payment, dates of payment, procedure for filing annual returns, the statutory forms should be used in filing for a particular tax type, penal provisions, objection procedures and assessments. The following changes have been noted with the introduction of the ITA:

#	Provision under Act 592 (IRA)	Provisions under Act 896 (ITA)	Implication for Taxpayers
Gaps (Changes)			
		Types of Assessments	
1	Provisional Assessment; Final Assessment; Self-Assessment; and Additional Assessment.	Original/Commissioner's Assessment; Self-Assessment; Adjusted Assessment; and Pre-emptive Assessment	Provisional, additional and final assessments under the IRA have been replaced by Original /Commissioner's assessment, adjusted assessment and pre-emptive assessments. Time for filing self-assessment is now by the end of the first Quarter of the year of assessment. Comments: what will be the overriding impact on taxpayers of the pre-emptive assessment?

Remission and Refunds			
2	The President may remit in whole or in part, a tax due by a person under the IRA – *S.158 (3)*	The Commissioner-General may remit in whole or in part, a tax due by a person under the ITA – *Sch. 7, par 65(1)*	The President no longer has the power to remit tax owed by a person under the ITA.

Penalties and Interests			
1	5% of the amount of tax payable	Where failure is deliberate or reckless: • 75% of the tax attributable to the period • either the above or 250 *CP* (whichever is lower) and in any other case the CG shall determine the attributable tax on a reasonable basis	**Failure to maintain records** Has been increased materially. GRA is encouraging proper record keeping for better and fairer tax administration…***and to facilitate migration of all taxpayers unto self-assessment*??**
2	Income Tax: 10% where < 3months 20% where > 3months Withholding Tax: 20% where < 3months 30% where > 3months	125% of the statutory rate, compounded monthly, and applied to the amount outstanding at the start of the period	**Failure to pay tax on due date** There is a complete change in the penal system. Assuming that the BoG rate is currently about 26%, 125% is around 32.5%. ***A significant increase in penalty?***
3	• GHC4 *CP* in case of an entity • GHC2 *CP* in case of individuals	• GHC4 *CP* in case of an entity • GHC2 *CP* in case of an individual • separately for estimates and returns • prosecution 4 months after imposition of penalty	**Failure to furnish returns** Penal provision still remains unchanged…except it now applies to filing of estimates as well…
4	30% of the difference between the tax calculated on the estimated chargeable income and 90% of the actual chargeable income.	125% of the statutory rate and is applied to [90% of total correct tax – estimated tax actually paid]	**Underestimating instalment tax payable** There is a complete change in the penal provision. Given that the BoG rate is currently about 26%, 125% is around 35.5%. ***A significant increase in penalty?***
5	Double or three times the amount of the underpayment of the tax which may have resulted if not detected.	• **Without reasonable cause:** Two times (2x) the amount of prospective underpayment of tax; • **Reckless or knowingly:** Three times (3x) the prospective underpayment of tax… - which may result if inaccuracy of statement were undetected.	**Making false or misleading statements** These provisions remain unchanged…
6	Three times the amount of the underpayment of the tax which may have resulted if the offence had gone unnoticed.	Triple or three times (3x) the underpayment of tax which may result if the offence were committed and went unnoticed	**Aiding and abetting (in 1 – 5 above)** These provisions remain unchanged…

Other Changes Affecting Taxpayers

The changes to be considered here are those changes that do not fall directly under the headings discussed above. These will include changes made to the general presentation and areas of tax, allowable deductions, tax concessions, pre-incorporation expenditures and financial costs.

#	Provision under Act 592 (IRA)	Provisions under Act 896 (ITA)	Implication for Taxpayers
Gaps (Changes)			
Interest			
1	…there shall be deducted any interest incurred during the period in respect of a borrowing employed by that person in the production of the income. – *S.14*	….Deductible to the extent that: - *S.10* • The debt to which the interest relates is money borrowed and is used during the year or used to acquire an asset used in the production of the income; **and** • The debt was incurred in the production of the income – in any other case.	The deductibility of interest from borrowed money is now conditioned on the person using of the loan during the year (specific); or In any other case, the debt must have been incurred wholly, necessarily and exclusively in generating the income.
Repairs and Improvements – *exception to non-deductibility of capital expenditures*			
2	Repair costs wholly incurred by a person in the production of income for a year is deductible – to the extent that it is not a capital expenditure. – *S.16*	……shall deduct repairs and improvement costs incurred wholly, necessarily and exclusively incurred in calculating the income of a person irrespective of whether the expense is of a capital nature..... *Conditions:* Deduct only up to 5% of the TWDV of the Class that asset would have been pooled. Excess over 5% shall be capitalised and granted Capital Allowance. – *S.12*	Taxpayers are allowed to recover capital expenditures up to 5% of the TWDV of the class of that assets upfront thus reducing the chargeable income and capitalise the excess.
Research and Development Costs – *exception to the non-deductibility of capital expenditures*			
3	Research & development costs wholly, exclusively and necessarily incurred by a person in the production of income for a year is deductible – not including expenses incurred that will be entitled to capital allowance (capital expenditure). – *S.19*	A research & development expenditure incurred wholly, exclusively and necessarily may be deducted irrespective of whether it is capital in nature. – *S.13*	All research and development expenditures are now fully deductible. There will no longer be delayed recovery of research and development expenses.

#	Provision under Act 592 (IRA)	Provisions under Act 896 (ITA)	Implication for Taxpayers
Losses on realisation of assets and Liabilities			
4	N/A	*S.15*:……shall deduct in ascertaining income from business or investment: • A loss from the realisation of capital assets; and • Losses from the realisation of liabilities from a business	New provision
Financial Costs, Including Foreign Currency Exchange Losses			
5	*S.21*: (1) FX losses deductible, except those of a capital nature (2) FX losses of a capital nature may be capitalised and granted Capital Allowance (5) Where a person incurs both FX gains and Losses, no deduction shall be allowed to a person whose FX loss exceeds his FX gains for the period.	*S.16*: (1) deductible financial costs (excluding interests) shall not exceed the Financial Gains of the entity plus 50% of the entity's profit (computed with the exclusion of both financial gains and losses) (2 & 3) Financial losses denied in one year may be carried forward for 5 years and deducted in subsequent years on a FIFO basis *S.25*: The inclusion and deductions of amounts to/from income of a person shall be in accordance with the GAAP	The ITA segregates interests from Financial costs. Financial cost means: • a debt claim; • losses relating to derivative instruments, foreign currency instrument; and • any other instrument prescribed by regulations. Implication: all FX losses (realised or not) are now deductible against the income of a person while all FX gains (realised or not) are taxable.
Capital Gains Tax and Gift Tax			
6	• Sections 95 to 104 of Chapter II of the IRA relating to Capital Gains Tax and • Sections 105 to 110 of Chapter III of the IRA relating to Gift Tax	• *S.4(2vii)* - Other payments including gifts received in respect of employments; • *S.5(iii)* - A gain from the realisation of capital assets & liabilities of the business; • *S.5(vii)* - A gift received by the person in respect of the business; and • *S.6(ii)* -a gain from the realisation of an investment asset	Capital gains derived by an entity is now taxable as part of the entity's business income unless it relates to an Investment activity; Also, gifts received by a person in respect of business is now taxable as business income; On the other hand, capital gains realised by an individual shall be taxed as part of the

			individual's investment income; and Gifts received by an individual is taxed as part of the individual's employment income. Implications: Gift and capital gains will now be taxed at the company income tax rate and at the graduated income tax rate as applicable – a definite increase in tax.
This Capitalisation			
7	Section 71(1) pegs the threshold for Thin Capitalisation at a **Debt: Equity** ratio of **2:1**	*S.33* now pegs the threshold for Thin Capitalisation at a Debt: Equity ratio of 3:1	This will afford non-resident, non-financial institution business owners more room to lend to their businesses with interest rates. ***Comment: there is a need for clarification on resident exempt persons and its practical applications.***
Employment Income Tax – Loan Benefits & Benefits in Kind			
8	N/A	*Fourth Sch. (Par 3)*: • Where loan is from employer to employee; • The loan tenure does not exceed 12 months; and • The loan amount, plus any outstanding loan payable by the employee does not exceed the employee's 3months basic salary, **no amount is taxed in the employee.** • **Otherwise**, (¼) * (Interest payable using the BoG rate less Interest actually paid under the loan contract) is deemed as a benefit to the employee and taxed as such.	New addition to the taxation of employees. Practical challenges to this provision include: • Which BoG rate will be used? On the date of contracting or on the date of the GRAs assessment where the employer has not quantified the amount? • How will the GRA monitor to ensure that employers are quantifying these benefits and paying the correct taxes on the employee's income? • Will this provision be applicable to loans in existence prior to the coming into force of the ITA?

9	Limits on vehicle benefits: Car + Fuel + Driver – up to GH₵350; Car + Fuel - up to GH₵300; Car only - up to GH₵150; and Fuel only - up to GH₵150.	Limits on vehicle benefits: Car + Fuel + Driver – up to GH₵600; Car + Fuel - up to GH₵500; Car only - up to GH₵250; and Fuel only - up to GH₵250.	Quantification of benefits in kind table on employees has been increased.

Request for Information on the Clients of Banks			
9	GRA requires a court order before the Bank can provide information about its client to the GRA – No Automatic Exchange of Financial Information	Commissioner-General is able to access information relating to the clients of a Bank due to the Automatic Exchange of Financial Information – *S.137*	Is this supposed to make Ghana more tax competitive internationally?
Arm's Length Standard and Arrangement Between Associates			
10	The Commissioner-General may distribute, allocate, apportion, re-characterise, etc. transactions between persons who are associates as he deems necessary to reflect the chargeable income or tax payable which would have been payable if the transaction has been conducted at arm's length – *S.70*	Persons in a controlled relationship (associates) are **required** to quantify, characterise, apportion and allocate transactions using the arm's length standard. The Commissioner-General may make such adjustments where in the opinion of the Commissioner, the taxpayer has failed to comply with the requirement to account using the arm's length standard. - *S.31*	The ITA now places the onus on the taxpayer and its associates to account for the transactions at arm's length, failure of with the commissioner will exercise his powers. ***This is better since persons are free to choose which of the transfer pricing methods to use. This provision is in line with the Transfer Pricing Regulation.***
Pre-Incorporation Costs			
11	N/A	*S.58(2):* Amounts derived or expenses incurred by the shareholders or managers of a Company shall be deemed as being incurred by the Company, even if the company lacks legal capacity.	This clarifies and takes a position on the treatment of pre-incorporation costs incurred by the promoters/shareholders of a business. Henceforth, pre-incorporation or preliminary costs are allowable deductions.
Bad Debts – Banking Business			
12	*S.18*: For a deduction to qualify as Bad debt, the person must have taken **all reasonable steps** to pursue payment and which the person believes will not be satisfied…..	*S.23(7):* A person shall not claim bad debt unless the CG is satisfied that the person has taken reasonable steps in pursuing the payment and the debt claim cannot be satisfied. *S.88*: (1) Where a person conducting a banking business makes specific provision for a debt claim which the CG is satisfied is a bad debt shall treat the specific provision as	Given that the GRA is yet to clarify which other criteria apart from the evidence of reasonable efforts being taken by the person to recover the debt claims, entities in the banking industry can claim all specific debt claims. Further, since the section 23 does not apply to banking businesses, where specific provisions are claimed as a deduction and later recovered, the ITA

		deductible (2) Section 23 of the ITA does not apply to Specific provisions in Banking business	does not recognise such recoveries (though it is in line with IFRS) as income in the Year in which it is recovered.
Concessions (IRA S.11 versus ITA 6th Schedule)			
13	• The income of a **Person** from a farming business in Ghana including tree crop, cash crops, livestock and cattle farming is exempt from tax for the relevant concessionary periods. – *S.11(1)*	Where an **Individual** conducts a farming business **wholly within** the country including tree crop, cash crops, livestock and cattle farming is subject to tax at 1% for the relevant concessionary period(s). – *Sixth sch. (par 1)*	The Concession granted to farming business is granted only to individuals and not to entities. Entities conducting farming businesses are therefore not entitled to the 1% concessionary tax rate applicable for the relevant year(s),
14	• Agro-processing business established before 2004: **0% for first 3** years from date of first commercial production • Agro-processing business established after 2004: **0% for first 5** years from date of first commercial production • Agro processing businesses after their exemption, where located: i. Accra and Tema – 20%; ii. Other regional capitals except Northern, Upper East & Upper West – 10%; iii. Northern, Upper East and Upper West regions – 0%; and iv. Outside other regional capitals – 0% - *S.11(2)*	• Agro-processing business conducted **wholly in** the country: **1% for first 5** years from date of first commercial production • Agro processing businesses after their exemption, irrespective of their location – 25%. – Sixth sch. (par 2)	With effect from the coming into force of the ITA, Agro-processing businesses within their concessionary period (5 years) will be subject to tax at 1% instead of the current 0%. Further, agro-processing entities irrespective of their location after the concessionary period shall be subject to tax at 25% rather than the location advantages enjoyed currently. ***Comment: May discourage persons that from situating agro-processing businesses in rural areas as there is no incentive to do so.*** ***What then happens to the fruits produced by farmers in rural Ghana?***
15	• Income from a rural bank – **0% for first 10 years**	• Income from a rural bank – **1% for first 10 years**	
16	• Income of company who engages in commercial production of cocoa by-products derived from sub-standard cocoa beans – **0% for 5 years**	• Income of company who engages in commercial production of cocoa by-products derived from sub-standard cocoa beans – **1% for 5 years**	

17	• Income from a company whose principal activity is the processing of waste including recycling – **0% for first 7 years**	• Income from a company whose principal activity is the processing of waste including recycling of – **1% for first 7 years**	
18	• Income of a venture capital financing company properly qualified under Act 680 – **0% for first 10 years**	• Income of a venture capital financing company properly qualified under Act 680 – **1% for first 10 years**	
19	• Income of a business from construction for sale or letting of low cost affordable residential premises – **0% for first 5 years.**	• Income of a business from construction for sale or letting of low cost affordable residential premises – 1**% for first 5 years.**	
20	• Income of the Ghana Stock Exchange – **exempt for first 20 years from its establishment.**	N/A	Income from the Ghana stock exchange is now taxable. ***Will the stock exchange see a decline in persons who trade on the exchange due to the tax relief they enjoy being taken away?. Will this lead to difficulties for listed companies to source funds on the market?***
21	N/A	• Income from an approved unit trust scheme and mutual fund – **1% for first 10 years**	***New inclusion into the Tax Laws.***
22	Fresh Graduate Allowance: • Up to 1% of workforce – 10% of Salary • 1% to 5% of workforce – 30% of Salary • Above 5% of workforce – 50% of Salary	Fresh Graduate Allowance: • Up to 1% of workforce – 10% of Salary • 1% to 5% of workforce – 30% of Salary • Above 5% of workforce – 50% of Salary	No changes in this concession
23	Income of a Free Zone Enterprises – **0% for first 10 years, 8% thereafter**.	Income of a Free Zone Enterprises – **0% for first 10 years, 15% thereafter**.	Still exempt in the concessionary period, however, the tax rate applicable after the concessionary period has increased to 15%.

24	Income of a Banks from granting loans to farmers and leasing companies – interest income is taxed at **20%**	Income of a Banks from granting loans to farmers and leasing companies – interest income is taxed at 20%	There have been no changes to this provision
25	• Income from Hotel business – 20% • Income from export of non-traditional goods – 8%	• Income from Hotel business – 22% • Income from export of non-traditional goods – 8%	There have been a 2% increase in the company income tax rate for Hotel businesses in the ITA. ***Any negative implications?***
26	Income from a manufacturing business located: i. Accra and Tema – 25%; ii. Other regional capitals – 18.75%; and iii. Elsewhere in the country – 12.5%;	Income from a manufacturing business located: i. Accra and Tema – 25%; ii. Other regional capitals – 18.75%; and iii. Elsewhere in the country – 12.5%;	There is no change to this location advantage enjoyed by Manufacturing businesses.

Most of the concessions identified above are industry specific and may not apply to other industries. The only exception is the Fresh Graduate Employment Allowance. This is applicable to persons in all industries at the rates indicated above (#22).

For purposes of taking advantage of the fresh graduate allowance, a Fresh Graduate is defined to mean: A person who has graduated from a tertiary institution for the first time whether or not that person has been previously employed.

Opportunities present and Highlights of Salient "Watch-Out Areas"

Some tax planning opportunities available to taxpayers in general and also highlight of areas of concern and of probable tax exposure are discussed below. It is imperative to note that these areas are key to the minimisation of tax compliance costs as well as the tax liability itself.

Return of Income and Assessments

Both Tax Laws require taxable persons to file a return of income with the GRA not later than four (4) months after the end of the person's basis period (Accounting period for entities; and 1st January – 31st December for individuals).

In the case of employers and employees, the employer is required to submit a return on all employees who were in his or her employment in the previous year by 31st March following the end of the year.

Employment Income Tax and Personal Reliefs

Employment is defined by the ITA to mean:

- A position of an individual in the employment of another person;
- A position of an individual as manager of an entity other than as partner of a partnership;
- A position of an individual entitling the individual to a fixed or ascertainable remuneration in respect of services performed; and
- Public office held by an individual.

Amounts to be included in determining the employment income of a person in accordance with the ITA shall include:

1. Salary, wages, leave pay, fees, commissions and gratuities;
2. Overtime pay and bonuses as provided by Regulations;
3. Personal allowances including cost of living allowance, subsistence, rent, entertainment or travel allowance;
4. A discharge or reimbursement of an expense incurred by an individual or an associate of the individual;
5. Payments made for the individual's agreement to conditions of the employment;
6. Subject to s. 94, a retirement contribution made to a retirement fund on behalf of an individual or employee;
7. Other payments including gifts, received in respect of an employment;
8. Other amounts required to be included under part III of the ITA (compensation and recovery payments); and
9. Any other allowance or benefit paid in cash or given in kind if they are derived by the individual from the employment during the year.

Benefits given in kind to an employee includes:

#	Details of benefit in kind	Value of benefit (% of TCE*)
Provision of Accommodation:		
1	Accommodation with furnishings	10%
2	Accommodation only	7.5%
3	Furnishings only	2.5%
4	Shared accommodation	2.5%
Provision of Means of Transport		
1	Fuelled vehicle with driver	12.5% up to GH₵600 (IRA - 350)
2	Vehicle and fuel	10% up to GH₵500 (IRA - 300)
3	Vehicle only	5% up to GH₵250 (IRA - 150)
4	Fuel only	5% up to GH₵250 (IRA - 150)
Loan Benefits		
1	Quantification where qualifying conditions are met	(¼) of differential interest

***TCE means Total Cash Emoluments**

The person shall exclude the following amounts from the calculation:

1. A reimbursement or discharge of a person's dental, medical, or health insurance expenses where the benefit is available to all full-time employees on equal terms;
2. A passage to or from Ghana to take up an appointment or termination of a person's appointment where that person is recruited or engaged outside Ghana, is in Ghana solely for the purpose of serving the employer and is not a resident of Ghana;
3. Any provision of accommodation by an employer carrying on a timber, mining, building, construction or farming business to that person at any place or site where the field operation of the business is carried on;
4. Reimbursements by an employer of an expenditure incurred by an employee on behalf of the employer that services the proper business purpose of the employer;
5. Redundancy pay etc.

The income from employment of a person shall be reduced, but not below zero, by contributions made by the employee to a retirement, pensions and/ or provident fund schemes (35% contribution condition apply) as well as the **employee's personal reliefs** in order to ascertain the employee's taxable income (chargeable Income).

The following personal reliefs are deductible by each individual for a year:

#	Type of relief	Personal Relief Available (Per Annum)
1	An individual with dependent spouse or at least two dependent children	GH₵ 200
2	An individual with disability	25% of the assessable income of the person from business or employment
3	An individual who is 60 years of age and above	GH₵ 200
4	An individual sponsoring the education of a child or ward of that individual in a recognised registered educational institution in the country	GH₵ 200
5	An individual with a dependant relative other than a child or spouse who is 60 years of age or more	GH₵ 100 per child up to 3 children
6	An individual who has undergone training to update the professional, technical or vocational skills or knowledge of that individual	Amount equivalent to the cost of training but not exceeding GH₵ 400.

Note:

1. Where two or more persons qualify in respect of the same child, ward or relative, the Commissioner-General shall grant only one relief;
2. For personal relief purposes, dependent child, spouse or relative in respect of an individual means "a child", "spouse" or "relative" of the individual for whom that individual provides the necessities of life; and
3. The personal reliefs can be claimed on monthly basis upon approval of a written application to the CG.

Employment income tax is determined by applying the graduated tax rates below on the Taxable (Chargeable) income of the individual.

The Graduated tax rates (table) is as follows:

Details (per annum)	Chargeable Income	Tax Rate	Tax Payable	Cumulative income	Cumulative tax
	GH₵	%	GH₵	GH₵	GH₵
First	2,592.00	0%	0.00	2,592.00	0.00
Next	1,296.00	5%	64.80	3,888.00	64.80
Next	1,812.00	10%	181.20	5,700	246.00
Next	33,180.00	17.5%	5,806.50	38,880.00	6,052.50
Exceeding	38,880.00	25%	-	-	

The employment income tax (PAYE) computed using the graduated rates above is a withholding tax and should be remitted to the GRA by the 15th of the following month.

Withholding Tax – Opportunities and Exemptions

Withholding tax is source based. It is charged at source when **payment** is being made by a person and where the value of the transaction exceeds GH₵2,000. Taxes withheld are treated as though they were an "**Advance payment of Tax**" to the GRA. The TCCs received by the taxpayer in respect of tax withheld from payments made received can therefore be utilised by a person in paying the quarterly self-assessment and other tax obligations.

Payment is defined by the ITA to mean <u>an amount **paid** or **payable** in cash or kind, and the conferring of value or benefit in any form by one person on another person.</u>

When WHT is deducted from payments and remitted to the GRA, the person (withholdee), in accordance with the ITA shall be entitled to a tax credit, evidenced by a certificate (TCC) which can be used to reduce tax when annual returns are filed.

A person making payment for the supply of Goods, Services and Works shall withhold tax at the appropriate rate (see withholding tax gaps above for rates) and remit same to the GRA by the **15th of the following month**.

The following are however exempted from withholding tax:

1. Sale of goods which constitute trading stock of both the vendor and the purchaser;
2. Premiums paid to a resident insurance company;
3. A person with satisfactory tax record who is exempted in writing by the Commissioner-General from withholding tax. – *S.116 (5cii)*.

A person may be granted an exemption from withholding tax upon applying to the Commissioner-General in writing and on satisfactorily meeting the criteria for granting such exemption from withholding tax.

For the purpose of determining if a contract exceeds the GH₵2,000 threshold, two or more contracts with a resident person in respect of the same goods, works and service shall be treated as a single contract. – Split Contracts.

Where a person withholds tax from payments made to a non-resident person and where the contract gives rise to income from Ghana, the person shall notify the Commissioner -General in writing of:

1. The nature of the contract;
2. The likely duration of the contract;
3. The name and postal address of the non-resident person to whom payment under the contract are to be made; and
4. The total sum estimated to be payable under the contract to the non-resident person.

Other Planning and "Watch-out Areas"

Dividends and Taxation:

Dividends paid by a resident Company to its shareholders for a year is subject to Tax at the rate of 8% in accordance with the First Schedule of the ITA. Section 59(3) however provides for dividends paid by a resident Company to another resident Company to be exempt from tax where the Company that received the dividends controls directly or indirectly, **at least 25% of the ownership or voting power** of the Company which paid the dividend. The provision described above applies where:

- Both parties are resident **Companies;** and
- The dividend paid is not in respect of redeemable shares;
- The dividend paid is not as a result of the capitalisation of profits; and
- The dividend paid is not as a result of an income splitting scheme or a re-characterisation of incomes by either the taxpayer or the Commissioner-General of transactions deemed not to have been accounted for at arm's length.

Taxation of Capital Gains:

As discussed above, the gains on realisation of capital assets of an entity, in accordance with section 5 and 6, is considered as part of the Business or Investment income of the entity and subjected to tax at the rate applicable to that entity. However, section 48(1) of the ITA provides for the gains on the realisation of an asset arising out of a merger, amalgamation, or re-organisation of a Company is **Exempt** from tax where there is continuity of **at least 50% of the underlying ownership** in the asset. Case for planning?

Refunds and Set-Offs

Paragraph 66 of seventh schedule to the ITA provides for a taxpayer to set-off overpaid taxes against:

- Outstanding tax liabilities under the ITA;
- Instalment tax payment under the ITA (self-assessment or original assessment, etc.); or
- Any other amount due to the GRA under the ITA.

Where there is still an excess tax overpayment by the taxpayer after the set-offs described above, the taxpayer may apply to the Commissioner-General in writing for a refund of the taxes overpaid at the **LATER** of 6 years;

- From the date on which the tax was paid; or
- The date the CG served a notice of assessment to which the refund application relates.

Refund of interests paid by a taxpayer on failing to pay tax on due date will be made where the tax liability to which the interest relates is found not to have been due or payable by the taxpayer.

Income Splitting – Section 32

Income splitting refers to an arrangement where a taxpayer and his associates:

- Transfers an asset or an amount directly or indirectly to the other associate; and
- The transferor retains legal or implicit right to that asset or money currently or at a future time; and
- The implication of the transfer is a reduction in tax payable by that person.

This arrangement is motivated by, for instance, where a lower income is taxed at a lower rate while a higher sum is taxed at a higher rate. E.g. Employment income tax – Graduated rate of tax.

The ITA provides that the Commissioner-General may, by notice in writing prevent the reduction of the tax payable by:

- Adjusting the amounts to be included and deducted from the income of that person; or
- Re-characterise the source and type of the income, loss, amount or payment.

Thin Capitalisation – Section 33

Where a resident entity other than a financial institution in which 50% or more of its ownership, control or voting power is held by **an exempt person** either alone or jointly with an associate has a **debt to equity** ratio of **more than 3:1** is deemed to be Thinly Capitalised.

Where a thinly capitalised, interest paid or foreign currency exchange losses incurred by that entity in excess of the 3:1 ratio shall not be allowed as a deduction for the year. This implies that the whole interest paid by the entity to the exempt person will be limited to such an amount in proportion to the **3:1** ratio. This results in an increase in the chargeable income of the entity equal to that part of the interest disallowed.

An exempt person refers to:

- A non-resident person; or
- A resident person for whom interest is paid by the resident (thinly capitalised) entity to an **exempt person**; or
- A resident person for whom a foreign exchange gain realised with respect to the debt claim constitutes an exempt income or is exempt from calculating the assessable income of that person.

In order for entities to be allowed the whole interest as a deduction, it is important that they manage their capital structure (debt to equity ratio) in a way that will enable them accommodate the amount of loan they intend to source. Alternatively, the person should source debt from persons who are not exempt persons.

Note that an exempt person must have 50% or more of the control or ownership of an entity for the entity to be thinly capitalised. Where the lender of the loan controls less than 50%, thin capitalisation will not apply irrespective of how close the percentage control is to 50%.