

Exploring the Value Added Tax (Amendment) Act, 2023 (Act 1107): Implications of the New 5% Flat Rate on Immovable Property Transactions in Ghana



In December 2023, Parliament passed the Value Added Tax (Amendment) Act, 2023 (Act 1107) to implement Value Added Tax (VAT) enhancement measures.

Following the passage of Act 1107, the Ghana Revenue Authority (GRA) issued the VAT Administrative Guidelines on the Supply by Estate Developers & the Supply of Immovable Property for Rental Purposes (the "Guidelines")^[1] in March 2024, to offer clear guidelines and procedures for the smooth implementation of the VAT enactments as they relate to the supply of immovable property by estate developers, and the supply of immovable property for rental purposes.

Supply of Immovable Property for Rental Purposes by a Taxable Person

Among other provisions, Act 1107 introduces a flat tax rate on the rental of any immovable property that is not for accommodation either in a dwelling or a commercial rental establishment.

Specifically, Act 1107 amends section 3 of the Value Added Tax Act, 2013 (Act 870) by providing that when a **taxable person**^[2] makes a **taxable supply**^[3] of immovable property for rental purposes—other than for accommodation in a dwelling or a commercial rental establishment—that person is liable to tax at a flat rate of five percent (5%) calculated on the value of the taxable supply.

The implication of this provision is that all taxable persons who rent immovable property for any purpose, other than accommodation in a dwelling or commercial rental establishment, are liable to pay the VAT flat rate on the rent charged.

Rental of accommodation in a dwelling

Per Act 1107 when a taxable person—who is not an estate agent— rents out accommodation in a dwelling place, the proceeds from the rental are exempt from payment of the flat rate.

A dwelling is defined under the Value Added Tax Act, 2013 (Act 870) and the Guidelines as any building, premises, structure, or any place or part of these along with any attached facilities used or intended for use **mainly as a residence or**

home for a natural person provided that it is not a commercial rental establishment.

In sum, the flat rate is not applicable to the rental of property by an individual to a natural person for accommodation purposes in a dwelling.

Rental of accommodation in a commercial rental establishment

Act 1107 provides that all taxable persons—other than estate agents— who rent immovable property for accommodation in a commercial rental establishment^[4] are not liable to pay the VAT flat rate on the rent charged.

Although on the face of the law, the proceeds from the provision of accommodation in **[all]** commercial rental establishments by individuals are exempt from the flat rate, the Guidelines attempt to make a distinction between the types of accommodation within a commercial rental establishment that are subject to the tax, and those that are not.

From the Guidelines, it appears that only accommodation in certain categories of hostels and boarding establishments, hospitals, maternity homes, nursing homes, and clinics are exempt. For these exempt facilities, the key factor appears to be whether they are operated for profit or not.

It is noteworthy, that although Act 1107 amends parts of the First Schedule of Act 870, it fails to amend its definition of commercial rental establishment or make the distinction the Guidelines seek to make. That notwithstanding, the Guidelines purport to make this distinction on the basis of the First Schedule of Act 870.

It would be interesting to see how the Ghana Revenue Authority deals with challenges in this regard from individuals who provide accommodation in commercial rental establishments in the coming months. It is anticipated that the argument advanced by the Appellant in *Scancom PLC v the Commissioner General*^[5] that practice notes are for internal administrative purposes and not statutory, will be made by individuals required to pay the flat rate on the basis of the distinction in the Guidelines.

It remains to be seen whether this supposed distinction by the Guidelines will hold up as a legal basis for imposing the flat rate on certain categories of accommodation in commercial establishments.

Supply of Immovable Property by an Estate Developer

Act 1107 also provides that when a **taxable person** who is an **estate developer**^[6] makes a taxable supply of immovable property, that person shall account for the tax payable at a flat rate of five percent (5%) calculated on the value of the taxable supply.

Where previously the business of the estate developer was the construction and sale of immovable property, Act 1107 substitutes the word “sale” in Act 870 for “supply”, thereby bringing activities such as rental of immovable property by estate developers within the ambit of the law.

Furthermore, Act 1107 amends the previous definition of estate developer, to include the business of renovation. Consequently, renovation of immovable property is liable to tax at the flat rate.

In addition, the scope of the definition of estate developer has been widened from commercial establishments to include individuals.

In order to determine whether an individual is liable to tax as an estate developer or not, the Guidelines delineate the characteristics of an estate developer for VAT purposes to include a profit-seeking motive; presence of similar trading transactions or interests; alterations to the form of the immovable property; the method of sale execution; the source of financing; the interval of time between purchase and sale; and the mode of acquisition.

Also, Act 1107 expands paragraph 18 of Act 870 by including the supply, rather than just the sale of immovable property by an estate developer in the definition. However, it fails to exclude estate developers from the exemption outlined in respect of accommodation in a dwelling, land used or to be used for agricultural purposes, and for public civil engineering works.

The argument however can be made that all supplies by an estate developer are taxable under section 1 of Act 1107, and in view of this any such distinction in the schedule would be otiose.

Finally, per the Guidelines, business activities other than the supply of immovable property, such as landscaping, maintenance of building structures or works, lease, and professional services are taxable at the standard rate of 15%.

Although this expansion is not provided for in Act 1107, its application can be supported under Act 870.

Supply of Immovable Property by an Individual

Per Act 870, the supply of immovable property by an individual, including land for dwelling is exempt from tax.

That notwithstanding, we note that since the definition of estate developer has been expanded to include an individual engaged in the business of the supply of immovable property, the foregoing exemption will not apply to individuals who are estate developers.

In addition, Act 870 exempts the supply of accommodation in a dwelling, land to be used or used for agricultural purposes, and land used for public civil engineering works from tax.

Although the foregoing definition references immovable property as a whole—**including** land, from a review of the Guidelines, it would appear that the GRA takes the position that a supply of immovable property by an individual who is not an estate developer which does not fall categorically within the scope of the exemptions is liable to tax. It remains to be seen whether the GRA can provide a legal basis for this tax imposition.



Miscellaneous Provisions

A noteworthy addition in the Guidelines is the inclusion of an additional COVID-19 levy, set at 1% and calculated on the value of the taxable supply, in addition to the applicable flat rate of five percent (5%). In summary, taxable supplies under this regime incur a total tax of six percent (6%).

With respect to deductible input tax claims, an estate developer who accounts for VAT at the flat rate on the supply of immovable property for dwelling; and a supplier of immovable property for rental purposes do not qualify for input claim on purchases.

Failure to comply with the VAT flat rate requirements gives rise to penalties and has additional consequences for both individuals and real estate companies.

We anticipate that while registered real estate entities will likely to comply with Act 1107, the Ghana Revenue Authority may encounter challenges in collecting taxes from individuals engaged in transactions falling within the scope of the Act, requiring diligent efforts to ensure compliance. [\[1\]](#)

[\[1\]](#) Administrative Guideline Number GRA/AG/2024/002 - Date of Issue: 24th March,

2024

[2] Section 4 of the Value Added Tax Act, 2013 (Act 870) (as amended) defines a taxable person as a person who is registered for purposes of Act 870 or is required to register under sections 6 to 16

[3] Section 33 of Act 870 defines taxable supply as a supply of goods or services made by a taxable person for consideration, other than exempt supply, in the course of, or as part of taxable activity carried on by that taxable person.

[4] Item 2 of the First Schedule of Act 870

[5] Suit No. CM/TAX/0008/2022 In the Matter, Scancom PLC vs The Commissioner-General

[6] Section 4 of Value Added Tax (Amendment) Act, 2023 (Act 1107) defines estate developer as a commercial establishment or an individual engaged in the business of construction or renovation and supply of immovable property.

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