



GRA

GHANA REVENUE AUTHORITY

**Practice Note on
Civil Engineering Public Works
under the Value Added Tax Act, 2013 (ACT 870)**

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1.0 PREAMBLE

The Commissioner-General of the Ghana Revenue Authority is empowered under Section 100 of the Revenue Administration Act, 2016 (Act 915) to issue Practice Notes setting out the interpretations placed on provisions of a Tax Law. Accordingly, this Practice Note is issued in respect of exemption on Civil Engineering Public Works as provided for under item 18(d) of the First Schedule to the Value Added Tax Act, 2013 (Act 870).

2.0 INTERPRETATION

In this Practice Note, the word “Act” means the Value Added Tax Act, 2013 (Act 870). Definitions and expressions used in this Practice Note have the same meaning as they have in the Act.

3.0 PURPOSE

This Practice Note is issued to provide direction and guidance to officers of the Ghana Revenue Authority, Tax Practitioners, Consultants, Taxpayers and the general public on the definition and scope of Civil Engineering Public Works as provided in the Act, in order to achieve consistency in the administration of the Act.

It is also intended to address administrative and operational challenges that arise from the interpretation and scope of Exemptions for Civil Engineering Public Works.

4.0 MEANING AND THE SCOPE OF “CIVIL ENGINEERING PUBLIC WORKS”

In this Practice Note, Civil Engineering Public Works in the context of the Act means the construction, maintenance, reconstruction, demolition, repair or renovation of a building, structure, surface or system, and includes site preparation, excavation, erection, assembly, installation of plant, fixing of equipment, laying out of materials, decoration and finishing in relation to infrastructure projects for public **use** and **paid for with public funds** as defined in Article 175 of the 1992 Constitution of Ghana.

Public funds means the

- i. **Consolidated fund,**
- ii. **Contingency fund**
- iii. Funds established under the Public Private Partnership Act, 2020 (Act 1039) and
- iv. Any **other public funds** as may be established by or under the authority of an Act of Parliament.

5.0 APPLICATION OF THE LAW

Section 35 of and the First Schedule to the Value Added Tax Act, 2013, (Act 870) provide the legal basis for VAT exemptions for goods or services, including Civil Engineering Public Works.

To this effect

1. All civil engineering works which are not public works as defined under 4.0 of this Practice Note shall not qualify for exemption.
2. Services such as architectural designing and drawings, consultancy, supervision of works, catering services, hotel services, and similar services related to civil engineering public works are taxable.

Note: Supervision by an employee in the course of employment is not taxable.

6.0 ILLUSTRATIONS

Illustration 1.

Mr. Ababio is a resident of New Bortianor, a suburb of Accra. A bridge linking the Communities collapsed in the last rainy season. The collapse of the bridge is making life unbearable for the residents of the communities.

Mr. Ababio, a philanthropist, approached the Ga South Municipal Assembly to obtain approval to construct the bridge from his own resources. There was no response from the Assembly but he goes on and engages a contractor to construct the bridge.

The contractor is charging Mr. Ababio VAT for the work.

Requirement

Determine whether the supply by the contractor to Mr. Ababio qualifies for exemption as civil engineering public works under item 18(d) of the First Schedule to Act 870.

Solution

The work undertaken by Mr. Ababio does not qualify for exemption because although the bridge is for public use, the funding is from a private source.

Note:

- 1. For the work to be exempted, it should satisfy both criteria:
“for public use” and “paid for from public funds”.**
- 2. To qualify as “paid from public funds” The funds must be deposited in a legally recognised public fund and disbursement made from that public fund (District Assembly).**

Illustration 2

ABC Ltd is a resident company which has won a contract from KEEA District to construct a 20 km road between two towns at a cost of GH¢20m.

ABC Ltd sub-contracts the designing of the road to Amen Architect.

Requirement

What are the VAT implications for this transaction?

Solution

The construction of the road qualifies for VAT exemption under item 18(d) of the First Schedule to Act 870 because it falls under public works and also financed from public funds and for public use. However, the architectural design does not qualify for VAT exemption because it is a taxable service as explained in paragraph 5.0 above.

Illustration 3

Adom Ara Kwa is a mining company operating in Tarkwa in the Western Region. The mining company has operated in the community for several years. As part of the corporate social responsibility of the company, it has received approval from the Tarkwa Municipal Assembly to construct a Football Park for the residents of Tarkwa.

The Mining Company has outsourced the construction of the football park to Fa Nkyeni Bra to design and build. The cost of the design of the park is GHØ5m whilst its construction is GHØ20m.

Adom Ara Kwa is funding the project from its own resources for the residents of Tarkwa free of charge.

Would the construction of the football field qualify for exemption under item 18(d) of the First Schedule of Act 870?

Solution

- i. The design of the park is subject to VAT because it is a service and not civil engineering public works.
- ii. The construction of the park, though meant for public use, will also not qualify for exemption under item 18(d) of the First Schedule of Act 870 because it is not financed from public funds. The approval by the Assembly in itself does not create a public fund until the funds are channelled to the Assembly and is received as such by the Assembly.

Illustration 4

Asempa Company Ltd is a private company which has entered into agreement with the government of Ghana in a Public Private Partnership Agreement to build, own, operate and transfer 25km road between two towns A and B.

Asempa Company Ltd is to finance the design and construction of the road with the approval of the government. The private company is to provide 100% funding for the road construction.

The government has agreed that the private company is to toll, own and operate the road after the construction for a period of 10 years and transfer to government.

Asempa Company Ltd intends to take advantage of the provisions under item 18(d) of the First Schedule of Act 870 as the road is meant for public use and the road will be paid for through the collection of tolls.

Requirement

Would the project qualify for exemption?

Solution

- i. The designing of the road is a service and not civil engineering public works and therefore taxable.
- ii. The construction will qualify for exemption because it is a Build, Operate and Transfer (BOT) arrangement approved by the appropriate authority in accordance with the provisions under Paragraph 3 of the Second Schedule of the Public Private Partnership Act, 2020 (Act 1039).

Illustration 5

Child Care Foundation, is a non-governmental organisation based in Gomoa Buduatta in the Central Region. The basic school classroom block in the community is in a deplorable state. Child Care Foundation intends to finance the renovation of the class room block from its own resources, but is not sure about the VAT implications of the intended renovation works.

Requirement

What are the VAT implications for the intended project?

Solution

A non-governmental organisation in Ghana, which intends to undertake any project in any Metropolitan, Municipal and District Assemblies (MMDAs) is required under Section 12 (5) of the Local Governance Act, 2016, Act 936, to either channel the resources to be used for the project to the Ministry, Department and Agency (MDA) or MMDAs for consideration into the said MDAs or MMDAs budget and activities for the year.

For the renovation of the class room block to qualify for exemption under Item 18(d) of the First Schedule of Act 870, the following conditions must be satisfied:

- a) The school must be a state-owned or state sponsored educational institution, and
- b) The renovation must be financed from public funds.

NOTE: Approval by MMDAs changes the character of private financing to public financing within the meaning of Section 124 of Act 936.

If the project satisfies the two conditions above, then it qualifies for exemption.

In respect of public use, the class room block is a public school hence satisfies the condition for public use.

In order to satisfy the condition of financing from public funds, the renovation must be approved by the MMDA in line with Sections 12 and 124 of the Local Governance Act, 2016, Act 936.

It must be noted that where Child Care Foundation undertakes the renovation of the classroom blocks from its own private sources without satisfying the conditions specified above, the renovation shall not be entitled to the exemptions under Act 870.

Signed

Date

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Commissioner-General