

Case Brief: Eaton Towers Ghana Ltd v. The Commissioner-General (GRA) & Another

Citation: Suit No. CM/TAX/000318

Court: High Court of Justice (Commercial Division), Accra

Date: 27th February 2018

Judge: His Lordship Jerome Noble-Nkrumah, J.

Flynote

Tax Law — **Income Tax** — **Value Added Tax (VAT)** — **Tax Avoidance Schemes** — **Re-characterization of Transactions** — **Arm's Length Principle** — **Whether charging a related party (Vodafone) fees 25% lower than market rates constitutes a tax avoidance arrangement** — **Power of Commissioner-General** to disregard fictitious arrangements — **Sections 34 of Act 896 and 99 of Act 915.**

Facts

The Appellant, **Eaton Towers Ghana Ltd**, specializes in the maintenance and leasing of telecommunication masts. Following a tax audit for the period 2013–2016, the **Ghana Revenue Authority (GRA)** adjusted the Appellant's assessable income upward, resulting in a total tax liability of **GHS 40,945,696.83**.

The GRA's assessment was based on the finding that Eaton Towers charged **Vodafone Ghana Ltd** (the owner of the masts) fees that were **25% lower** than those charged to other telecommunications operators (such as MTN and Airtel) using the same masts. The GRA argued that this preferential pricing lacked commercial justification and served to undercut the tax revenue due to the state. The Appellant contended that the discount was justified by the specific commercial arrangement where Vodafone handled land leases and license renewals for the sites.

Issues

1. Whether the pricing arrangement between Eaton Towers and Vodafone amounted to a **tax avoidance scheme** under Ghanaian law.
2. Whether the Commissioner-General has the power to **re-characterise** such an arrangement to reflect fair market value for tax purposes.
3. Whether the GRA sufficiently demonstrated the **tax benefit** that accrued to the Appellant as a result of the arrangement.

Held (Judgment)

The High Court **dismissed the appeal** and upheld the GRA's assessment.

- **Tax Avoidance Confirmed:** The Court held that by charging Vodafone significantly less than other users for the same services, the Appellant effectively reduced its corporate income tax and VAT liabilities. The arrangement "works to the disadvantage of the taxman" by blocking income that otherwise should have come to the Appellant.

- **Power to Re-characterise:** The Court affirmed that under **Section 112 of Act 592** and **Section 34 of Act 896**, the Commissioner-General is empowered to re-characterise or disregard arrangements that are entered into as part of a tax avoidance scheme.
- **Market Price Comparison:** The Court found that market prices were easily determined by looking at the higher fees the Appellant charged other entities for identical services on the same masts.

Relevant Legal Provisions Considered

- **Income Tax Act, 2015 (Act 896):**
 - **Section 34:** Grants the Commissioner-General power to re-characterise or disregard arrangements that lack substantial economic effect or are fictitious.
- **Revenue Administration Act, 2016 (Act 915):**
 - **Section 42(5):** Requirements for paying a portion of assessed tax before an objection can be entertained.
 - **Section 99(4) & (5):** Defines a tax avoidance arrangement as one that involves a misuse or abuse of tax law provisions.
- **Internal Revenue Act, 2000 (Act 592):**
 - **Section 112:** General anti-avoidance provision allowing the re-characterization of schemes.
- **Value Added Tax Act, 2013 (Act 870):**
 - **Section 43(1), (2), (3):** Provisions regarding the calculation of VAT in arrangements that reduce tax liability.

Significance

This ruling reinforces the **Arm's Length Principle** in Ghanaian tax administration. It establishes that the GRA can look past "convenient" private agreements between business partners if those agreements result in fees lower than the fair market price, thereby reducing the tax burden. It also clarifies that the burden of proof lies with the taxpayer to show that such a tilt in pricing has a justifiable economic effect beyond tax avoidance.