**Case Brief: Hon. Clement Apaak v. Ghana Revenue Authority**

Citation: Suit No. CM/TAX/0448/2017

Date: 31st July 2018

Court: High Court (Commercial Division), Accra

Judge: Her Ladyship Jennifer Dodoo (Mrs)

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## Flynote

***Tax Law*** *— Value Added Tax (VAT) —* ***VAT Flat Rate Scheme (VFRS)*** *—* ***Practice Notes*** *— Whether the Commissioner-General can use a Practice Note to extend a tax regime to a category of persons not specified by Parliament —* ***Input Tax Deductions*** *—* ***Accrued Rights*** *— Whether a new tax regime can retrospectively extinguish a taxpayer's right to claim previously earned tax credits —* ***Constitutional Law*** *— Non-discrimination.*

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## Facts

In 2017, the Government of Ghana amended the VAT Act to re-introduce the **VAT Flat Rate Scheme (VFRS)** at 3%, applicable to retailers and wholesalers. Unlike the Standard Rate (15%), the VFRS does not allow for the deduction of input tax.

To implement this, the Commissioner-General of the GRA issued **Practice Note Number IDT/2017/001**. This Practice Note extended the 3% VFRS to **importers** of taxable goods. The Plaintiff, a Member of Parliament, challenged this, arguing that the VAT (Amendment) Act, 2017 (Act 948) specifically targeted "retailers and wholesalers" and did not mention "importers." Furthermore, the Plaintiff argued that the new regime unlawfully prevented businesses from deducting input VAT they had already accrued before the law changed.

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## Issues

1. Whether the GRA could lawfully extend the VFRS to importers through a Practice Note when the Act only mentioned retailers and wholesalers.
2. Whether the GRA acted lawfully by preventing taxpayers from deducting or carrying forward input tax credits accrued under the Standard Rate regime prior to the commencement of the VFRS.
3. Whether the VFRS regime was discriminatory against importers in violation of Article 17 of the Constitution.

## Held (Judgment)

The Court **granted the Plaintiff's reliefs in part**:

- **Extension to Importers (Relief Denied):** The Court found that most importers also act as wholesalers or retailers. Therefore, extending the VFRS to them was not inherently unlawful, as they fell within the functional definitions provided in the Act.
- **Protection of Accrued Credits (Relief Granted):** The Court ruled strongly in favour of the taxpayers on this point. It held that input VAT paid before the 2017 Amendment Act came into force constituted **"accrued rights."** The GRA cannot use a new law or a Practice Note to retrospectively take away a taxpayer's right to set off these credits against future output tax.
- **Ordered Remedy:** The Court ordered that all persons under the VFRS who had accrued tax credits under the Standard Rate prior to the law change are entitled to a **refund or a set-off** of those credits.

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## Relevant Legal Provisions Considered

### Statutory Provisions:

- **Value Added Tax (Amendment) Act, 2017 (Act 948):** Introduced the 3% VFRS for retailers and wholesalers.
- **Revenue Administration Act, 2016 (Act 915), Section 100:** Authorises the Commissioner-General to issue **Practice Notes** to provide guidance and consistency, but not to create new tax obligations not supported by the parent Act.
- **Interpretation Act, 2009 (Act 792), Section 19:** Deals with the effect of the repeal or amendment of an enactment on accrued rights and liabilities.

### Constitutional Provisions:

- **Article 17 of the 1992 Constitution:** Guarantee of equality before the law and freedom from discrimination.

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## Significance

This case is a landmark for the **"Principle of Non-Retrospectivity"** in tax matters. It establishes that while Parliament can change the tax rate or the method of calculation moving forward, the GRA cannot use such changes to wipe out financial credits (accrued rights) that a taxpayer has already earned

under a previous regime. It also clarifies that **Practice Notes** are administrative tools for interpretation and cannot be used to expand the scope of a tax law beyond what Parliament intended.