

Case Brief: Scancom PLC v. The Commissioner-General (Ghana Revenue Authority)

Citation: Suit No. CM/TAX/0008/22

Date: 9th November 2023

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

Judge: Her Ladyship Justice Afi Agbanu Kudomor

Flynote

Tax Law – Value Added Tax (VAT) – **Imported Services** – Partial Exempt Trader – **Apportionment** – Whether imported services used for both taxable (telecom) and exempt (mobile money) supplies attract VAT – **National Health Insurance Levy (NHIL) & GETFund Levy** – Decoupling of levies from VAT – Whether NHIL and GETFund levies apply to imported services used for taxable supplies – **Input Tax Deduction** – Burden of Proof in tax appeals.

Facts

The Appellant, Scancom PLC (operating as MTN Ghana), underwent a comprehensive tax audit by the Ghana Revenue Authority (GRA) for the period January 2014 to December 2018. Following the audit, the GRA assessed a total tax liability of approximately GHS 617 million. Scancom objected to the assessment, leading to an Objection Decision by the GRA in September 2021, which revised the liability but maintained assessments on two key issues:

1. **VAT on Imported Services (2014–2017):** The GRA argued that Scancom used imported services (e.g., management fees, royalties, IT support) for both its telecommunications business (a taxable supply) and its Mobile Money business (an exempt supply). Consequently, the GRA treated Scancom as a "partially exempt trader" and apportioned VAT liability based on the ratio of exempt revenue to total revenue.
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2. **NHIL and GETFund Levies (Aug–Dec 2018):** Following the 2018 amendment laws that decoupled NHIL and GETFund levies from VAT, the GRA imposed these levies on Scancom's imported services. The GRA contended these are distinct levies applicable to all imported services, regardless of whether they are used for taxable supplies, and are not subject to input tax deduction.

Scancom appealed to the High Court, arguing that it used the services solely for its telecom business and that the laws do not impose these levies on services used to make taxable supplies.

Issues

1. **VAT on Imported Services:** Whether the Respondent erred in law by imposing VAT on imported services for the period 2014–2017, specifically whether Scancom was a "partial exempt trader" requiring apportionment of input tax between taxable and exempt supplies.

2. **NHIL & GETFund Levies:** Whether the Respondent erred in imposing NHIL and GETFund levies on imported services for the period August–December 2018, and whether these levies apply even when the services are used to make taxable supplies.
3. **Practice Notes:** Whether the Respondent wrongfully relied on internal Practice Notes to impose taxes not sanctioned by statute.

Held (Judgment)

The High Court **dismissed the appeal**, ruling in favour of the Commissioner-General on all grounds.

- **VAT on Imported Services (2014–2017):** The Court held that Scancom was a "Partial Exempt Trader" during this period because it operated its Mobile Money business (exempt) as a revenue line within Scancom PLC before spinning it off into a separate entity in 2018. The imported services (like network infrastructure and IT support) supported *both* the telecom and mobile money businesses. Therefore, under **Sections 49 and 65 of the VAT Act (Act 870)**, the GRA was right to apportion the cost and impose VAT on the portion attributable to exempt supplies.
- **NHIL & GETFund Levies (2018):** The Court ruled that the **National Health Insurance (Amendment) Act, 2018 (Act 971)** and **Ghana Education Trust Fund (Amendment) Act, 2018 (Act 972)** created distinct levies separate from VAT. These laws explicitly state that the levies on imported services are "not subject to input tax deduction". Consequently, these levies apply to *all* imported services, irrespective of whether they are used to produce taxable or exempt supplies. The concept of claiming them as input tax (which would zero out the cost for taxable supplies) was removed by the amendments.
- **Reliance on Practice Notes:** The Court found that the GRA did not rely on Practice Notes to create new taxes but rather enforced the clear provisions of the amended Acts (Act 971 and Act 972).

Relevant Legal Provisions Considered

- **Value Added Tax Act, 2013 (Act 870):**
 - **Section 1(1)(b):** Imposition of VAT on import of services.
 - **Section 49:** Apportionment rules for taxable persons making both taxable and exempt supplies (Partial Exemption).
 - **Section 65:** Definition of "import of services" regarding utilisation in the country other than to make taxable supplies.
 - **First Schedule, Paragraph 19:** Classification of financial services (mobile money) as exempt supplies.
- **National Health Insurance (Amendment) Act, 2018 (Act 971):**
 - **Section 47(3):** States the Levy is not subject to input tax deduction.
- **Ghana Education Trust Fund (Amendment) Act, 2018 (Act 972):**
 - **Section 3A(3):** States the Levy is not subject to input tax deduction.
- **Revenue Administration Act, 2016 (Act 915):**
 - **Section 92:** Burden of proof in tax appeals lies with the taxpayer.
 - **Section 99:** Anti-avoidance provisions.