

INTERNATIONAL BAR ASSOCIATION

RECENT DEVELOPMENTS IN INTERNATIONAL TAXATION

MAY 2019

GHANA

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1 SUMMARY

Some of the tax policy initiatives outlined in the 2019 Budget Statement and Economic Policy of the Government of Ghana to enforce tax compliance, improve tax revenue and stimulate growth in the economy are:

- Reform of Revenue Institutions
- Intensifying Tax Compliance in the Mining Sector
- Use of Third-Party Data to Identify Taxpayers
- Intensifying the Use of Taxpayer Identification Number (TIN)

Ghana's Parliament passed legislations to give effect to some of these policies. These laws were assented to by the President 28th December 2018 and gazetted on 31st December 2018.

On 13th July 2018 the Commercial Division of the High Court in Ghana delivered a judgment in a tax appeal case which sought to limit the ability of a resident entity to deduct royalty payments to foreign entities unless the agreement, based on which the royalties were charged, was registered with the Ghana Investment Promotion Centre (GIPC).

2. REFORM OF REVENUE INSTITUTIONS

The Ghana Revenue Authority (GRA) which is the institution of state charged with the collection and administration of taxes was created in 2009 from the amalgamation of the three revenue agencies - Value Added Tax Service, Internal Revenue Service and the Customs Excise and Preventive Service. The Government of Ghana intends to reform the GRA for the critical task of mobilizing revenue to finance activities outlined in the Budget.

The reforms are expected to improve the quality of the leadership of GRA and boost the performance, responsiveness and work ethics of the entire GRA workforce.

3. INTENSIFYING TAX COMPLIANCE IN THE MINING SECTOR

In an attempt to optimize revenue derived from mining, Government of Ghana intends adopting strategies to strengthen the verification and assessment of minerals derived from mining activities.

The strategies to be adopted will include:

- Ensuring greater scrutiny of the quantity and quality of minerals produced in Ghana as the basis of revenue determination and export valuation;
- Curbing base erosion as a source of systemic undervaluation of royalties and profits;
- Simplifying the collection of withholding taxes from small scale mining operators by shifting the point of collection of the tax to the point of export;
- Capitalizing tax expenditures and recognizing them as additional government equity holdings in mining companies.

4. USE OF THIRD-PARTY DATA TO IDENTIFY TAXPAYERS

To help identify taxpayers, the Government intends to rely on data with The Driver and Vehicle Licensing Authority (DVLA), the Lands Commission, the Courts, Financial Institutions, the Social Security and National Insurance Trust (SSNIT) among others. Government believes that information in the databases of these institutions will be useful in ensuring that all taxpayers fulfil their tax obligations.

5. INTENSIFYING THE USE OF TAXPAYER IDENTIFICATION NUMBER

The Revenue Administration Act, 2016 (Act 915) lists a number of services and transactions that cannot be accessed by individual without a Taxpayer Identification Number (TIN). However, this law has not been strictly enforced. The Government intends applying sanctions to state and private entities that fail to enforce these TIN requirements. Additionally, government, in providing social services and benefits provided by the state, will require beneficiaries or their guardians to have a TIN.

6. COURT JUDGMENT IN BEIERSDORF GHANA LIMITED V THE COMMISSIONER-GENERAL, GHANA REVENUE AUTHORITY [SUIT NO. TAX/0001/18]

The Appellant, Beiersdorf Ghana Limited appealed against an assessment issued by the Ghana Revenue Authority after an audit was conducted on the activities of the company for the 2014, 2015 and 2016 years of assessment. The main argument advanced by the taxpayer was to the effect that GRA erred in law when it disallowed the deduction for tax purposes, royalty payments made to Beiersdorf AG for the use of the Nivea brand because the Royalty Agreement had not been registered with the Ghana Investment Promotion Centre (GIPC).

The Commercial Court division of the High Court dismissed the appeal and upheld the assessment by GRA. The Court ruled that the Royalty Agreement between Beiersdorf Ghana Limited and Beiersdorf AG was a Technology Transfer Agreement as defined in section 43 of the Ghana Investment Promotion Centre Act, 2013 (Act 865). Thus, the Royalty Agreement should have been registered with GIPC and the failure of the appellant to register the Agreement made it unenforceable and any payment made pursuant to the Agreement cannot be deducted for tax purposes in Ghana.

In arriving at its conclusion, the Court did not address the cardinal rules for deducting expenses for income tax purposes under the relevant income tax legislations in Ghana. The rule is to the effect that an expense is allowed as a deduction if it is incurred wholly, exclusively and necessarily in generating income. The income tax laws do not make the registration of an Agreement a pre-requisite for the deductibility of the expense incurred for income tax purposes. The reliance of the Court on the provisions of the Ghana Investment Promotion Centre Act, 2013 (Act 865) without averting its mind to the provisions of the Internal Revenue Act, 2000 (Act 592) which was the income tax law for 2014 and 2015 as well as the Income Tax Act, 2015 (Act 896) which is the income tax law applicable for 2016 brings into question the thoroughness of the decision to serve as a binding precedent.

The Appellant (Beiersdorf Ghana Limited) has appealed the decision given by the High Court to the Court of Appeal and the Court of Appeal has not delivered its judgment as yet.

7. CONCLUSION

The tax revenue measures outlined above are intended to help government achieve its policies of increasing the number of persons paying taxes to generate the needed revenue for development. The decision of the Court of Appeal in the Beiersdorf case might bring some clarity to the High Court decision which essentially makes the deductibility of royalty payments made to foreign entities dependent on the registration of the Agreement with GIPC.