Ruling on Interconnect Services.... the way forward?

July 2013

The controversy over whether Communications Service Tax ("CST") is payable on interconnect services provided by one Telecommunication Company (Telcos) to another was finally put to rest in a judgement handed down by Justice John Ajet-Nasam, of the Economic Crime II court of the Accra High Court.

As you may be aware, the Ghana Revenue Authority ("GRA") has since the enactment of Communications Service Tax Act, 2008, (Act 754) hereafter referred to as "CSTA" maintained that CST was payable on interconnect services and the GRA followed this position up with demand notices and assessments on the telcos to pay CST on interconnect services.

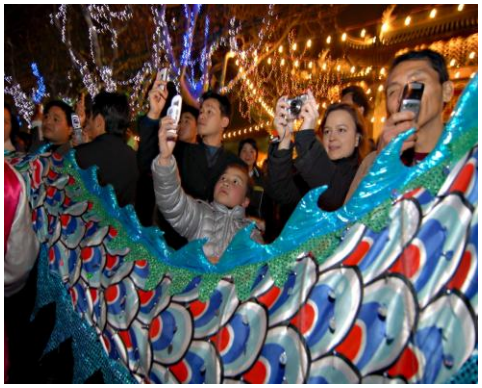
In an appeal to the assessment and CST payment demand notices, the three Telcos in question challenged the decision of the GRA to charge CST on interconnect services on the following grounds:

1. The decision of the Commissioner-General ("CG") of the GRA to charge CST on interconnect service amounted to double taxation and/or in the alternative was illegal;
2. The decision of the CG that the Appellants are customers within the meaning of the CST Act was erroneous; and
3. The CG's interpretation of the Act to Levy CST on interconnect charges was at variance with the express intention of parliament and thus demonstrably wrong.

The first and third issues were consolidated into one as the Court believed that both issues were seeking same relief.

There have been very few instances where the GRA has been challenged in court over its position and no wonder there were no local precedents for the judge to fall on in this case.

It is for this same reason that most taxpayers intending to enter into transactions with significant tax implications tend to seek a private-ruling with the CG before commencement. As this judgement has shown, it is not enough to simply rearrange one's transactions in response to a negative ruling from the CG of the GRA. In fact, taxpayers should be encouraged by this ruling in challenging the decisions of the CG.

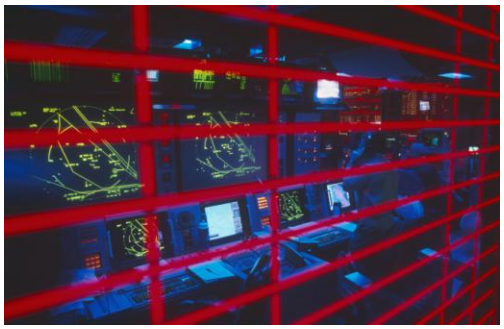


Grounds 1 and 3

The Court was of the opinion Parliament did not intend to impose CST on telcos and that if it was in deed the intention, then it was an absurdity which the Court must not allow to stand.

According to the judgment, imposing CST amounts to double taxation of the interconnect services. The judgement also made reference to the Indian case of ***Fascel Limited v. Ahmedabad***[1] where it was held that *"no telegraph authority can be treated as subscriber of another telegraph authority in relation to the link established between one telegraph authority and another telegraph authority"*.

Also, in ***Power Grid Corporation of India Ltd v. Commissioner of Service Tax***[2], the Attorney General of India opined that *"service tax cannot be levied on these charges which are paid by one telecom service provider to another for enabling calls to move from one network to another"*.



Grounds 2

In deciding whether the telcos are "consumers" who are subject to CST under CSTA, both the Court and counsel for the telcos relied on the literal or dictionary meaning of a consumer and submitted that 'a service provider cannot be a consumer in the sense of interconnectivity'.

The Court relied on dictionary meaning of the word because the CSTA does not provide any definition or interpretation of who a consumer is.

The Black Law dictionary defines a consumer as *"a person who buys goods or services for personal, family or household use, with no intention of resale who uses products for personal rather than business purposes"*

Section 1 of the CSTA provides that "*there is imposed by this Act a tax to be known as the Communications Service Tax to be levied on charges payable by consumers for the use of Communications Service* ".

Accordingly, the Court held that a consumer under section 1 of the CSTA could not be the appellants as the definition cannot be stretched to include the

Communication service provider especially when sub-section 2 of section 1 provides that "*the tax shall be levied on all communication service usage charged by communication service providers with class 1 licenses."*

[1] Fascel Limited v. Ahmedabad [1]CST 2007 (01) LC X0226

[2] Power Grid Corporation of India Ltd v. Commissioner of Service Tax[2], New Delhi 2008 (09) LC X 0345

The court further held that the CST is not a direct tax as it is not directly imposed on a person and is not transferrable. It further noted that interconnect charges cover the costs of terminating calls and maintaining and operating the points of interconnect.

In summary, for grounds 2, the court concluded that a consumer does not in the context of the CST Act mean a Telco. Telcos are involved in interconnection and they provide Communication Service to one another and such must not be construed to mean a consumer of one telco to another.

This ruling brings clarity to the long outstanding issue faced by the telcos resulting in additional costs for them.

It is hoped that this will be emulated by all taxpayers who have similar or peculiar issues and are unsatisfied by the position or tax treatments taken by the GRA.

How PwC can assist your business

PwC Ghana has built competencies in tax compliance and advisory issues over the years; we can assist your business with compliance with the new taxes and levies once in force.

PwC also has the capacity to conduct training for your staff on both new and existing grey areas of tax compliance.

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