

Filed on 13-09-17
at 10:03 am/pm

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(COMMERCIAL COURT) Registrar
HIGH COURT
COMMERCIAL DIVISION, L.L.O-ACCRA
ACCRA - A.D. 2017

THE REPUBLIC

SUIT NO.

v.

Misc/0159/2017

COMMISSIONER-GENERAL
GHANA REVENUE AUTHORITY
ACCRA

RESPONDENT

EX-PARTE

GHANA TELECOMMUNICATIONS CO. LTD.
ACCRA

APPLICANT

MOTION ON NOTICE FOR AN ORDER OF CERTIORARI AND MANDAMUS
(ORDER 55 RULE 4)

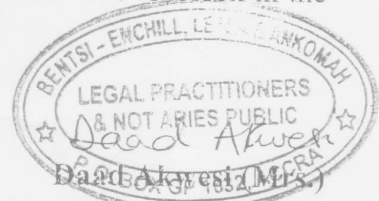
TAKE NOTICE that lawyers for the Applicant shall move this Honourable Court praying for an order of certiorari, bringing up and quashing the decision of the Respondent demanding payment of 30% of a disputed tax assessment and for an order of mandamus compelling the Respondent to determine the Applicant's request for a waiver of said payment, on the grounds stated in the accompanying affidavit, and for any further order(s) as this Honourable Court may deem fit.

Se Court to be moved on WED the 11th day of OCT. 2017 at 9 O'clock in the forenoon or so soon thereafter as counsel may be heard.

Dated this 12th day of September 2017.

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REGISTRAR
HIGH COURT
COMMERCIAL DIVISION



Bentsi-Enchill, Letsa & Ankomah
Lawyers for Applicant
Licence No.: GAR 16289/17
Firm licence number: Pp 0003109/17

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orig/inst - 100.00
doc - 10.00
exh - 70.00
Graf - 180.00

0466269
0466303
13-09-17

Slu-2017

The Registrar
High Court (Commercial Court)
Accra

And to the Respondent.

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Filed on 18-09-17
10:03 am/pm
Registrar
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(COMMERCIAL COURT)
ACCRA - A.D. 2017

SUIT NO.

THE REPUBLIC

V.

COMMISSIONER-GENERAL
GHANA REVENUE AUTHORITY
ACCRA

- RESPONDENT

EX-PARTE

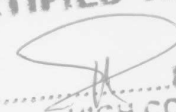
GHANA TELECOMMUNICATIONS CO. LTD.
ACCRA

- APPLICANT

AFFIDAVIT IN SUPPORT

I, Theodore Albright, of 8 Abidjan Street East Legon, Accra, Head of Legal of the Applicant company, make oath and say as follows:

1. That I am the deponent herein and I have the authority of the Applicant to swear to this affidavit and to depose to these matters which have come to my personal knowledge and belief in the course of my duties.
2. That in July 2017, the Respondent conducted a Transfer Pricing audit of the Applicant for the 2012-2016 years of assessment.
3. That during the cause of the audit, the Applicant disagreed with the Respondent's use of the Technology Transfer Regulations, 1992 (L.I. 1547) instead of the Transfer Pricing Regulations, 2012 (L.I. 2188), in the audit exercise.
4. That the parties met several times to resolve the Applicant's disagreements without success and consequently the Respondent requested the Applicant to submit its grievance in writing.
5. That by a detailed memo to the Respondent dated 3rd August 2017, the Applicant, through its consultant, KPMG, set out the issues arising from the audit, juxtaposed the Applicant's position with the Respondent's and requested

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HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

that the Respondent review its computations. (A copy of the Applicant's memo issued by KPMG to the Respondent is attached and marked as "**Exhibit TA**".)

6. That whilst waiting for the Respondent's response to **Exhibit TA**, the Applicant received an audit report with a tax assessment of GHc162,468,361.90 (One Hundred and Sixty-Two Million, Four Hundred and Sixty-Eight Thousand, Three Hundred and Sixty-One Cedis, Ninety pesewas), on 8th August 2017, from the Transfer Pricing Unit of the Ghana Revenue Authority ("GRA"). (A copy of the said audit report is attached as "**Exhibit TA1**".)
7. That the said Transfer Pricing Unit of the GRA demanded that the Applicant pay the full amount stated in **Exhibit TA1** within 14 days.
8. That the Applicant responded to Exhibited TA1 by a letter dated 17th August 2017, and objected to the assessment and demand in **Exhibit TA1** and further setting out the apparent misapplication of the statutory provisions regulating the issue in dispute. (A copy of the Applicant's objection letter is attached as "**Exhibit TA2**".)
9. That by a letter dated 21st August 2017, the Transfer Pricing Unit of the GRA requested the Applicant to provide specified details in "order to facilitate the audit process" being undertaken by the Respondent and then requested for the Applicant's "maximum co-operation" in the exercise. (A copy of the letter from the Transfer Pricing Unit is attached as "**Exhibit TA3**".)
10. That before the Applicant could respond to **Exhibit TA3**, it received a dated 23rd August 2017 from the Large Taxpayer Office of GRA, and erroneously addressed to "PRICEWATERHOUSECOOPERS (GH) LTD." acknowledging receipt of **Exhibit TA2** and demanding payment of thirty percent (30%) of the sum assessed in **Exhibit TA1**, being GHc48,740,508.57, within 5 days. (A copy of the said letter from the Large Taxpayer Office is attached as "**Exhibit TA4**".)
11. That **Exhibit TA4** neither referred to the request for information and cooperation demanded to facilitate the audit, in **Exhibit TA3**, nor responded to **Exhibit TA**.
12. That in response to **Exhibit TA1** and **Exhibit TA4** and pursuant to section 42(6) of the Revenue Administration Act, 2016 (Act 915), the Applicant applied to the Respondent to exercise his discretion under the law and waive the 30% objection payment precondition. (A copy of the Applicant's application for a waiver is attached as "**Exhibit TA5**".)
13. That in a 4th September 2017 response to **Exhibit TA5**, the Respondent stated that although the enactment gives him "*the power to waive, vary or suspend the*

[the payment, he is] yet to consider a decision to exercise that authority.” and then demanded the payment of the 30% within 7 days of the letter. (A copy of the Respondent’s letter is attached as “Exhibit TA6”.)

14. That alarmed by the Respondent’s refusal to exercise the statutory discretion vested in him, the Applicant followed up and held discussions with the Respondent on the issue but the Respondent has continued with his refusal to consider the Applicant’s application for a waiver.
15. That the GRA has since followed up to demand payment despite the pendency of the Applicant’s application for a waiver of the payment.
16. That in refusing to consider the Applicant’s application for a waiver, the Respondent has disregarded his statutory obligation under the said enactment.
17. That the Respondent has also refused to indicate any lawful basis for his decision not exercise his power to consider the application for a waiver by the Applicant who is directly affected by and faced with the daunting obligation of paying the colossal amount of GHc48,740,508.30.
18. That the Respondent will proceed to enforce the payment of 30% of the disputed tax assessment in contravention of the enactment, unless this Honourable Court exercises its supervisory jurisdiction and issues an order of *certiorari* bringing up the Respondent’s decision and quashing same.
19. That additionally, the Respondent would persist in his refusal to consider the Applicant’s application for a waiver in outright disregard of the enactment vesting him with the discretion, unless compelled to do so by an order of *mandamus* from this Honourable Court.
20. That in the circumstance the Applicant hereby prays this Honourable Court for orders of *certiorari* and *mandamus* as prayed herein.
21. That the Respondent is the person directly affected by the orders sought and his address for service is at: Ghana Revenue Authority, Off Starlets 91 Road, Near Accra Sports Stadium, Accra.

WHEREFORE I swear to this affidavit in support.

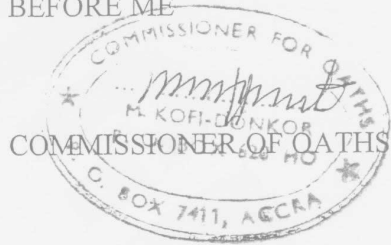


DEPONENT

SWORN THIS 12th DAY OF SEPTEMBER 2017.

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BEFORE ME



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HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

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"Exhibit TA"



Memo

13 Yiyiwa drive
Marlin House
Abelenkpe
Accra, Ghana
P.O. Box 242

Telephone +233 (0) 302 770454, 770618, 770712
Telefax +233 (0) 302 771500
Internet www.kpmg.com

This is the Exhibit Marked
TA in the Oath of
T. Abright before
me this 12th day of Sept 2017
Commissioner for Oaths

To Transfer Pricing Unit - Ghana Revenue Authority Date 3 August 2017
From Ghana Telecommunications Company Limited / KPMG Ghana Ref Memo to Transfer Pricing Unit.doc

Matters Arising from Meeting with the Transfer Pricing Unit

In reference to the transfer pricing audit meeting held at the Ghana Revenue Authority (GRA) Transfer Pricing (TP) unit, on 14 July 2017, we respond on behalf of our above-named client to the transfer pricing adjustments as follows:

- 1. Inappropriate Use of the Technology Transfer Regulations, 1992 (L.I. 1547) for the Transfer Pricing Adjustments

Your Position: Our review of your transfer pricing (TP) audit adjustment schedules, indicate that regulation 17 of the Technology Transfer Regulations, 1992 (L.I. 1547) was used in determining the arm's length basis of the controlled transactions entered into by Ghana Telecommunications Limited (Ghana Telecom) for the 2012 to 2016 years of assessment.

Our Response: It is our view that, the Transfer Pricing Regulations, 2012 (L.I. 2188) should be the basis for any transfer pricing adjustment instead of the Technology Transfer Regulations (L.I. 1547).

This is because the main objective of L.I. 1547 is to regulate the payment and transfer of forex in respect of transfer of technology, whereas the L.I. 2188 provides the basis and the methods for determining the arm's length price for transactions between controlled parties.

We, therefore, request that the L.I. 2188 be the principal law for any transfer pricing adjustments.



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*Ghana Telecommunications Company Limited
Matters Arising from Meeting with the Transfer Pricing Unit
3 August 2017*

We, therefore, request that you review your position based on the above provisions.

3. Management Services Fees

Your Position: We noticed from your adjustment that, management service fees charged in excess of 8% of turnover has been disallowed for tax purposes in the 2012 to 2016 Financial Statements. This is based on your application of the L.I. 1547 which provides for the use of a percentage (%) of net sales as a basis for fees to be charged for technology transfer agreement.

Our Response: As per the accompanied Transfer Pricing Report (TP report), Vodafone Group Services Limited (VGSL), a member of the Vodafone Group, provides management services to Ghana Telecom. These services include corporate functions, group technology, Vista Services and Data Centre services.

The appropriate method from the TP report selected for the purpose of benchmark analysis is the Transaction Net Margin Method (TNMM). This is one of the five (5) methods specified in the Transfer Pricing Regulations, 2012 (L.I. 2188) to be used in determining arm's length price.

Please refer to section 6.2.1 of the TP report for the basis of selecting this method. A copy of the report is attached for ease of reference.

That notwithstanding, the functional analysis, economic analysis, benchmark analysis and the comparability test performed supports the arm's length price charge in the 2012 to 2016 financial statements. Thus, the fee for management services is in accordance with arm's length principle established by the Transfer Pricing Regulations, 2012 (L. I. 2188). Please refer to section 6.1 of the TP report.

We, therefore, request that, the use of the TNMM be the support for the determination of the arm's length nature of the charge.

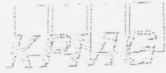
4. Commission on Procurement

Your Position: From your adjustment of the commission on procurement, we noted that, the commission charged in excess of 5% of turnover in the 2012 and 2013 Financial Statements was disallowed.

Our Response: We, however, want to bring to your attention that, the commission charged in the 2012 to 2013 Financial Statements is in respect of central procurement services being provided by Vodafone Procurement Company Limited (VPC) to Ghana Telecom.



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*Ghana Telecommunications Company Limited
Matters Arising from Meeting with the Transfer Pricing Unit
3 August 2017*

As per the attached Transfer Pricing Report and in line with Regulation 3(1) of Transfer Pricing Regulations 2012, (L.I. 2188) in determining the arm's length nature of the procurement commission charged in the accounts, Ghana Telecom selected the TNMIM as the most appropriate method. Please refer to section 8.2.2 of the TP report for the basis of selecting this method. A copy of the report is attached for ease of reference.

That notwithstanding, the functional analysis and benchmark results, including the comparability analysis supports the commission price charged in the 2012 to 2013 financial statements. Thus, the commission charged on the procurement services is in accordance with arm's length principle established by the Transfer Pricing Regulations, 2012 (L. I. 2188).

We, therefore, request that you review the report and amend your position.

5. Marketing, Advertisement and Promotion (MAP)

Your Position: We noted from your adjustment that, you have imputed interest income to Ghana Telecom at the average treasury bill rate on the MAP expense charged in the 2012-2016 Financial Statements.

Our Response: We, however, bring to your attention that, the ownership of the Vodafone Brand resides with Vodafone Sales and Services Limited (VSSL). It is important to note that, a mere legal ownership of the brand (i.e. Vodafone brand) does not by itself confer any right to the return from its exploitation. Instead, the economic return from the brand, the cost and any other economic burdens associated with the brand, will be allocated to the entity which performs and controls the important value-creating functions of developing, enhancing, maintaining, protecting and exploiting the brand.

The above value-creating functions mentioned are the responsibility of Vodafone Sales and Services Limited. Ghana Telecom does not contribute to any of these functions. Ghana Telecom, however, benefits from the use of the Vodafone Brand in promoting its services in the local market.

Ordinarily, in the conduct of every business activity, an entity expends an amount of money on marketing, advertising and promotions.

It is also a fact that, a strong global brand is a key factor in attracting and retaining customers, which assists in gaining and/or maintaining markets share and margins. The expenses incurred by Ghana Telecom on marketing, advertising and promotions are for generating revenues from Ghanaian clients. These revenues are recognised in the books of Ghana Telecom and as such, Ghana Telecom is the beneficiary from the marketing, advertising and promotions it has incurred.



Furthermore, no contribution is attributed for the use of the trademark as noted in the functional analysis of the transfer pricing report.

We, therefore, request that you review the attached TP report and amend your position.

6. Brand Royalty Payment

Your Position: We noticed from your adjustment that, royalty charged in excess of 2.45% of turnover has been disallowed for tax purposes in the 2013 to 2016 Financial Statements. This is based on your application of the L.I. 1547, which provides for the use of a percentage (%) of net sales as a basis for fees to be charged for technology transfer agreement.

Our Response: As stated in point (5) above, the Vodafone brand is a well-known brand worldwide and is a key factor in attracting and retaining customers which assists in gaining and/or maintaining markets share and margins for the Company.

The appropriate method from the TP report selected for the purpose of benchmark analysis is the Comparable Uncontrolled Price (CUP) method. This is one of the five (5) methods specified in the Transfer Pricing Regulations, 2012 (L.I. 2188) to be used in determining arm's length price.

The functional analysis and the benchmark results, including the comparability analysis also identified comparable independent companies providing similar or identical function as a supports to the royalty fees charged in the accounts.

Also the benchmarking in the Brand report was based on revenues or turnover and not net revenues as per your adjustments.

The results of the Transfer Pricing Policy, therefore, supports the margin earned by VSSL for their contribution to the Vodafone Brand which is in compliance with arm's length principle established by the Transfer Pricing Regulations, 2012 (L. I. 2188).

We, therefore, request that you review the report and amend your position.

7. Interest on Inter-Company Loan

Your Position: From your adjustments, loan interest payment in excess of 5% plus LIBOR has been disallowed for tax purposes for the 2012 to 2016 financial years.

Our Response: We, however, want to indicate that, the total interest charged on the inter-company loan together with its associated exchange losses have been duly disallowed for tax purposes for the 2012 to 2016 years of assessment in accordance with Section 71 of the Internal Revenue Act, 2000 (Act 592).

YPIAG

Ghana Telecommunications Company Limited
Matters Arising from Meeting with the Transfer Pricing Unit
3 August 2017

The above position has also been duly documented in the TP report thus we do not agree with the further adjustment to the interest charged in the Financial Statements as doing so will result in duplication of tax charges on the interest expense and exchange losses incurred.

We, therefore, request that you review the attached TP report together with the tax computations filed for 2012 to 2016 years of assessment based on regulation 8(4) of L.I. 2188 and amend your position.

In view of the above responses, we look forward to your revised report on the issues.

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TPU/LTO/08/17

TRANSFER PRICING UNIT
(LARGE TAXPAYER OFFICE)
2ND FLOOR, VAT HOUSE
P. M. B 28, OSU
ACCRA

8TH AUGUST, 2017

THE MANAGING DIRECTOR
GHANA TELECOMMUNICATION COMPANY LIMITED
SOUTH LIBERATION LINK
MANET TOWER A, AIRPORT CITY
PMB 221, ACCRA-NORTH

Dear Sir,

GHANA TELECOMMUNICATION COMPANY
TRANSFER PRICING AUDIT 2012-2016 YEARS OF ASSESSEMENT

We have reviewed your Transfer Pricing Returns and documentation and have held meetings with your team lead by the Financial Controller and Transfer Pricing Advisors, KPMG, and wish to formally write to you on all the issues raised and discussed with both teams.

- i. **Payment for Services under Technology Transfer Regulation 1992, LI 1547:**
Payment for service to related parties as captured under the Technology Transfer Agreement should not cumulatively exceed 8% of net sales. Regulation 17 of LI 1547 states "where a transferor provides management/technical services, in addition to patents know-how and trademarks, the total fee shall not exceed 8% of net sales". Your payments for 2012 and 2013 exceeded the 8% limit provided for under the Technology Transfer Regulation (TTR) 1992, LI 1547. Adjustments have been made to the excess payments for the 2012 and 2013 years of assessment and is attached as appendix I.

We wish to emphasize that, the rate contained in the agreement of the TTR 1992, LI 1547 is not an Arm's Length Price. We would therefore subject all the transactions undertaken under the Agreement to the Arm's Length test, that is whether;

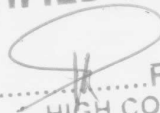
- the service has actually been rendered
- the service rendered provides economic benefit and
- an independent person in a comparable circumstance will pay that charge for the service.

- ii. **Commission on Procurement:**

Our understanding of the centralized procurement system undertaken by the Vodafone Procurement Limited Company Limited based in Luxemburg is to take advantage of the economies of scale for bulk purchase which will ordinarily reduce the unit price. Information available to us indicate that when companies make such

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bulk purchases, they are entitled to discounts of between 10%-20% of the open market price. If the local company is not entitled to any of the discount enjoyed by the related party supplying the items, we are of the view that a commission of 10% put on the procurement and supply of the items due the local subsidiary is on the high side.

We have therefore adjusted all commission in excess of 5% and the computation is attached as appendix II.

iii. **Interest and Loan:**

Vodafone Overseas Finance Limited UK has granted a loan facility to Ghana Telecom at an interest rate of 9% plus libor per annum. Information available to us indicate that, it is possible for a local Ghanaian Company to obtain a US dollar denominated loan on the Ghanaian financial market and pay interest of between 8%-12%. The applicable rate is for third party companies which bear risk in the estimation of the financial institutions. Subsequently, we find the interest rate of 9% plus libor for a related party transaction to be on a high side.

We are of the view that a 5% plus libor as the rate of interest is a fair rate to charge for the loan. The corresponding adjustment is attached as appendix III.

iv. **Payment for the use of intangibles:**

The Vodafone Ireland Marketing Limited receives royalty for the use of the Vodafone intangibles, that is the Logo from Ghana Telecom.

In addition, Ghana Telecom advertises, promotes and markets the Vodafone brand although it is not the legal owner of the Vodafone brand. Ghana Telecom is actually involved in the development, enhancement, maintenance, protection and exploitation of the Vodafone brand.

The Transfer Pricing Principle here is that the ultimate allocation of return derived by the multinational group from the exploitation of intangibles among members of the group, and the ultimate allocation of cost and other burdens related to intangibles among of the group is accomplished by **compensating** members of the group for **functions performed, assets used and risk assumed** in the development, enhancement, maintenance, protection and exploitation of the intangible assets. Ghana Telecom has performed functions, deployed assets and taken risks in the performance of the functions listed above and should be adequately compensated by the Parent Company for the services rendered. It is in the fulfilment of this functions performed by Ghana Telecom on behalf of the Parent Company of brand enhancement that the Marketing, Advertising and Promotional expenses have been adjusted to compensate the local subsidiary. The adjusted figures are attached as appendix IV.


KWAME OWUSU
(HEAD, TRANSFER PRICING UNIT)

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SUMMARY OF RELATED PARTY TRANSACTIONS ADJUSTMENTS

	MGT. & ADMIN GH¢	COM. PROCUREMENT GH¢	MAP GH¢	ADJUSTED INT. GH¢	TOTAL GH¢
2012	172,656.00	537,727.50	541,311.20	24,196,589.28	25,450,295.98
2013	1,494,472.00	2,177,880.00	1,840,412.88	20,961,289.55	26,476,067.42
2014	2,055,216.00		2,088,481.74	12,489,872.23	16,635,583.97
2015	4,494,276.00		626,480.76	23,606,760.74	28,729,532.50
2016	4,600,940.00		759,993.55	22,331,304.52	27,694,254.06
TOTAL	12,817,560.00	2,715,607.50	5,856,680.12	103,585,816.32	124,985,733.94
PENALTY @ 30%	3,845,268.00	814,682.25	1,757,004.04	31,075,744.90	37,492,699.18
TOTAL LIAB.	16,662,828.00	3,530,289.75	7,613,684.15	134,661,560.00	162,468,361.90

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GHANA TELECOM LIMITED

APPENDIX I

ADJUSTMENT ON MANAGEMENT AND TECHNICAL SERVICES

YEAR 2012 TO 2016

Y/A	TURNOVER GH¢	MGT & ADM PAID PER ACCOUNT GH¢	MGT & ADM AS % OF TURNOVER GH¢	% DISALLOWED	AMOUNT ALLOWED GH¢	DISALLOWED AMOUNT GH¢	WITHHOLDING RATE	TAX@25% LESS WITHHOLDING TAX RATE GH¢
2012	530,943,000.00	44,202,000.00	8.32518745	0.32518745	42,475,440.00	1,726,560.00	15%	172,656.00
2013	667,316,000.00	68,330,000.00	10.2395267	2.239526701	53,385,280.00	14,944,720.00	15%	1,494,472.00
2014	793,473,000.00	84,030,000.00	10.59015241	2.590152406	63,477,840.00	20,552,160.00	15%	2,055,216.00
2015	938,153,000.00	119,995,000.00	12.79055762	4.790557617	75,052,240.00	44,942,760.00	15%	4,494,276.00
2016	1,086,415,000.00	178,932,000.00	16.46994933	8.469949329	86,913,200.00	92,018,800.00	20%	4,600,940.00
TOTAL					321,304,000.00	174,185,000.00		12,817,560.00
PENALTY @ 30%								3,845,268.00
TOTAL LIABILITY								16,662,828.00

ADJUSTED INTEREST ON LOAN FROM VODAFON OVERSEAS FINANCE LIMITED							
YEAR	INTEREST CHARGED PER ACCOUNT @ 9% PLUS LIBOR GH¢	AVERAGE LIBOR INTEREST RATE GH¢	9% PLUS LIBOR RATE GH¢	5% PLUS LIBOR RATE ALLOWED GH¢	ADJUSTED INTEREST AMOUNT @ 5% PLUS LIBOR GH¢	DISALLOWED INTEREST GH¢	Tax@17% GH¢
2012	325,711,000.00	0.1535	9.1535	5.1535	183,378,121.87	142,332,878.13	24,196,589.28
2013	281,431,000.00	0.1298	9.1298	5.1298	158,129,296.79	123,301,703.21	20,961,289.55
2014	167,000,000.00	0.0922	9.0922	5.0922	93,530,163.33	73,469,836.67	12,489,872.23
2015	316,790,000.00	0.1252	9.1252	5.1252	177,926,701.53	138,853,298.47	23,606,760.74
2016	309,097,000.00	0.4122	9.4122	5.4122	177,736,385.19	131,360,614.81	22,331,304.52
TOTAL	1,400,029,000.00				790,700,668.71	609,328,331.29	103,585,816.32
PENALTY @30%							
TOTAL LIABILITY							
							134,661,561.22

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GHANA TELECOM LIMITED
ADJUSTMENT ON MARKETING, ADVERTISING & PROMOTION (MAP)

APPENDIX IV

YEAR	MAP EXPENSES PER ACCOUNT GH¢	AVERAGE TB RATE	INTEREST ON MAP@ AVERAGE TB RATE GH¢	TAX @ 25% GH¢
2012	11,535,667.50	18.77%	2,165,244.79	541,311.20
2013	34,741,158.58	21.19%	7,361,651.50	1,840,412.88
2014	38,873,554.93	21.49%	8,353,926.95	2,088,481.74
2015	11,132,487.91	22.51%	2,505,923.03	626,480.76
2016	13,240,305.71	22.96%	3,039,974.19	759,993.55
TOTAL				5,856,680.12
PENALTY @ 30%				1,757,004.04
TOTAL LIABILITY				7,613,684.15

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COMMERCIAL DIVISION, LLC-ACCRA

"Exhibit TA2"



KPMG
Marlin House
13 Yiyiwa Drive, Abelenkpe
P. O. Box GP 242
Accra, Ghana
Tel: +233(302) 770454
+233(302) 770618
Fax: +233(302) 771500
Internet: www.kpmg.com.gh



This is the Exhibit Marked
TA2 in the Oath r
T. Albright before
me this 12 day of Sept 2017
mmmm
Commissioner for Oaths

The Commissioner- General
Ghana Revenue Authority
Off Starlets 91 Road,
Near Accra Sports Stadium
Accra

TIN C0003137155
Our ref TG.1548/KFK/MB
Contact M. Boateng



17 August 2017

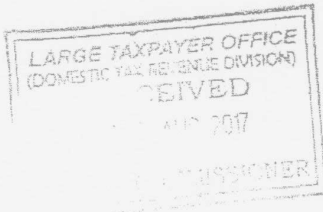
Dear Sir

**Re: Objection Letter - Ghana Telecommunications Company Limited
Transfer Pricing Audit 2012 – 2016 Years of Assessment**

On behalf of our above-named client, we acknowledge receipt of your letter dated 8 August 2017 on the above subject matter.

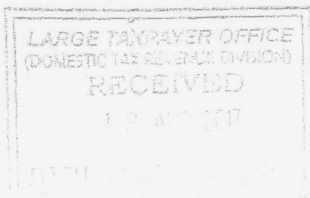
We, however, noted from your letter that, the contents of our memo dated 3 August 2017 which provided detailed responses to the transfer pricing audit meeting held at the Ghana Revenue Authority Transfer Pricing Unit, on 14 July 2017 (Copy attached) has not been considered in your present assessments.

We object to your assessment as per Section 128(1) of the Internal Revenue Act, 2000 (Act 592), which states that:



"A person who is dissatisfied with an assessment made under this Act may lodge an objection to the assessment with the Commissioner within thirty days of the service of the notice of assessment or, in the case of a provisional assessment under section 76, within nine months of the comments of the basis period to which the provisional assessment relates."

We also challenge the basis of the transfer pricing adjustments as they are not based on the stipulated guidelines as per section 8(4) of the Transfer Pricing Regulations, 2012 (L.I. 2188) which states that:



"The Commissioner-General shall adjust the taxable profit of a person if the Commissioner-General is satisfied after the examination that the amount

- (a) charged to the final accounts, or

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**REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA**

KPMG is a separately established unit. Ghanaian law, in terms of
KPMG is a separate legal entity. Ghanaian law, in terms of
KPMG is a separate legal entity. Ghanaian law, in terms of

ghanabusinessnews.com

"Exhibit TAB"

GHANA REVENUE AUTHORITY



Our Ref. No. TPU/LTO/08/17

Your Ref. No. _____

TRANSFER PRICING UNIT
(LARGE TAXPAYER OFFICE)
2ND FLOOR, VAT HOUSE
P. M. B 28, OSU
ACCRA

21ST AUGUST, 2017

THE MANAGING DIRECTOR
GHANA TELECOMMUNICATION COMPANY LIMITED
SOUTH LIBERATION LINK
MANET TOWER A, AIRPORT CITY
PMB 221, ACCRA-NORTH

This is the Exhibit Marked
TAB in the Oath of
T. Albright before
me this 12th day of Sept 2017
Wm. C. ...
Commissioner for Oaths

Dear Sir,

GHANA TELECOMMUNICATION COMPANY LIMITED

AUDIT OF PAYMENTS UNDER TECHNOLOGY TRANSFER REGULATION 1992, LI-1547 (TTR 1992)

In our letter dated August 8, 2017 (Our Ref. No. TPU/LTO/08/17) on Transfer Pricing Audit for the 2012-2016 years of assessment, we did indicate that we would subject all transactions undertaken under the Technology Transfer Regulation 1992, LI 1547 to a Transfer Pricing audit to determine whether they meet the Arm's Length Test.

In order to facilitate the audit process, we would be grateful if you could furnish us with the following details concerning all transactions undertaken under LI 1547:

- i. Names, Addresses and Passport number of the Resource Persons;
- ii. Nature of services rendered including quantum of service received by your company;
- iii. Evidence that Ghana Telecom was not in a position to perform that service on its own;
- iv. Whether the Ghana Telecom has the capacity to absorb the services provided by the Resource Persons;
- v. The economic benefits derived by Ghana Telecom;
- vi. Whether in comparable circumstances an independent party will be willing to pay for the service.

Mr. Lucas Bram-Larbi and Wilfred Gamel Nassar are the Transfer Pricing Specialist to conduct the audit.

We hope you will give our audit team the maximum co-operation in the discharge of this responsibility.

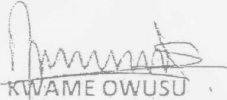
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Off Starlets '91 Road, P. O. Box 2202, Ministries - Accra
Tel.: +233 (0) 302 675714, Fax: +233 (0) 302 664538
Email: info@gra.gov.gh Website: www.gra.gov.gh

CERTIFIED TRUE COPY

REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC ACCRA
Office of The Commissioner
Domestic Tax Revenue Division

Yours faithfully,
For: Deputy Commissioner (LTO)



KWAME OWUSU
(HEAD, TRANSFER PRICING UNIT)

Cc: Deputy Commissioner (LTO)
The Partner, KPMG

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.....REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

"Exhibit TA4"



GRA

Our Ref. No. LT01DC17\08117

Your Ref. No.

TEL: 0302-210570/210599
FAX: 0302-225871
Email: info@gra.gov.gh

LARGE TAXPAYER OFFICE
VAT HOUSE
PMB 28
ACCRA

Off Starlets, 91 Road
P.O. Box 2202,
Ministries, Accra.

T: +233 (0) 302 953407
F: +233 (0) 302 664538
E: info@gra.gov.gh

www.gra.gov.gh

23rd August, 2017

THE PARTNER
PRICEWATERHOUSECOOPERS (GH) LTD.
NO. 12 AIRPORT CITY
UNA HOME 3RD FLOOR
AIRPORT - ACCRA

Dear Sir

RE: TRANSFER PRICING AUDIT REPORT 2012 – 2016
GHANA TELECOMMUNICATION COMPANY LIMITED

We acknowledge receipt of your letter dated August 17, 2017 seeking a further review of the above assessment.

Section 42(5)(b) of Revenue Administration Act, 2016 (Act 915) states as follows:

"An objection against a tax decision shall not be entertained unless the person has paid all outstanding taxes including thirty percent of the tax in dispute".

Accordingly, pending the determination of the objection, you are required to pay thirty percent of the assessment computed as follows:

Tax Assessed	162,468,361.90
Amount not in Dispute	<u>NIL</u>
Amount Disputed	162,468,361.90
Tax payable @ 30% thereon	48,740,508.57

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..... REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

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Integrity. Fairness. Service.

This is the Exhibit Marked
TA4 in the Oath of
J. Albright before
me this 12th day of Sept 2017
[Signature]
Commissioner for Oaths

Your are entreated to forward to the LTO your cheque for GHs48,740,508.57 being amount payable for objection to be determined. Ensure payment within five (5) days from the date of service of this letter.

Thank you.

Yours faithfully,

Ed Gyambrah
23/1/17.

EDWARD GYAMBRAH
(DEPUTY COMMISSIONER)
(LARGE TAXPAYER OFFICE)

CC: The Chief Financial Officer
Ghana Telecommunications Company Ltd.
South Liberation Link
Accra-North

Head, Audit
Head, CM/DM & E
Head, TPS

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.....REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

"Exhibit TA5"



vodafone

August 25, 2017

The Commissioner-General
Ghana Revenue Authority
Off Starlets 91 Road,
Near Accra Sports Stadium
Accra.

This is the Exhibit Marked
TA5 in the Oath of
J. Albright before
me this 12 day of Sept 2017
Commissioner For Oaths

Dear Sir,

RE: TRANSFER PRICING AUDIT REPORT 2012 – 2016 YEARS OF ASSESSMENT
GHANA TELECOMMUNICATION COMPANY LIMITED

We write following your letters of 8th August 2017 and 23rd August, 2017 with your references TPU/LTO/08/17 and LTO\DC\TP\08\17 respectively and note their contents.

- A. We wish by this letter to ask the Commissioner-General to:
1. Exercise his discretion to waive the 30% deposit requirement - in order that our objection be addressed - in accordance with Section 42 (6) of the Revenue Administration 2016 (Act 915);
 2. Instruct that the concerns raised in our correspondence dated 3 August 2017 be addressed fully;
 3. Instruct that, until a final resolution of the matter has been communicated in writing and the parties have exhausted the appeal procedure, the Task Force should desist from visiting Vodafone's premises under the pretext of an enforcement action.
- B. We seek the exercise of the Commissioner-General's discretion for the following reasons:
1. Our very comprehensive correspondence - dated 3 August 2017 (preceding your Transfer Pricing Audit Report (TPAR) detailing significant concerns- regarding the application of the L.I. 1547 and L.I. 2188 by the Ghana Revenue Authority's (GRA) Transfer Pricing Unit remains unanswered; Indeed, this correspondence was a follow up to a meeting held on 17 July 2017 with the Transfer Pricing Unit (Large Taxpayer Office) where we were encouraged to put our concerns in writing;
 2. The resultant decision -upon which the TPAR dated 8 August 2017, is based- is inconsistent with the provisions of Regulation 8 of the LI 2188 (for taxable profit) which makes reference to methods of computation in Sections 1-6 of Income Tax Act 2015 (Act 896); It is the accepted view that a transfer pricing adjustment is to be assessed on the chargeable income of businesses. We are unaware of any tax law that requires businesses to pay a transfer pricing adjustment on the related party expense or charge in dispute. Consequently, requiring us to pay 30% of a supposed tax liability which is untenable and not backed by law;
 3. The TPAR stipulated 14days for a response, which is not in consonance with the 30 days allowed for an appeal by Section 42 (1) of the Revenue Administration Act 2016 (Act 915);

Ghana Telecommunications Company Limited
Headquarters: Vodafone Ghana, South Liberation Link
Manet Tower A, Airport City, Accra- Ghana
T-233 (302) 919 935, www.vodafone.com.gh

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HIGH COURT

COMMERCIAL DIVISION, LLC-ACCRA

4. The subsequent letter dated 23rd August, 2017 asked that payment of the 30% following the objection - amounting to GHS48,740,508.57 Forty-Eight Million Seven Hundred and Forty Thousand Five Hundred and Eight Cedis Fifty-Seven Pesewas- be made within 5 days;
5. To date we are not aware of the rationale for arriving at the additional tax liability of GHS162,468,361.90 One Hundred and Sixty-Two Million Four Hundred and Sixty-Eight Thousand Three Hundred and Sixty-One Cedis Ninety Pesewas;
6. To ignore the reasons given in 1-5 above would be a breach of natural justice which may give rise to remedies in court.

For all of the above reasons we request that the Commissioner-General waive the payment of the 30% as provided under Section 42(6) of the Revenue Administration Act, 2016 (Act 915) which states:

“Despite subsection (5) the Commissioner-General may waive, vary or suspend the requirements of subsection (5) pending the determination of the objection or take any other action that the Commissioner-General considers appropriate including the deposit of security”

We request the waiver be maintained until our objection has been adjudicated on fully through the administrative and or legal processes given to address such matters.

We await your response to both our objection letter and waiver request. For ease of reference we have attached copies of our previous correspondence regarding this matter.

Yours faithfully


Kenneth Gomadd
FINANCE DIRECTOR

CC: The Deputy Commissioner, LTO
The Head, TPS
The Head, Audit
The Head, CM/DM & E
Bentsi – Enchill, Letsa & Ankomah
KPMG

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COMMERCIAL DIVISION, LLC-ACCRA

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"Exhibit TAG"

GHANA REVENUE AUTHORITY

Our Ref. No. CG/GRA/GTELCO/17

Your Ref. No.



GRA

4th September, 2017

THE MANAGING DIRECTOR
GHANA TELECOMMUNICATIONS COMPANY LIMITED
HEADQUARTERS
VODAFONE GHANA
SOUTH LIBERATION LINK
MANET TOWER A
AIRPORT CITY
ACCRA – GHANA

This is the Exhibit Marked
TAG in the Oath of
J. Albright before
me this 12th day of Sept 2017
mmpr
Commissioner For Oaths

Dear Sir,

TRANSFER PRICING AUDIT REPORT 2012 -2016 YEARS OF ASSESSMENT GHANA TELECOMMUNICATION COMPANY LIMITED

We acknowledge your receipt of your letter dated August 25, 2017 on the above subject matter and respond as follows:

- I. Section 42(5)(b) of Act 915 Revenue Administration Act states "an objection against a tax decision shall not be entertained unless the person has
 - b. In the case of other taxes, paid all outstanding taxes including thirty percent of the tax in dispute."
- II. Although section (6) of Act 915 gives the Commissioner – General the power to waive, vary or suspend the requirements of sub section (5), I am yet to consider a decision to exercise that authority.
- III. Accordingly, please pay thirty percent (30%) of the assessment as contained in the audit report to enable me take my next steps. The tax is as computed below;

	GH¢
Tax Assessed	162,468,361
Amount not in Dispute	NIL
Amount Disputed	162,468,361
Tax payable @ 30% thereon	48,740,508.30

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HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

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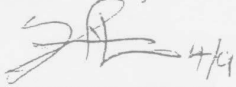
www.gra.gov.gh

OFFICE OF THE COMMISSIONER-GENERAL

Head Office: 4th Floor, P. O. Box 2202, Ministries, Accra. Tel: +233 (0) 302-953407 Fax: +233 (0) 302-664538 Email: info@gra.gov.gh

You are to settle this amount at the Large Taxpayer Office within seven (7) days of the date of this letter.

Yours faithfully



EMMANUEL KOFI NTI
AG. COMMISSIONER-GENERAL

CC: COMMISSIONER, DTRD, GRA
DEPUTY COMMISSIONER, LTO, GRA

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HIGH COURT
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