

UPSA LAW TODAY



DEAN'S WELCOME

PROF. E. KOFI ABOTSI

UPSA Law welcomes the publication of our maiden newsletter with great excitement as this will afford an opportunity to engage the public and other members of the university fraternity on developments in the school. At UPSA Law, we adopt an approach rooted in what could be aptly described as "theoretical pragmatism" in the teaching and learning of the law.

Recognizing that an appreciation of the sound theoretical basis of legal studies provides the needed grounding for a future in law, we equally devote substantial attention to practical lawyering issues including mooting and various legal and regulatory conversations. Hopefully this newsletter helps in your tour of our school!

Welcome



GHANA E-LEVY AND CONTENTIOUS LEGAL MATTERS

BY JAMES K. ANG-NAYAA

READ FULL STORY ON PAGE 2

UPSA LAW SCHOOL

POINT OF LAW SERIES



The duties performed by the wife in the home like cooking for the family, cleaning and nurturing the children of the marriage, etc. which go a long way to create an enabling atmosphere for the other spouse to work in peace towards the acquisition of the properties concerned, was enough contribution that should merit the wife a share in the said properties upon the dissolution of the marriage.

Peter Adjei vs. Margaret Adjei
CIVIL APPEAL NO. J4/06/2021
DATE: 21ST APRIL, 2021

Point of Law Series is a biweekly publication of the Upsa Law School that touches on various subjects of law.

UPCOMING EVENTS

- International Lecture
- UPSA Law Games '22
- Annual Africa Customary Law Conference
- Absa-UPSA Law School Quarterly Banking Roundtable VIII



ABOUT THE UPSA LAW SCHOOL

UPSA Law School combines inspired teaching and learning of the law with a world-class module in a collegial academic community. At UPSA Law School, the ratio of faculty to students provides a functional intimacy to legal education in a way unmatched in Ghana. Adopting a pedagogy rooted in critical-thinking, UPSA Law engenders cutting-edge scholarship among its students and faculty and this prepares our students for the rigours of legal practice in the contemporary world. The congenial academic atmosphere prevalent within the Law School presents an ideal environment for harnessing students' talents and enables the full and complete realization of their potentials.

Given the centrality of students to the life of the School, UPSA Law prioritizes the overall student experience in studying at the law school. The spirit of academic collegiality that exists among and between faculty and students promotes and fosters a healthy academic environment and the exchange of knowledge at UPSA Law. With a deep belief in the internationalization of law and legal education, the UPSA Law School is implementing a network of collaboration and partnerships with leading law schools around the world including in areas of faculty exchanges and clinical legal education.

Finally, the synergy and collaboration that exists between the UPSA Law School and industry/professional community affords practical lawyering training and this predisposes our students to outperform others when ultimately admitted to the Bar.

The UPSA Law School has a number of platforms for engaging members of the public. These include;

- UPSA Law School-ACCA Africa Trade Roundtable
- Absa-UPSA Law School Quarterly Banking Roundtable
- Constitution Day Public Lecture
- UPSA Global Law College
- Point of Law Series
- Eminent Guest Lecture Series

PERSONALITY SPOTLIGHT



Ms. Mavis Ekua Enyamah Kwainoe Esq.

A senior lawyer and lecturer at the UPSA Law School with an interest in human rights and criminal law is making great strides with her research on "VICTIM-OFFENDER MEDIATION IN THE CRIMINAL JUSTICE SYSTEM OF GHANA". She hopes that through mediation victims in the criminal justice system of Ghana would be given the opportunity to find answers to some critical questions, which the victims often require in order to get the much needed closure they deserve. This she believes would be a stepping stone for victims to move on with their lives after suffering heinous crimes.



GHANA E-LEVY AND CONTENTIOUS LEGAL MATTERS

By JAMES K. ANG-NAYAA

Electronic Levy, commonly referred to as E-Levy, is a tax applied on electronic transactions or transactions on digital platforms.

The Minister of Finance, Mr. Ken Ofori-Atta in November 2021, mooted the idea of E-Levy as a possible bailout to save Ghana from the constant resort to the IMF for developmental loans and also to close the ever-widening budget deficit. Daily transactions above GHS100.00 (One Hundred Ghana Cedis) were to be subjected to a proportional tax rate of 1.75% (but was reduced to 1.5% with the passage of the bill on Tuesday, March 29, 2022). This sparked a public outcry and members of the

Minority in Parliament fiercely resisted the Bill. Indeed, members of both sides of Parliament in the full glare of cameras were seen during parliamentary business exchanging physical and verbal tantrums which was touted by many as a 'dishonour' to the Honourable House.

Ghana is not the first country to impose, or attempt to impose E-Levy in Africa. Kenya, Tanzania, Uganda, Malawi, Republic of Congo, Côte d'Ivoire and Cameroon are the forbearers of E-Levy in sub-Saharan Africa with varying degrees of successes and failures in their attempt. These countries faced resistance as expected, from the taxpayers and opposition in government who see it as fertile grounds to gain political points. The public outcry and resistance from members of the opposition, including the "kume preko" demonstrations, is not new to the imposition of a new tax. In 1995, an attempt to introduce the Value Added Tax (VAT) through the Value Added Tax Act, 1995 (Act 486) suffered a similar fate but was eventually successfully re-introduced in 1998 through the passage of the Valued Added Tax Amendment Act, 1998 (Act 546).

Tax is a necessary tool in every national economy, for raising revenue for public expenditure, as an inflationary/deflationary device, for the creation of jobs, for dimming appetite on the consumption of harmful goods, etc. To this end tax is inevitable. In deed Oliver Wendell Holmes Jr, former Justice of the United States Supreme Court, in his dissenting opinion in *Compania General De Tabacos De Filipinas V. Collector of Internal Revenue* (1927) said, "Taxes are what we pay for a civilized society. Without taxes there can be no meaningful economic progress in any nation.

Ghana largely depends on a portion of the formal sector for raising revenue in the form of taxes. This is because the large informal sector has proven to be resistant to payment of taxes. This together with the high level of corruption and favouritism within the public sector leading to compromise by tax collectors has dimmed any potential hopes of raising significant revenue through the informal sector

One major characteristic of a good tax system is equity. E-Levy applies a proportional rate of tax across all amounts exceeding the nontaxable threshold. It thus treats the poor and the well-to-do alike. This is relatively fiscally exacting for the poor and low income earners as proportional taxation has long been demonstrated to be equitable.

E-Levy targets the movement of money and not the actual transaction. There are two main modes of taxation: income tax or consumption tax. To which of these can one classify E-levy? The mere transfer of post-taxed income from a person to another will suffer additional unjustified tax. The transferor would have suffered transactional charge which would be subject to tax in the hands of the Telecommunication Company (telco). Others who opt transfers outside digital platforms are spared e-levy leading to discriminatory fiscal pricing. The resulting effect is to discourage the use of electronic platforms for business and a resort to the use of physical cash with attendant increase in the cost of printing.

E-levy as a Tax

Section 9 (1) of the Revenue Administration Act 2016 (Act 915) defines tax as: "a duty, levy, charge, rate, fee, fine, interest, penalty or any other amount imposed by a tax law or to be collected by, or paid to, the Commissioner-General under a tax law". To the extent that e-levy is imposed by a tax law it qualifies to be a tax.

Legal validity of Electronic Transfer Levy Act, 2022 (Act 1075)

No tax can be legally imposed except authorized by an Act of Parliament. In Ghana, it is the civic duty of every citizen and tax resident persons to declare their income honestly to the appropriate and lawful agencies and to satisfy all tax obligations as expressed in Article 41 (j) of the 1992 Constitution. However, Article 174 (1) of the 1992 Constitution stipulates that no taxation shall be imposed otherwise than by or under the authority of an Act of Parliament. The legal validity of the imposition of tax is therefore premised on a validly enacted tax legislation by Parliament. In *Development Data & 2 Others. v. National Petroleum Authority & Another* [Suit No. BC.553/2009 (Unreported)] the High Court upheld the contention of the Plaintiffs that the "ex-refinery differential" component of "ex-refinery price" announced by the First Defendant on 5th June, 2009 was unlawful as NPA did not receive Parliamentary approval in line with Article 174 of the 1992 Constitution. Any attempt to impose a charge that has the characteristic of a tax will therefore require the prior approval of Parliament.

The E-levy Bill was passed into law on Tuesday 29 March, 2022 amidst controversy over a legally constituted quorum of Parliament. The Minority staged a walk-out in protest before the bill was tabled for voting. The Minority is thus contesting the validity of the Bill as they allege it offends against Article 104 (1) of the 1992 Constitution and per the ruling in **[Justice Abdulai V. Attorney General] SC 9th March, 2022 (Unreported)**. Article 104 (1) states that "Except as otherwise provided in this Constitution, matters in Parliament shall be determined by the votes of the majority of members present and voting, with at least half of all the members of Parliament present". While the minority argue respectively that "half of all members" means half of all 275 Members of Parliament and "present" means members who were available for voting when the question was put to the House and not when they had declared their intention not to be part of the business. The majority argue the contrary and in particular that "half of all members" of Parliament means half of 274 members in view of the fact that injunction was secured against the Assin North MP, Hon. James Gyekye Quayson by a Cape Coast High Court. To further complicate issues the Applicant in the **[Justice Abdulai V. Attorney General]** is seeking a review at the apex court of its own judgement delivered on the 9th March, 2022. The contest at the Supreme Court awaits a decision to bring finality on the validity or otherwise of the Bill.

Interpretative issues

Fiscal legislations are generally construed strictly as historically these are not part of the common law. Wood CJ in **Multi-Choice Ghana Ltd v. The Commissioner, Internal Revenue Service [2011] 35 G.M.J, 87 – 102** echoed the words of Rowlat J's formulation of the rule in *Cape Brandy Syndicate v IRC* [1921 1KB 64, 71] thus "in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used (emphasis mine)." Understandably it poses a problem when the words of the legislature are ambiguous in a taxing Act.

A number of issues have emerged after the passage of the Act. The question as to who pays the tax and the date of filing and remitting the tax lack clarity. In an Article titled **E-Levy, ACT 2022 (ACT 1075) and matters arising: is there a need for legislators to intervene**, published on Ghanaweb on April 11, 2022 Fred Kwashie Awutty raises concerns on these ambiguities. Three revenue sources at the time of transfer are identified as follows; the transferor, transferee and the electronic money issuer or bank. There is no clarity as to who bears the incidence of the tax. Equally missing in the Act are the dates of collection of the tax, filing and remission of returns.

Conclusion

While E-levy may provide the administrative convenience of collection of taxes, it is argued that its implementation may not yield the desired results as tax payers would devise legitimate modes of avoiding E-Levy. It will further discourage a cashless system of transaction that will not only impede transparency but will inhibit the tax authorities' ability to track transactions through electronic and digital platforms. It is also worthy of note that it is the responsibility of leadership to design a fair and equitable system to widen the tax net rather than adopt an easy and administratively convenient yet an inequitable approach that targets the same tax payer in multiple taxes of the same income. The Act may need to distinguish mobile money transactions from other digital transactions in large volumes and apply a progressive rate to mobile money transactions for the benefit of the low income earners who are the majority users of mobile money.

The preliminary issues raised may lead to an early amendment as happened when the Income Tax Act 2015 (Act 896) was passed. Alternatively, the Commissioner General of the GRA may issue Practice Notes to aid in the interpretation and application of ambiguous provisions of the Act. We await the decision of the Supreme court on the validity or otherwise of the Electronic Levy Act 2022 (Act 1075). Till then the Act has come to stay!!!



JAMES K. ANG-NAYAA



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AFRICA TRADE ROUND TABLE III 25TH JAN. 2022



CONSTITUTION DAY PUBLIC LECTURE 14TH JAN. 2022



UPSA LEGAL CONFERENCE & MENTORSHIP FAIR 25TH AND 26TH NOV. 2021



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DEAN'S WELCOME COCKTAIL 18TH OCT. 2021



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'LEGALLY FIT' HEALTH WALK 26TH JUN. 2021



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ECOWAS President visits the UPSA Law School



The President of the ECOWAS Court of Justice, Hon. Justice Edward Amoako Asante, paid a special working visit to The UPSA Law School on Wednesday, 31st March, 2021.

The visit was at a pivotal time in the life of the School as the School seeks to deepen its ties and strategic partnership with international sub-state institutions in Africa.

In his welcome address, Pro Vice Chancellor of UPSA, Prof Charles Barnor said the University was delighted and proud to have hosted Justice Asante. He stressed that the historic visit by the preeminent ambassador is a testament to the confidence reposed in the University's burgeoning law school.

The Dean of the UPSA Law School, Prof. Kofi Abotsi also welcomed Justice Asante and assured him of the readiness of the UPSA Law School to collaborate with the ECOWAS court and leverage new tools in advocacy training.

Speaking at the event, Justice Asante expressed the interest of the ECOWAS court in deepening ties with the UPSA Law School, where students through exchange programmes could do their internships with the apex court of the sub-region.

"We have a very good research department [at the ECOWAS Court] and those [of you] who want to do your research work at the Master's level can fall on us for assistance," Justice Asante said.

Hon. Justice Asante climaxed his one-day working visit with a presentation on the work of the ECOWAS court, its accessibility and opportunities presented by its establishment.

The event was graced by staff, students and well-wishers of the UPSA Law School.



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