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Cristal Advocates

Guide to Withholding Tax in Uganda

Managing your compliance

August 2018

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This guide is based upon the tax laws and regulations in force as at 1st July 2018. Ugandan tax laws, judicial interpretation and practice frequently change and we therefore advise that you check with your advisors prior to closing complex or large transactions. This guide does not cover the system of withholding tax on employees' remuneration also known as Pay As You Earn (PAYE), some sector specific oil and gas issues and the URA can take differing positions to the discussion herein.

1. Definitions and abbreviations

Unless the context otherwise requires, the following words and acronyms have the meaning ascribed to them whenever used in this guide.

a) Dividend includes:

- where a company issues debentures or redeemable preference shares to a shareholder in respect of which the shareholder gave no consideration, an amount equal to the greater of the nominal or redeemable value of the debentures or shares;
- where a company issues debentures or redeemable preference shares to a shareholder in respect of which the shareholder gave consideration which is less than the greater of the nominal or redeemable value, an amount equal to the excess;
- any distribution upon redemption or cancellation of a share, or made in the course of liquidation, in excess of the nominal value of the share redeemed, cancelled or subject to liquidation;
- in the case of a partial return of capital, any payment made in excess of the amount by which the nominal value of the shares was reduced;
- in the case of a reconstruction of a company, any payment made in respect of the shares in the company in excess of the nominal value of shares before reconstruction;
- the amount of any loan, the amount of any payment of an asset or service… to the extent to which the transaction is in substance a distribution of profits;
- the issue of bonus shares to shareholders;

b) DTA(s) means Double Tax Agreement(s).

c) Interest includes:

- any payment, including a discount or premium, made under a debt obligation which is not a return of capital;
- any swap or other payments functionally equivalent to interest;
- any commitment, guarantee or service fee paid in respect of a debt obligation or swamp agreement;
- a distribution by a building society;

d) ITA means the Income Tax Act Cap 340;

e) Natural resource payment means a payment made as consideration for the right to take minerals or a living or non-living resource from the land or payment calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource from the land;

f) Payee means a person receiving payments from which tax must be withheld;

g) Payer means a person making payments from which tax must be withheld;

h) Payment includes any amount paid or payable in cash or kind, and any other means of conferring value or benefit on a person;

i) Person includes an individual, partnership, a trust, company, a retirement fund, a government, a political subdivision of a government and a listed institution;

j) Rent means any payment made as consideration for the use or occupation or right to use or occupy, land or buildings;

k) Royalty includes:

- any payment made as consideration for the use of, or right to use, any patent, design, trademark; copyright, any model, pattern, plan, formula or process or any property or right of a similar nature;
- any payment for the use of, or right to use any motion picture, film, video or audio material;
- any payment for the use of or the right to use, any tangible movable property;

l) URA means the Uganda Revenue Authority;

m) WHT means withholding tax;

n) UGX means Uganda Shillings;

o) Year of income means the period of 12 months ending 30th June or any other equivalent period.

2. Executive summary

a) WHT typically represents the final Ugandan tax liability on payments with a source in Uganda made to non-resident tax persons. In the absence of this WHT, non-resident persons would derive income from Uganda without paying any tax.

b) In the case of tax resident persons, WHT represents an advance tax payment that is creditable against the person's year end income tax liability unless the ITA explicitly provides that the tax withheld is a final one. This equally is the position for branches of foreign legal entities registered in Uganda though they are ordinarily non-resident for tax purposes.

c) WHT deducted on interest paid on treasury bills and government securities, commissions for the distribution of airtime as well as the provision of mobile money services and on the payment of dividends to individuals is a final tax for Ugandan tax resident persons.

d) WHT is a tax on the recipient of the income/payment and not the payer. Where the payer however fails to withhold from a payment which is subject to WHT, he/she is responsible for paying the WHT due to the URA though the payer can recover the same amount from the payee/ vendor except the arising interest and penalties.

e) The payer is required, by law, to deduct tax at the appropriate rate and remit the amount deducted to the URA within the specified period i.e. by the 15^{th} of the month following the calendar month the payment was made.

f) Tax is borne by the payee/ recipient (unless the payer has agreed to gross-up the payment-still borne by the recipient but funded by payer). Tax authorities are often of the opinion that the gross up amount is the payment of taxes of another person, namely the recipient, and accordingly this does not have the necessary connection to the payer's business for this expense deduction to be available. This interpretation ignores accepted business practices and the true cost to a company in a contract with a gross-up mechanism.

g) If the taxpayer fails to withhold the tax due, in addition to the repayment of the principal tax, there is simple interest at the rate of 2% on the overdue payment for each month (or part thereof).

h) If the taxpayer fails to maintain proper records as required under the ITA for a tax period, the payer is liable to a penal tax equal to double the amount of tax that is payable by the person for which the failure relates.

i) The ITA imposes further punitive penalties where a taxpayer makes false or misleading statements.

3. Introduction

Unless provided otherwise, every person making specified payments with a source in Uganda as set out in the ITA must withhold tax at the applicable rates and remit the tax withheld to the URA on or before the 15^{th} day of the month following the calendar month in which the payment was made.

Section 2 of the ITA defines payment to include any amount paid or payable in cash or kind, and any other means of conferring value or benefit on a person. In accordance with this definition, WHT is not only pegged on the actual physical transfer of money or equivalent (ordinary meaning of the term "payment") but rather the earlier of accrual or creation of the liability in the books of accounts or the actual physical transfer of money or equivalent. It also means that an amount made in advance is subject to WHT at the time when it is paid by the payer and not at the later time when it accrues to the payee.

Though the payer collects the WHT on behalf of the URA, the tax incidence falls on the payee. Unless the ITA provides that this is a final tax, the tax withheld is an advance tax payment creditable against the resident payee's year-end income tax liability. The same can be claimed as refund if the resident taxpayer/payee has nil tax liability. In the event of failure to withhold tax on qualifying payments to their vendors/payees, the URA can demand the corresponding tax from the payer who in turn is also entitled to recover this amount from the vendor/payee except for the penalties and interest that arise on the same.

Whether the specified payments set out in the ITA should be subject to WHT and the rate applicable depends on the tax residency status of the payee. The ITA provides the criteria for determining a tax resident person. Anyone outside of scope is non-resident for tax purposes.

An individual is resident for tax purposes if he/she has a permanent home and is present in Uganda in that year of income or has no permanent home but has 183 days presence in Uganda in that year of income or 122 days or more in that year and each of the two preceding years.

A company is resident for tax purposes if it is incorporated or formed under the laws of Uganda or has its management and control exercised in Uganda at any time during the year of income or undertakes the majority of its operations in Uganda during the year of income.

There are further elaborate rules in the ITA that lay out the criteria for determining whether Trusts, Partnerships and Retirement Funds are resident in Uganda for tax purposes.

4. Income sourced from Uganda

Section 79 of the ITA sets out among others that the following payments/income have a sources in Uganda.

a) Fees earned for the provision of services exercised or rendered in Uganda;
b) Fees for the provision of services paid by a resident person other than as expenditure of a business carried on by the person outside Uganda through a branch;
c) Fees for the provision of services paid by a non- resident person as expenditure of the business carried on by the person through a branch in Uganda;
d) Royalties paid by resident persons in Uganda other than as expenditure of the business carried on by a person outside Uganda through a branch;
e) Royalties paid by a non-resident person as expenditure of the business carried on by the person through a branch in Uganda;
f) Royalties arising on the disposal of industrial or intellectual property in Uganda;
g) Interest where the debt obligation giving rise to the interest is secured by movable or immovable property used in Uganda;
h) Interest where the payer is a resident person;

i) Interest where the borrowing relates to a business carried on in Uganda;
j) Dividends paid by a resident company;
k) Natural resource payments for natural resources taken from Uganda;
l) Management charge paid by a resident person;
m) Management charge attributable to any activity which occurs in Uganda including an activity conducted through a branch in Uganda.

5. Payments to non-resident persons

The following payments which have a source in Uganda made by resident persons (including branches of foreign legal entities) to non-resident persons attract WHT.

- Sale of assets;
- Dividends;
- Interest except if arising on widely issued debentures for a loan raised outside Uganda and the interest is paid to a bank or a financial institution of a public character outside Uganda;
- Rent;
- Natural resource payments;
- Royalty payments;
- Professional/ management/ consultancy payments;
- Payments to public entertainers or sports persons;
- Payments to ship operators, charterers or air transport operators who derive income from the carriage of passengers, cargo or mail which embark in Uganda;
- Payments to persons carrying on the business of transmitting messages by cable, radio, optical fibre or satellite communication or providing internet connectivity services;
- Payments for winnings of betting or gaming;
- Payments for premiums of re-insurance services except if made to the Uganda Re-insurance Company Limited, Africa Reinsurance Corporation and the PTA Reinsurance Company;

Please note the tax withheld on payments to non-resident persons as earlier highlighted is ordinarily final in Uganda. This means that:

- There is no further tax liability imposed upon the taxpayer in respect of the income;
- This income is not aggregated with the other income of the taxpayer;
- No refund of tax can be made in respect of the income;
- No deduction is allowed for any expenditure or losses incurred in deriving the income;
- There is no requirement to file an income tax return in Uganda.

6. WHT rates on payments to non-resident persons

The following rates of WHT apply on the following incomes below derived from Uganda by non-resident persons.

Types of payments	WHT rate
Sale of assets	10%
Dividends	15%
Interest other than on government securities	15%
Interest on government securities	20%
Rent	15%
Natural resource payments	15%
Royalties	15%
Professional/ management/consultancy	15%
Public entertainers or sportspersons	15%
Payments to ship operators, charterers or air transport operators who derive income from the carriage of passengers, cargo or mail which embark in Uganda	2%
Payments for telecommunication services	5%
Premiums for re-insurance services	10%
Winnings of betting or gaming	15%

7. Payments to resident persons

The following payments which have a source in Uganda made by resident persons including branches of foreign legal entities in Uganda to resident persons or branches of foreign legal entities in Uganda attract WHT.

- Interest except if made by a natural person or paid to a financial institution other than interest from government securities or made to an associated company or is exempt from tax in the hands of the recipient;
- Dividends unless exempt from tax in the hands of the shareholder;
- Professional fees unless the URA rules that the recipient has regularly complied with their tax obligations under the ITA;
- Payments for winnings of betting or gaming;
- Payments for agricultural supplies in excess of UGX 1,000,000 *by any person designated by the Minister of Finance in a notice so issued;*
- Commissions for airtime distribution or provision of mobile money services;
- Payments for professional fees but does not apply to a taxpayer who the URA rules has been tax compliant;
- Payments of goods and services in excess of UGX 1,000,000 by the government, government institutions, local authorities or companies controlled by the government or *any person designated by the Minister of Finance in a notice so issued;*
- Importation of goods into Uganda unless by an exempt organisation or by a tax payer who is regularly compliant with the provisions of the ITA.

8. WHT rates on payments to resident persons

The following rates of WHT apply on the payments below made to resident persons including branches of foreign legal entities in Uganda.

Types of payments	WHT Resident rate
Dividend except when paid to a resident company by another resident company with 25% or more of voting power or exempt from tax in the hands of the recipient	15%
Dividends to individuals from companies listed on the Stock Exchange	10%
Interest other than on government securities	15%
Interest on government securities	20%
Professional fees	6%
Payments for winnings on betting or gaming	15%
Agricultural supplies in excess of UGX 1,000,000	1%
Commissions paid by telecom service providers for airtime distribution or provision of mobile money services	10%
Payment of goods and services in excess of UGX 1,000,000 by the government, government institutions or designated institutions	6%

The importation of goods into Uganda unless by an exempt organisation or a tax payer who has been ruled by the URA to be tax compliant is also subject to 6% WHT on the customs value of the consignment.

WHT represents an advance tax payment for Ugandan tax resident persons and is creditable against their year-end income tax liability unless the ITA explicitly provides that the tax withheld is a final one. This equally is the position for branches of foreign legal entities registered in Uganda though they are ordinarily non-resident for tax purposes.

WHT deducted on interest paid on treasury bills and government securities, commissions for the distribution of airtime as well as the provision of mobile money services and on the payment of dividends to resident individuals is a final tax for Ugandan tax resident persons.

9. Disbursements

The WHT treatment of recharges or reimbursements of expenses incurred while providing services/supplies is intricate. Though it can be argued that recharges of third party expenses incurred by vendors which are recovered from the payer can be treated as disbursements for WHT purposes and thus out of scope of WHT, the test of whether repayment of these expenses amounts to disbursements for WHT purposes is stringent and not all payments described as disbursements for WHT purposes qualify as such.

Costs incurred by vendors as agents of the service recipient are ordinarily treated as disbursements for WHT purposes. They need not be subject to WHT because they are outside the scope and do not reflect a payment to the vendor for supplies provided. These may include taxes or other statutory levies ordinarily payable by the customer which the vendor incurs on their behalf but subsequently recovers by way of reimbursement. These should however be contrasted with costs incurred by vendors in the course of making supplies to their clients. e.g. transport fares, accommodation, per diem for staff. Such repayments may not pass the disbursement test for WHT purposes and must be included in the value of supplies on which WHT is calculated.

10. Double Tax Agreements

Uganda has DTAs with India, UK, Zambia, Netherlands, Mauritius, Norway, South Africa, Italy and Denmark which provide for the following rates of WHT.

Country	Dividends	Interest	Royalty	Technical fees
Denmark	10%	10%	10%	10%
India	10%	10%	10%	10%
Italy	15%	15%	10%	10%
Mauritius	10%	10%	10%	10%
Netherlands	5% (0%)	10%	10%	Not explicitly provided for.
Norway	10%	10%	10%	10%
South Africa	10%	10%	10%	10%
United Kingdom	15%	15%	15%	15%
Zambia	Exempt	Exempt	Exempt	Exempt

The ITA contains an anti-treaty shopping provision limiting entitlement to the reduced rate or exemption from tax provided under the DTAs in certain circumstances unless the party receiving payment is a publicly listed entity. Tax treaties generally override the provisions of domestic legislation and there are divergent positions among practitioners whether the position under the ITA fettering the unrestricted application of the DTAs that Uganda has entered into is legally tenable.

11. WHT obligations under the law

a) Monthly WHT payment deadlines

There is the requirement for the payer to remit the WHT deducted each month to the URA within 15 days after the end of each calendar month with an accompanying WHT return.

b) Tax credit certificate

The payer should deliver to the payee a tax credit certificate setting out the amount of payments made and tax withheld during a year of income. This certificate is generated on the online URA portal. A payee required to furnish a return of income should attach to the return the tax credit certificates supplied to the payee for the year of income for which the return is filed.

c) Record of payments and tax withheld

The payer should maintain and keep available for a period of 5 years for inspection by the URA, records showing in relation to each of year of income the payments made to a payee and tax withheld from those payments.

12. Penalties and interest

- If the taxpayer fails to withhold the tax due, in addition to the repayment of the principal tax, there is simple interest at the rate of 2% on the overdue payment for each month (or part thereof).
- If the taxpayer fails to maintain proper records as required under the ITA for a tax period, the payer is liable to a penal tax equal to double the amount of tax that is payable by the person for which the failure relates.
- The ITA imposes further punitive penalties where a taxpayer makes false or misleading statements.

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He holds a Master of Laws Degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom and various other qualifications. He is widely published and a regular commentator in the local, regional and international media and speaker at various conferences regarding the taxation and financing of the energy projects and other businesses. ■

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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the firm's oil and gas practice. Prior to joining Cristal, he worked as the Company Secretary of the Uganda Refinery Holding Company Ltd (URHC) which represents the Government's interests in the Uganda Refinery Project.

Dickens also served as the Company Secretary of the Uganda National Oil Company (UNOC) - a company charged with handling the State's Commercial interests in the Oil and Gas industry in a Joint Venture with Total E&P, CNOOC and Tullow Oil from its inception until September 2016. Dickens was instrumental in UNOC's formation and initial period of operation and also worked as its Head of Contracts, Negotiations and Advisory until April 2018.

Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy and Mineral Development for five (5) years where he was charged with evaluation of oil and gas and infrastructure transactions, negotiation of Production Sharing Agreements, host implementation agreements and joint venture agreements. While there, he was the secretary of the team that put together the midstream petroleum law and was also also part of the team that put together the upstream law and the attendant regulations.

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