Cristal Advocates

Validate your income tax exemption status to avoid surprises

Keeping you informed

In this article, we set out a discussion of some issues relating to income tax exemption in Uganda.

Uganda's Income Tax Act ("ITA") exempts certain specified income from income tax. This exemption does not extend to other taxes including (though not limited to) value added tax, excise duty and customs duty, unless explicitly provided for in the relevant legislation.The exemption from income tax in some instances is not effective until validated. Individuals and organisations, especially charitable bodies, that assumed income tax exempt status have sometimes been issued assessments by the Uganda Revenue Authority ("URA") demanding for tax, much to their surprise.

1. Exemption from income tax

Section 21 of the ITA provides a list of the individuals, organisations and activities that are exempt from income tax in Uganda. For the purposes of this publication, we will limit our discussion to the ten categories below.

a) Listed institutions

Income earned by listed institutions is exempt from income tax. Listed institutions are those organisations detailed in the First Schedule to the ITA and these mainly comprise Public International Organisations. These include the African Development Bank, African Development Fund, African Trade Insurance Agency, Agakhan Foundation, Austrian Development Agency, Belgian Technical Cooperation, Danish International Development Agency (DANIDA), Department for International Agency, Department for International Development (DFID), European Development Fund, European Investment Bank, European Union, Food and Agricultural Organisation, French Development Agency, International Civila Aviation Organisation, International Development Association, International Finance Corporation, International Labour Organisation and the International Monetary Fund.

b) Diplomatic missions and staff

The Diplomatic Privileges Act Cap 201 gives effect to the Vienna Convention of Diplomatic Relations ("the Convention") which was signed on 18th April 1961. The Act adopts Article 23 of the Convention which exempts diplomatic missions and their heads from national, regional or municipal dues and taxes other than such that represent payment for specific services rendered.

The official employment income of foreign mission staff in the public service of a foreign government is also exempt from income tax. This income must be paid from the public funds of that foreign country and that income should be subject to tax in that country for this exemption to crystallise .

Local employees of diplomatic missions are however liable to income tax and bear personal responsibility for tax compliance. It is debatable whether diplomatic missions can be compelled by the URA to share local employee's financial information to enforce tax compliance.

c) Local authorities

Local authorities income (such as interest income or capital gains on the disposal of immovable property) is exempt from income tax. Local authorities are defined under the ITA as public bodies established under laws of Uganda and having control over the expenditure of revenue derived from rates or taxes imposed by law upon the residents of the areas for which that body is established.

d) Exempt organisations

Exempt organisations' income is relieved from income tax. An exempt organisation is defined under the ITA as any company, institution or irrevocable trust which is an amateur sporting association, religious, charitable or educational institution of a public character or trade union, employees association, an association of employers registered under any law of Uganda or an association established for the purpose of promoting farming, mining, tourism, manufacturing or commerce and industry in Uganda or body established by law for the purpose of regulating the conduct of professionals or the National Medical Stores.

To qualify for this exemption, the organisation must be issued with a written ruling by the Commissioner of the URA stating that it is an exempt organisation and that none of the income or assets confers or may confer a private benefit on any person. URA is cautius in giving this ruling and has been challenged in the Tax Appeals Tribunal and Courts of Law in Uganda by taxpayers disputing the Commissioner's decision not to give such a written ruling confirming that they are exempt organisations within this provision for entitlement to the income tax exemption.

Property income except (rent received in respect of immovable property and used for the activities of the organisation) and other business income not related to function constituting the basis for the organisation's existence are not relieved from income tax under this provision.

e) Capital gains

Capital gains are exemt from tax to the extent they are not included in business income. Business income generally covers earnings from carrying on a business. Business includes any profession, vocation or adventure in the nature of trade inferred via the common law badges of trade but excludes employment. Capital gains on the sale of shares in a private liability company or on the sale of a commercial building are subject to taxation in Uganda regardless of whether they are not included in business income.

f) Technical assistance agreements

Employment income derived by an individual in respect of performing duties under a technical assistance agreement is exempt from income tax in Uganda to the extent the Minister responsible for Finance has concurred in writing with the tax provisions of the agreement. A technical assistance agreement is defined under the ITA to mean an agreement between the government of Uganda and a foreign government or a listed institution (see a) above for the definition of listed institution) for the provision of technical assistance to Uganda.

g) Agro-processing

Income from agro-processing is exempt from tax. Agro-processing is defined under the ITA to mean an industrial or manufacturing process that substantially transforms or converts raw agricultural produce in order to convert the produce into a different chemical or physical state.To qualify for this exemption, the person must:

- Upon commencement of agro-processing in Uganda apply in writing to the Commissioner of the URA for a certificate of exemption;
- Invest in plant and machinery that has not been previously used in Uganda by any person in agro-processing to process agricultural products;
- Process agricultural products grown or produced in Uganda;
- Regularly file returns required under the ITA;
- Regulary fulfill all obligations under the ITA relating to the person's investment;
- Be issued with a certificate of exemption by the Commissioner (this certificate of exemption is valid for one year but renewable annually).

h) Finished goods

Income from the exportation of finished consumer and capital goods is exempt from income tax for a period of ten years as set out in the certificate of exemption.

- In case of a new investment, a person applies in writing to the Commissioner to be issued with a certificate of exemption at the beginning of his or her investment;
- In the case of an existing investment, exports at least 80% of their production, has fulfilled such conditions as may be prescribed by regulations made by the Minister responsible for Finance and has been issued with a certificate of exemption prescribed by the Commissioner.

i) Developer of an industrial park or free zone

Income earned by a developer of an industrial park or free zone whose investment capital is at least United States Dollars ("USD") 100 million is exempt from income tax for a period of five years from the date of commencement of construction. Given the potentially long lead time between commencement of construction and such a project achieving profitability and the arising tax deductible expenses, it is highly unlikely that such investors can have a real benefit from this exemption.

j) Operator of an industrial park or free zone

The income of an operator in an industrial park or free zone or other business outside the industrial park or free zone whose investment capital is at least USD 15 million in the case of a foreigner, or USD 5 million in the case of a Ugandan national, is exempt from income tax for a period of five years from the date of commencement of business.

2. Validation of the exemption

As discussed above, the exemption from income tax for certain categories of income is only effective after validation by the URA. Prior to validation, the URA must satisfy itself that the organisation or investment in question qualifies for the income tax exemption in accordance with the criteria set out in the law and gives the relevant certificate or confirmation. It would also undertake a comprehensive tax audit prior to validation to ensure that all outstanding tax liabilities have been settled. Unless explicitly set out in the law, other categories of income tax exemption do not require validation provided all the conditions for exemption are satisfied.

Some organisations especially charities have assumed income tax exemption even in the absence of URA validation. This leaves them exposed to URA assessments because they are technically not exempt from income tax. We encourage charities and similar organisations in Uganda not to overlook the URA validation requirement as it can be costly to ignore. Having a written ruling from the URA that the the charitable body is an exempt organisation not only secures the income tax exemption status but also supports fundraising efforts. This is because donations to exempt organisations are tax deductible which can be an incentive to companies to make gifts to charities.

3. Conclusion

It is worth noting that being exempted from income tax does not relieve an organisation or individual from other tax responsibilities such as filing income tax returns albeit with nil tax to pay if required. An organisation would still have pay other taxes like VAT if applicable as well as deducting pay as you earn from its employees and withholding tax from qualifying vendors. Organisations that are exempt from income tax can still be burdened with tax, interest and penalties for non compliance with their other tax obligations.

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At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

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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 oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

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He joined Cristal Advocates from Kizza, Tumwesige, and Ssemambo Advocates. He previously worked with the Advocates Coalition for Development and Environment (ACODE). He also undertook a traineeship with the oil and gas division of Webber Wetzel in Johannesburg, South Africa.

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