Cristal Advocates

Mitigating tax hardships in the time of coronavirus

The case of Uganda

1. Introduction

This publication highlights the probable impact of the covid-19 (coronavirus) pandemic on the economy and an outline of some of the measures that the Ugandan government and the Uganda Revenue Authority ("URA") can consider or implement to mitigate the tax hardships that are likely to arise.

The virus is already having a massive impact on global stock markets and international travel and tourism has plummeted. Most major economies are entering a phase of lock-down which may last for several months. Bars, restaurants, theatres, cinemas, museums sports venues and many shops have closed. Uganda has already closed educational and public places that gather signifigant number of people for an initial 32 days but stricter measures are expected if the threat of the virus becomes greater.

Public health systems in many developed countries are already under significant pressure and it is feared that Africa will be hit worst if the virus spread is not contained. There is police patrol on the streets of major cities in the developed world where inhabitants are advised to remain indoors. Vaccines and treatments are under development but are not likely to be available before 2021 at the earliest.

At this point a global recession seems inevitable. Whilst the biggest impacts so far have been in China, Iran and Italy, cases have also been reported in Uganda and the wider East African region which is unlikely to escape further spread of the virus. The region inclusive of Uganda will without a doubt be adversely affected by the global economic slowdown, even if the direct health impact may be more limited than elsewhere.

2. Global recession and tax revenues

A global recession will have a significant impact on tax revenues everywhere. Falling sales of goods and services will impact the profits of large and small businesses, reducing income tax payments. New investment plans will be shelved or abandoned as demand falls. Yields from consumption taxes like VAT will reduce as consumers stay at home, and some lose their jobs or businesses.

Increasing unemployment and reduced working hours for those still in work will impact payroll taxes. Tax authorities will be unable to meet tax collection targets set before the crisis, whilst governments may wish to massively increase spending to combat the virus and support faltering economies. Even before this pandemic, URA was lagging behind its tax collection targets.

While borrowing or effectively printing more money may help to fill the 'fiscal gap' created, there is a danger that pressure on the tax authorities to collect more tax will result in pressure on already weakened businesses, further damaging fragile economies.

If the disease spreads widely through communities, the operation of the tax authorities themselves will be affected by staff shortages as will finance teams responsible for tax reporting and payment. This will add to the pressure.

3. Tax measures to mitigate economic hardship by developed countries

Governments around the world are starting to focus on the impact on business and several have already announced significant packages to combat the spread of the disease and stimulate their faltering economies. On 17 March 2020, the UK government announced that £330 billion would be made available to support the UK economy, including property tax relief and loan repayment deferral. The USA has announced a US$ 1 trillion programme. Tax measures being adopted by many countries including cuts in VAT, payroll and individual income tax, and deferring reporting and payment deadlines to assist cashflow.

4. Any tax measures taken by Uganda?

While measures by government taken to contain the spread of the coronavirus in Uganda are commendable, they do not yet address the mitigation of adverse impacts on the economy. It is more likely than not that a fiscal stimulus will be required to kick-start the faltering economy if the pandemic continues to rage and the implementation of the incentives thereunder may necessitate legislation to be passed by the Parliament.

Even in the absence of the above mentioned fiscal stimulus, our perusal of the existing tax legislation shows that there are some measures that the government and URA can consider in the meantime to mitigate tax hardships on the business community.

a) Where businesses face cashflow problems, the Tax Procedures Code Act provides that an application may be made to the URA for an extension of the deadline for payment of any tax. The Commissioner is given discretion, 'having regard to the circumstances of the case', to grant an extension and accept payment by instalments. The URA can judiciously exercise this discretion to help out distressed businesses.

b) Unfortunately, bad debts are likely to become more prevalent so the income tax and VAT reliefs available will be important. In the case of income tax, a business is entitled to relief for an unpaid debt provided that the related revenue was included in income and steps have been taken to recover the amount due. The standard the URA applies in practice to prove inability to collect the debts to benefit from the relief is very stringent and may need to be relaxed to enable distressed businesses benefit from this provision. A general provision against doubtful debts is not allowed. Any amount subsequently recovered from the debtor should be taxed. Special rules apply to financial institutions.

c) Under the VAT Act, output VAT in respect of goods or services which have been supplied but not paid for wholly or in part may be repaid to a taxpayer after the elapse of 2 years, provided that appropriate steps have been taken to enforce settlement. The standard the URA applies in practice to prove inability to collect the debts to benefit from the relief is very strict and may need to be relaxed to enable distressed businesses benefit from the same. As with income tax, a subsequent recovery triggers an obligation to pay the related output tax back to the URA.

d) Where contracts are cancelled or suspended because of the impact of the pandemic, compensation payments may be specified unless force majeure provisions can be invoked. The tax treatment of these will generally follow that of the underlying transactions for VAT and income tax purposes.

e) If business disruption gives rise to an insurance claim, any settlement will be taxed as business income for income tax purposes. It may help if such insurance payments are relieved from taxation during the period of economic hardship. (It's worth adding here that most business interruption insurance policies exclude claims in respect of wars, pandemics and similar events.)

f) In 2018, the government expanded the list of designated agents for withholding tax deductions. The deductions represent an advance income tax payment which can impose signifigant cash flow for businesses. This requirement can be suspended for the meantime to allow business apply cash flows to most pressing business needs.

g) Government can consider expanding the scope of items that benefit from the VAT deferment scheme at importation. At present, it is only items of plant and machinery that benefit from this deferment.

h) The government can extend the period within which importers are required to clear their goods from customs bonds giving the ample time to collect the funds required to pay the import duties.

i) It may be time for a formal tax amnesty programme considering that the last one took place in 2007. Businesses need certainty during economic recovery and the amnesty programme would encourage taxpayers to come forward to disclose historical tax liabilities without the worry of penalties and interest that the URA may impose which for most times is more than the outstanding principal tax. The URA would also be able to collect outstanding which on its own it might have been very difficult to uncover.

5. Conclusion

We all hope and pray that the coronavirus crisis will pass soon. We must be prepared, however, for significant dislocation of normal business and tax compliance activity which will potentially last for many months after the health crisis has subsided as businesses struggle to recover from the economic impact.

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Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates, he had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

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.

He holds a Master of Laws degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■

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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.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989. ■

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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 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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