



Introduction



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Embrace Uganda's Tax Amnesty Programme

Don't gamble with risk. Deal with it.

1. Introduction

The Government of Uganda has taken a bold decision to waive interest on all tax arrears unpaid by 30th June 2020 by taxpayers who will voluntarily comply with their tax obligations. This is in response to the lacklustre review of its earlier fiscal interventions to mitigate the economic hardship of the coronavirus pandemic that were considered inadequate by the business community. The proposal to waive interest contained in the Tax Procedures Code (Amendment) Bill 2020 will encourage taxpayers to regularise their tax affairs if approved by Parliament. Taxpayers are hesitant to declare their inadvertent tax errors to the Uganda Revenue Authority ("URA") for fear of the punitive penalties and interest which most times exceed the principal tax payable. This publication provides an overview of Uganda's tax amnesty programme.

2. 2007 Tax Amnesty Programme

Uganda's first formal tax amnesty programme was in 2007. In accordance with the 2007 Finance Act, taxpayers who voluntarily disclosed their tax obligations to the URA by 31st December 2007 and paid the principal tax were forgiven the accruing interest and penal tax. This time bound tax amnesty was lauded as a success because it enabled the government not only to register new taxpayers but also collect about United States Dollars ("USD") 18 million from the exercise.

It probably would have cost the URA more in terms of resources and time to follow up and discover if at all, the tax anomalies that the taxpayers disclosed voluntarily pursuant to the amnesty. The 5 year limit period within which the URA must ordinarily audit taxpayers was likely to lapse before URA had undertaken the same. Taxpayer disclosures also enabled the URA to identify common areas of tax default by taxpayers to plan better for future tax audits.

3. Rationale for tax amnesty programmes

According to the International Monetary Fund ("IMF"), tax amnesties are common in periods of economic hardship when taxpayers are more likely to default on their tax obligations. Tax amnesty programmes are also inevitable given the inherent weakness in the tax legal frameworks, management and operations of tax administration in many developing economies.

Tax administrators in many developing economies lack the power to write off tax debts that are uncollectible. Appeals in the tax dispute adjudication system are also sometimes abused by taxpayers buying time to postpone or defer payment of tax arrears. The penalty and interest regime in many developing countries is also perceived as unfair by taxpayers coupled by the absence of a fair instalment payment system to enable taxpayers stagger their tax payments. Regardless of the reforms and efforts undertaken by many developing countries to improve their ratio of tax collections to the gross domestic product, the above highlighted flaws in the tax systems remain a bottleneck. In fact, the relevance of tax amnesty programmes that do not address the foregoing specific weaknesses that contribute to the low compliance levels or weak revenue performance in the first place are questioned.

4. 2019 Tax amendment and recent URA public notice

In 2019, the Tax Procedures Code Act was amended. We cite verbatim below the text of this amendment.

"Where a person has committed an offence under a tax law, other than under section 63 of this Act and that person voluntarily discloses the commission of the offence to the Commissioner, at any time prior to the commencement of court proceedings, the Commissioner may enter into an agreement with the offender to compound the offence if the offender agrees to pay to the Commissioner the outstanding unpaid tax and that person shall not be required to pay any interest or fine due."

The above provision is interpreted as giving the Commissioner General ("CG") of the URA discretionary powers to waive interest and fines for taxpayers who come forward and make voluntary disclosures of tax liability before the commencement of any court proceedings. This amendment notwithstanding, there has been uncertainty around how the URA would implement the same until it issued a Public Notice in July 2020 that we discuss shortly. We however note that it would have created more certainty if the above provision of the law was enacted in the language of mandatory entitlement to the interest and penalty waiver once the voluntary disclosure is made not subjecting the same to further consideration by the Commissioner General of the URA. We anticipate CG reluctance to exercise this discretionary power on very sensitive cases as well instances of being misunderstood even when this discretionary call of waiver of interest and fines is made.

In July 2020, the URA issued a Public Notice shedding further guidance on how it would implement the foregoing amendment of the law in 2019 that gave power to the CG to consider interest and fine waivers. The Public Notice set out that a voluntary disclosure occurs where a taxpayer voluntarily discloses what ought to have been disclosed but was not declared or partially declared before being prompted by an action or threat of action on the issue by the URA such as: tax investigation, request

for information, tax advisory, tax health check/review, notice for a tax audit, tax query or compliance visit by URA officers.

The Public Notice further adds that a voluntary disclosure must be in writing, complete and accurate highlighting any previous inaccuracies, incomplete or non-disclosure of tax. Such disclosure must be signed by the taxpayer and must be accompanied with relevant information such as evidence relating to the omissions and proof of payment of the principal tax relating to the disclosure.

With respect to the foregoing Public Notice, we foresee disagreements between the URA and taxpayers in instances where the disclosures are made after a tax audit has commenced but not yet finalised. A strict reading of the above amendment seems to imply that URA should still favourably consider a taxpayer's disclosure in the circumstances to the extent there are no court proceedings on the matter that have commenced.

5. 2020 proposed tax amendment

The Tax Procedures Code (Amendment) Bill, 2020 proposes to amend the law waiving interest on tax arrears unpaid by 30th June 2020 by taxpayers who voluntarily comply with their tax obligations. This Bill is still under consideration by Parliament which may revise it further and is yet to be enacted as law. Aside the coronavirus pandemic, the other policy consideration by the Government in making this proposal is that URA's tax arrears book is bloated with accrued interest and penalty taxes that are unlikely to be recovered.

6. Way forward

We encourage taxpayers to take advantage of the current tax amnesty programme under the law to clean up their tax affairs by making a complete voluntary disclosure of tax liability to the URA at the soonest before the URA resumes its aggressive pursuit of tax revenues. It is our recommendation that taxpayers first undertake a risk and opportunities review exercise of their tax affairs to ascertain areas of non-compliance and quantification of the exposure. This review exercise may further highlight additional areas of legitimate tax planning that taxpayers may consider in restructuring their operations to optimise their tax efficiency. For additional information about the URA tax amnesty programme, please contact your usual Cristal Advocate adviser for further information.

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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.

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.

He is a certified project control specialist (IFP) and holds a Master of Laws Degree in Petroleum Law and Policy 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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