

Uganda's Court of Appeal outlaws Domestic VAT

Hot news



1. Introduction

The Court of Appeal ("COA") has outlawed the imposition of *domestic Value Added Tax* ("VAT") by the Uganda Revenue Authority ("URA") on goods imported into Uganda by non-VAT registered taxpayers. This decision overrules an earlier judgement of the High Court that upheld URA's stance. The COA decision has been lauded by many taxpayers and practitioners who have questioned for long why the URA was imposing a tax that lacked legal backing.

2. Facts of the case

Margaret Akiiki Rwaheju and others collectively referred to as the Appellants filed a case in 2013 in the Commercial Division of Uganda's High Court challenging URA's imposition of domestic VAT at the importation of goods into Uganda. The Appellants disputed URA's assessment of tax that was not sheltered by any provisions of the relevant tax laws.

URA has been charging two streams of VAT at importation of goods. VAT at the rate of 18% is charged on eligible goods at importation. This is not contested by the taxpayers as there are clear provisions in the Value Added Tax Act backing its imposition.

URA additionally charged domestic VAT on imports of goods by non-VAT registered taxpayers whose value exceeded Uganda Shillings 4 Million. In determining the chargeable domestic VAT, URA would apply a mark-up of 15% on the taxable value of the imported goods and subject this to VAT at the applicable rate.

According to the URA, this mark-up represented a value add or profit that the importers would earn on the resale of goods to customers in Uganda which ordinarily would attract VAT at the standard rate of 18%. These taxpayers would however not VAT charge on their subsequent sales because they were not registered for VAT causing revenue loss to the government. Domestic VAT was therefore an anti-tax avoidance measure by the URA on assumed future merchandise sales in Uganda by the importers.

3. Decision of the Court

Uganda's High Court previous decision fell short of declaring URA's imposition of domestic VAT as illegal despite the presiding Judge's observation that it was odd and irregular for the URA to collect *domestic VAT* at importation on the supposed future sales of non-VAT registered importers. Dissatisfied with the decision of the High Court, the Appellants sought the intervention of the COA for a pronouncement of illegality of URA's collection of *domestic VAT*.

In a unanimous decision of 3 Justices, the Court of Appeal has overruled the earlier decision of the High Court. The COA has ruled that it is illegal for the URA to impose *domestic VAT* and further ordered the URA to refund the aggrieved taxpayers. The Justices cited the provisions of Article 152 of the Constitution providing that no tax in Uganda would be imposed except under the authority of an Act of Parliament. Relying on several decided cases, the COA noted that no one should be subject to tax unless the words of the relevant law ambiguously imposed the taxes. It was not in dispute that eligible goods were rightly subjected to VAT at the rate of 18% on importation. The imposition of *domestic VAT* at importation on the presumed future sales of non-VAT registered importers was however not only irregular but also illegal. This is because there was no basis in the law to impose the same.

4. Conclusion

Indeed many eligible taxpayers are reluctant to register for VAT purposes. The imposition of domestic VAT by the URA was aimed at creating an incentive for qualifying persons to register. While it is understandable that the URA did this to plug tax leakages, it did not follow the due process of the law. URA is empowered under the law to compel the registration for VAT of eligible persons. By charging domestic VAT, URA created a new tax levy that was not backed by any legislation passed by Parliament. It however remains to be seen whether the victorious Appellants will be paid. It is likely that the URA may institute audits to ascertain whether the aggrieved taxpayers bear no further tax liability to the government prior to making the refund.

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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.

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