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Uganda's Recent Tax Decisions

Hot News

Input VAT | Extension of time to review taxation decisions

We are pleased to share with you our analysis of two recent Uganda Tax Decisions. ***Chestnut Uganda Limited versus Uganda Revenue Authority TAT Application No. 94 of 2019 ("Chestnut case")*** was heard by the Tax Appeals Tribunal and ***Charles Bitarabe T/A Reef Hotels versus Uganda Revenue Authority High Court Civil Appeal No.32 of 2019 ("Bitarabe case")*** decided by the High Court.
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▪ The Chestnut Case

This case interrogated the issue of whether Chestnut Uganda Ltd ("Chestnut") was entitled to input VAT incurred on the construction of a commercial building that was still under construction against taxable supplies unrelated to the said building, namely, the leasing of land.
The background was that Chestnut had over the years claimed input tax credit in its VAT returns that resulted into tax offset claims in that period. The Uganda Revenue Authority (URA) carried out a VAT offset verification following which it disallowed input VAT of UGX 4,388,802,707 earlier claimed by Chestnut on grounds that it related to construction of commercial property (Arena Mall) which was still under construction in respect to which no business had commenced and therefore no taxable supplies had been made in relation to it. The respective arguments raised by the parties were as follows;

(a) The Contention

Chestnut argued that contrary to URA's assessment, it was entitled to the input VAT incurred in the construction of Arena Mall. That the law, given its literal meaning, does not premise the input tax credit claim on the claimant having made taxable supplies from corresponding individual commercial activities. That what is required is that inputs in issue were taxable supplies and for use in the 'business'. Chestnut noted that it was in the business of property development and real estate. To that end, the construction of Arena Mall was a part of that business and as such any input tax incurred in its construction could be credited against the general supplies of that business, whether or not they relate to Arena Mall.
On the other hand, URA argued that Chestnut did not provide any taxable supply in relation to Arena Mall. That the taxable supply Chestnut was making related to letting part of the land which was another business, and therefore the construction of Arena Mall was not for use in that business as required by the law when seeking to claim input VAT.

(b) Decision of the Court

The Tax Appeals Tribunal ("the Tribunal") ruled in favour of Chestnut and allowed the application.
The members of the Tribunal held that in this case, what is required to be established for a taxpayer to claim input VAT is that; the taxpayer is a taxable person; taxable supplies were made to the taxpayer during the tax period; and that the said taxable supplies were for use in the business of the taxpayer.
The Tribunal noted that making taxable supplies was not a condition for claiming input tax. But went on to state that even if such was wrong, in this case Chestnut had made taxable supplies when it let out space for advertisement.
The Tribunal further noted that the law did not require one to ring-fence input tax credit to a particular commercial activity. That URA was confusing "commercial activity" with "business." That the business in this case was as stated in

Chestnut's Incorporation documents i.e., real estate and property management among others. The construction of Arena Mall was merely a commercial activity within the business of Chestnut.

The Tribunal emphasized that taxation is not only about tax collections but also subsidizing economic activities.

(c) Commentary

There are two major points to take away from this decision. First, a taxpayer does not need to be making taxable supplies to claim input VAT, as long as they are registered for VAT. However, taxpayers should read this within the context of the case. In some instances, this observation by the Tribunal may not apply. For instance, where a taxpayer is making only exempt supplies, the law does not permit such taxpayer to claim input tax credit. In fact, where a taxpayer makes both taxable and exempt supplies, the input VAT is apportioned to each of them and the one relating to taxable supplies is claimed. Therefore, whereas the Tribunal's observation holds for the most part, taxpayers should appreciate that such observation was made within the context of the case which may be different for others.

The other major point observed by the Tribunal is that a claim for input VAT is not ring-fenced to a "commercial activity" but rather the "business". While we understand URA's perspective that this may lead to very high claims thus reducing tax revenue, we agree with the Tribunal's finding. The principles of interpreting taxing statutes require the unambiguous ordinary meaning of the words to be adopted and in this case the law clearly provides that for one to claim input VAT, the inputs must have been for use in the "business". In the ordinary scheme of things, a business can constitute one or more commercial activities. If the legislators had intended for input VAT to be ring-fenced to each commercial activity, then they would have provided to that effect in clear terms.

This case serves to remind us that taxation is not always about collection of revenue. In some instances, tax laws are intended to achieve other social and economic goals. For instance, over the years, Uganda's budget speeches and corresponding amendments in the tax laws have strived to enact some laws that subsidize investment in the country despite the recognized need for more tax revenue collections. Therefore, the interpretation of tax laws may not always be about ensuring tax collection but rather adopting an interpretation that achieves those other social and economic goals intended by the legislators and government policy makers

Bitarabe case

This was an appeal to the High Court of Uganda lodged by Charles Bitarabe T/A Reef Hotels ("Reef Hotels") challenging the ruling of the Tribunal in which the latter dismissed the application for extension of time to review URA's objection decision.

The key facts were that the URA had made a tax assessment against Reef Hotels to which the latter objected. When Reef Hotels sought to challenge URA's objection decision before The Tax Appeals Tribunal, the Tribunal disallowed the application on grounds that Reef Hotels did not challenge the objection decision within 30 days as required under the Tax Procedure legislation.

Thereafter, Reef Hotels applied for extension of time within which to challenge the objection decision. The Tribunal dismissed this application as well on grounds that Reef Hotels did not furnish sufficient reasons to warrant the extension of time. Reef Hotels appealed to the High Court against the said Tribunal's ruling. The respective arguments raised by the parties are as follows;

(a) The Contention

In their pleadings, Reef Hotels contended that the Tribunal refused to extend the time in furtherance of a mere technicality. They further contended that the demonstration of sufficient reasons for not instituting the application in time is not a prerequisite for extension of time under the Tax Appeals Tribunal Act. And that URA did not demonstrate any prejudice that would be occasioned to it if the extension was allowed. However, Reef Hotels did not file written submissions in support of those contentions and neither had they give reasons for the delay in instituting the application.

URA, on the other hand, filed written submissions and argued that Reef Hotels did not demonstrate any reason why they failed to file within the prescribed time and emphasized the provision of those reasons is a prerequisite before the grant of an application for extension of time.

(b) Decision of the Court

Justice Susan Abinyo upheld the Tribunal's ruling and maintained that the Tribunal was right to rule that Reef Hotels had not demonstrated sufficient cause which is a prerequisite for extension of time. That on a careful perusal of the laws, it was evident that a party seeking extension of time within which to lodge an application for review of URA's objection decision must demonstrate sufficient reasons for not being able to lodge the application within the prescribed time. Those reasons must be ones that relate to the failure to

Cto take steps in lodging the application. The Court drew from previous decisions which emphasized that timelines set by law are not mere technicalities but rather substantive.

Reef Hotels was faulted for having failed to file written submissions as directed by the Court. It is because of this that the Court noted that Reef Hotels had failed to discharge its duty. Reef Hotels was also faulted for not having filed an affidavit in rejoinder stating reasons why the application was not filed in time when the Tribunal asked it to do so.

(c) Commentary

This case joins a considerable number of cases where the courts have emphasized the importance of time limits prescribed by law. It is therefore important for taxpayers to approach their tax matters with a sense of urgency and address every issue as soon as it arises. Whereas the law provides for the possibility of an extension of the timelines, such extension is not guaranteed.

It is further evident from the court's decision that failure of the Applicant to file submissions and also provide reasons explaining why there was delay in filing the application contributed to the matter being decided against the Applicant. The provision of such reasons is a requirement of law. And for such reasons to stand, they must be ones that relate to the taxpayer's inability to or failure to take a step in filing the application.

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