



An Overview of Tax Agency Notices in Uganda **The Law and Practice**



1. Introduction

In exercising its mandate to enforce tax compliance and collections, the Uganda Revenue Authority (URA) is vested with vast powers. These include preventing tax defaulters from leaving Uganda, seizing assets, and closing business premises. One of URA's potent tools is issuing agency notices to recover tax debts from third parties such as banks, employers, or customers holding money on behalf of defaulting taxpayers. These notices compel third parties to remit funds directly to the URA to settle outstanding tax obligations.

Concerns however arise when URA zealously exercises its right to issue agency notices, more so when under very intense pressure to collect taxes as the financial year draws to a close, without giving taxpayers the chance to fully go through the objection process. This article provides an overview of Uganda's laws and practices governing the issuance of tax agency notices.

2. Applicable law

The application and implementation of agency notices varies depending on the type of tax in dispute. The provisions of the Tax Procedures Code Act (TPCA) apply with regard to agency notices issued for domestic taxes such as income tax, value added tax, excise duty, and gaming taxes. Agency notices for stamp duty liabilities are governed by the provisions of the Stamp Duty Act, while agency notices relating to customs duties are covered under the East African Community Customs Management Act (EACCMA).

All the foregoing laws empower the URA to issue agency notices against third parties when a taxpayer fails to pay owed taxes or shows unwillingness to do so by the due date. For example, if income tax isn't declared on a property sale, the URA can issue an agency notice to the seller's bank, ensuring direct remittance to cover the tax liability.

3. The duty to comply

Unless specified otherwise by law, a third party issued with an agency notice must remit the funds mentioned therein to the URA by the notice's due date, usually the date the third party is served with the agency notice.

However, concerning customs taxes, the law seemingly allows a third party up to 30 days from the time of service of the notice and is a common ground of dispute with the URA.

There are also variations depending on the tax in dispute regarding the obligation to notify the URA when unable to honour the agency notice. Non-compliance by a third party renders them personally liable for the specified amount, recoverable by the URA as unpaid tax.

4. When to issue agency notices?

There is a debate whether URA can legally issue agency notices immediately after raising tax assessments. Our view is that such actions are not tenable at law as they violate procedural fairness by circumventing taxpayers' rights to contest to tax liabilities, they dispute during the objection period. Judicial precedents have supported this position, suggesting that issuing agency notices prematurely infringes upon the right to a fair hearing and weakens the procedural protections inherent in tax objection regimes.

5. Service of the agency notice

While the law requires that agency notices must be served on both the taxpayer and any involved third party, it is silent on the consequences of non-compliance a void that has been filled by case law. In one decided case, URA issued agency notices to a local bank against taxpayers who held accounts with the bank for the recovery of unpaid taxes. The URA failed to effectively serve the agency notices on the taxpayers, a fact that came to the knowledge of the bank. The bank refused to honour the agency notice and URA in turn issued a demand against the bank for the money in the agency notices. The High Court set aside the demand and agency notices. Court noted that in the event where the third party knows that there is an illegality, it would be unlawful and against public policy for them to go ahead and implement a thing that they knew very well to be invalid.

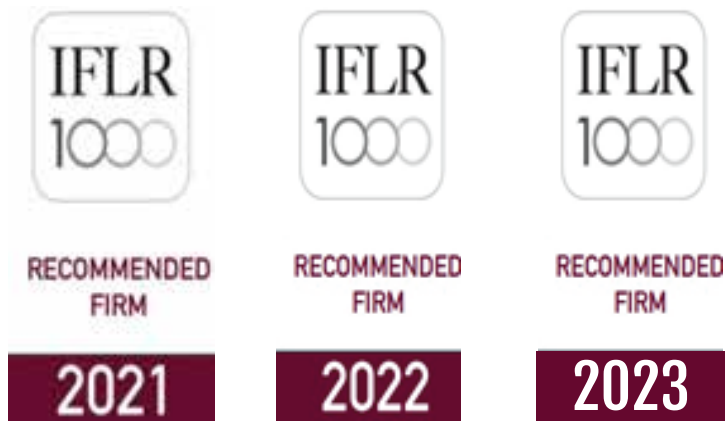
6. Conclusion

From the foregoing discussion, it can be construed that whereas URA has the powers to issue agency notices,

those powers should not be exercised arbitrarily. The relevant tax laws have set guidelines within which agency notices should be issued. It can be contended that that a third party can decline to honor an agency notice if the requirements of the Tax Procedure Code

Act, Stamp duty Act or EACCMA are not met or where the third party has knowledge that an illegality has been committed by URA in the course of issuance of the agency notice.

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