



## **The 30% Tax Payment to contest URA Assessments Due in Money or Alternative Equivalent?**

A graphic consisting of several white puzzle pieces arranged in a horizontal row. The text 'TAX ASSESSMENT' is written across the pieces in a bold, orange, sans-serif font. The pieces are set against a dark grey background with a subtle gradient and a soft shadow effect.

**TAX ASSESSMENT**

## 1. Introduction

The requirement in Uganda for taxpayers to pay 30% of the disputed amount before contesting Uganda Revenue Authority (URA) tax assessments has long been contentious and is now reaching boiling point as taxpayers seek ways to push back against an assertive tax authority desirous to meet the ambitious collection targets set by the government.

Despite this position of the law being litigated up to the Supreme Court of Uganda, there are lingering questions, such as whether this requirement contravenes the constitutional right of access to justice, and if the 30% payment is indeed due, whether it should be made in money or in equivalent form, which are still evolving.

While the Tax Appeals Tribunal (TAT or Tribunal) has occasionally moderated URA's strict enforcement of the 30% tax payment requirement, in line with the spirit of the law to offer taxpayers a fairer path to meet this demand, its recent ruling in the matter of VIVO Energy Uganda Limited versus URA threatens to upend this balance. By rejecting the validity of bank guarantees as qualifying payment and noting that money must feature in the mix to meet this payment requirement, the Tribunal's decision could entrench URA's objection to alternative payment arrangements as normally has been the case as this article discusses.

## 2. Section 15 of the TAT Act

Under Section 15 of the Tax Appeals Tribunal Act, Cap. 341, taxpayers disputing URA assessments are required to pay 30% of the assessed tax before their appeals can be heard. While this mandate ostensibly supports government tax collection efforts and aims to deter frivolous claims, it however imposes an onerous financial burden on those seeking redress.

Critics argue that this preemptive payment deters many from challenging otherwise erroneous assessments, effectively obstructing their quest for justice. The weight of this financial demand casts a shadow over their pursuit of fairness, leaving many unable to clear this initial hurdle, thereby saddling them with avoidable tax burdens. You can imagine a situation where an erroneous tax assessment of Uganda shillings (UGX) 100 billion is issued against a

taxpayer who before getting a right to challenge it in the Tribunal must first pay UGX 30 billion.

## 3. Constitutionality of the 30% payment

The constitutionality of the 30% payment requirement before taxpayer objections to tax assessments can be heard by the Tribunal was first considered by the Constitutional Court and later by the Supreme Court in the 2010 matter of Uganda Projects Implementation and Management Centre (UPIMAC) versus the URA.

UPIMAC had filed an application in the Tribunal to review URA's tax assessment. URA however objected to this application for lack of payment of 30% of the disputed tax. UPIMAC argued that this requirement violated its constitutional right of access to justice, and the matter was referred to the Constitutional Court for interpretation. Both the Constitutional Court and later the Supreme Court sided with URA, affirming that the 30% requirement was constitutional.

The constitutionality of the 30% payment was also further considered by the Constitutional Court in the matter of Fuelex Uganda Limited versus URA in a decision rendered in 2020. The Court found that the requirement to pay 30% of the tax in dispute was not unconstitutional so far as it applied only to disputes over the tax amounts assessed. However, the Court held that it would be unconstitutional if the requirement for the 30% payment was extended to parties whose disputes were purely legal or technical, where the issue before the Tribunal did not relate solely to the amount of tax payable.

Despite the Constitutional Court's decision, the Tribunal is yet to apply the Fuelex decision, citing the doctrine of precedent by which it is bound by the decisions of higher courts. Accordingly, it continues to uphold the Supreme Court's decision in the UPIMAC case that affirmed the constitutionality of the 30% payment requirement.

## 4. Facts of the VIVO matter

In 2018, Uganda amended sections 75 and 79(ga) of the Income Tax Act (ITA) to address the touchy issue of offshore share disposals tied to local assets. If an entity's ownership directly or indirectly changes by 50% or more within three years, potential taxable capital gains may arise.

As one of the first taxpayers against whom the 2018 ITA amendment is sought to be tested, VIVO Energy finds itself staring at a staggering UGX 59 billion demand from the URA arising from the sale of shares by one of its foreign shareholders on the London Stock Exchange in July 2022.

Seizing upon this transaction, the URA, invoking section 75(2) of the ITA, attributes the gains from this sale to VIVO Uganda. Consequently, VIVO Uganda is now held liable for the capital gains tax resulting from this offshore disposal.

VIVO thus filed an application in the Tribunal seeking declarations that the 30% tax payment requirement did not apply to their nature of the tax contest. Alternatively, they argued that if the 30% requirement did apply, remitting the same by way of a bank guarantee would suffice in accordance with the law.

## 5. Ruling of the Tribunal

The Tribunal ruled that VIVO must comply with the 30% payment requirement when disputing the tax assessments in question. Furthermore, the Tribunal decided that a bank guarantee does not qualify as a form of payment under the TAT Act. The Tribunal noted, "...while it is true that the primary purpose of a guarantee is to ensure that a payment will be made at a certain point in time upon the occurrence of an event, that does not make a guarantee a form of payment. The requirement under section 15 above is for a payment and not a guarantee."

The Tribunal hinged its decision on the definition of "pay" as set out in Black's Law Dictionary, which connotes giving money for a good or service, making a satisfaction, or transferring or giving money. Implicitly, the Tribunal seems to be pointing to a potential conclusion that compliance with the 30% payment condition under section 15 of the TAT Act must and should be evidenced by monetary satisfaction.

## 6. Our commentary

Tax practitioners are presently debating whether the Tribunal's decision in the VIVO case, which suggests

that the 30% payment under section 15 of the TAT Act must be strictly monetary, is too restrictive. The question is if this narrow interpretation limits how compliance with the 30% payment requirement can be demonstrated and whether it truly aligns with the dispensation of tax justice.

Expanding beyond the Black's Law Dictionary definition of "pay," the ITA's broader definition of "payment," which includes amounts paid or payable in cash or kind, or by other means of conferring value, might offer a more flexible approach to ensuring tax justice. Imagine a situation where a taxpayer has a tax credit or tax refund due from the URA and requests URA to apply that to satisfy the 30% tax payment. Can't such suffice as an equivalent for the 30% payment requirement?

As noted earlier, the Tribunal and the High Court have previously supported more flexible approaches to meeting the 30% payment requirement. The Supreme Court too has alluded to the same in the UPIMAC case. They have overturned URA's refusal to allow taxpayers to use installments, tax credits, or other forms of payment. This flexibility has often been allowed by the Courts when taxpayers initially request such arrangements from the URA and are denied. Relevant cases illustrating this stance include Registered Trustees of Free Masons v URA, TATA v URA, Elgon Electronics v URA, and A Better Place Uganda Limited v URA.

## 7. Conclusion

While the International Monetary Fund, a very influential institution in the evolution of Uganda's tax policy supports the requirement of taxpayers to pay a portion of their tax liability before contesting an assessment, it notes that this requirement must be both fair and flexible. Fairness ensures that taxpayers are not unduly burdened, allowing them to challenge tax assessments without imposing severe financial hardship. Flexibility involves accommodating various payment methods, such as installments or tax credits, to suit different financial situations.

Whereas the government could argue there are other alternative dispute resolution processes where the 30% payment may not be a pre-requisite, it is noteworthy

that such processes are still within the control of URA that impairs their independence and objectivity. More to that the decisions of alternative dispute resolution processes typically delay past the timelines allowed for taxpayers to lodge their appeals in the Tribunal.

tax payable before objection to a tax assessment but also equally consider establishing the Office of the Tax Ombudsman that would exercise oversight over URA to ensure fair administration of justice as well as ensuring that somewhat correct assessment to be objected to are issued. At the moment, URA has too much sway and say.

There may therefore be need to revisit the amount of

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Before joining Cristal Advocates, Denis spent nearly 10 years at Deloitte, an international professional services firm, where he started his career and rose to senior roles. While with Deloitte, he worked and lived in Uganda, Kenya, Tanzania and the United Kingdom.

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- a) Master of Laws in Petroleum Taxation and Finance with distinction - University of Dundee, UK
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**John Teira**

John is a Partner with the firm but presently on sabbatical leave. Before joining Cristal, he worked as a Private Secretary to the President of Uganda. Prior to this role, he had worked with Shonubi Musoke & Company Advocates and Post Bank Uganda Limited.

John is presently a Member of Parliament representing Bugabula County North in Kamuli District in Uganda National Assembly.

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Dickens is a Partner at Firm where he also leads the oil and gas practice. Before joining Cristal Advocates, Dicken had served as Company Secretary of the Uganda Refinery Holding Company Limited (URHC) and the Uganda National Oil Company (UNOC) where he played key role in its formation.

Prior to joining the UNOC, Dickens had spent five years as Legal Counsel at the Petroleum Directorate of the Ministry of Energy and Mineral Development, where he evaluated several oil and gas transactions, negotiated contracts, and participated in the preparation of Uganda's oil laws and regulations.

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**Bill Page**

Bill is a Senior Advisor at the Firm and is a leading global energy and tax practitioner with extensive international experience.

From 1986 to 1998, Bill 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 during a period of major infrastructure development for crude oil production.

From 2004 to 2008, Bill worked in Russia, leading Deloitte's oil and gas industry group and establishing the firm's Sakhalin office. In 2009, he moved to East Africa, where he led Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia, and Mozambique. Initially based in Kampala, Uganda, he later relocated to Dar es Salaam, Tanzania.

In 2014, Bill returned to the UK to support Deloitte UK teams on projects investing in Africa and remained a key member of Deloitte UK's energy and resource practice until his retirement in September 2018.

### Education

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



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