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A Preview into the 30% Tax Payment Requirement

Hua Sheng International Company Limited v. URA (Misc. App. 154 of 2024)

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1. Introduction

The requirement for taxpayers to pay 30% of the tax assessed as a precondition for contesting Uganda Revenue Authority (URA) tax assessments before the Tax Appeals Tribunal (Tribunal) remains a cornerstone of Uganda's tax jurisprudence. Despite numerous judicial decisions and interpretations on the same, this provision continues to provoke disputes and litigation. The recent Tribunal decision in Hua Sheng International Company Ltd v. Uganda Revenue Authority (Misc. App. 154 of 2024) matter further engages with this issue, as we explore in this commentary.

2. Background

URA conducted a tax audit of Hua Sheng International Company Ltd (Hua Sheng) and issued tax assessments, which Hua Sheng duly objected to. Dissatisfied with the outcome of URA's objection decisions, Hua Sheng sought recourse by escalating the matter to the Tribunal sooner after which URA demanded the payment of 30% of the disputed tax. To further compel compliance, URA took the additional step of deactivating Hua Sheng's Taxpayer Identification Number (TIN). This prompted Hua Sheng to challenge the legality of both these actions before the Tribunal.

3. Hua Sheng's Submission

Hua Sheng argued that the 30% payment requirement under Section 15(1) of the TAT Act only arises upon order by the Tribunal, not at URA's discretion. The company maintained that URA's unilateral demand lacked legal basis since enforcement of the 30% payment lies exclusively within the Tribunal's purview. Furthermore, Hua Sheng contended that the suspension of its Tax Identification Number ("TIN") by URA was unlawful and violated its constitutional right to a fair hearing. The company emphasized that URA's enforcement actions, in the absence of a Tribunal order, were procedurally flawed and unjust.

4. URA's Submission

URA asserted that the obligation to pay 30% of the disputed tax arises immediately upon the filing of an application before the Tax Appeals Tribunal, regardless of any order from the Tribunal. The Authority contended that it is statutorily mandated to collect this 30% as a prerequisite for Tribunal proceedings. Furthermore, URA argued that its actions, including the demand for payment and the suspension of Hua Sheng's Taxpayer Identification Number (TIN), were both lawful and necessary to enforce compliance and ensure effective revenue collection. URA maintained that the only means to restrain such enforcement was through seeking an injunction.

5. The Tribunal's Ruling

The Tribunal reaffirmed its established position that the payment of 30% of the disputed tax is a legal requirement for taxpayers challenging URA's assessments. It ruled that Hua Sheng's obligation to pay arose immediately upon filing the application before the Tribunal and upheld URA's demand as consistent with the law.

However, the Tribunal made an important distinction, clarifying that while the Tribunal is responsible for the enforcement of the law on the payment of 30%, the collection of the tax falls under URA's remit. Consequently, the Tribunal directed Hua Sheng to either make the required payment or negotiate a payment plan with URA, after which the case could proceed on its merits.

6. Commentary

While the requirement to pay 30% of the disputed tax upon filing an application with the Tribunal is generally settled, concerns have been raised regarding URA's approach to enforcement. Specifically, the issuance of agency notices or deactivation of TINs upon filing, even in the presence of interlocutory orders that bar tax collection to enforce the collection of this 30% tax, has drawn attention. This approach has led some practitioners to consider whether the appropriate response to non-payment should be the enforcement of collection or requesting the Tribunal to strike out the taxpayer's application for non-compliance.

While the importance of effective revenue collection is crucial, it is equally important that enforcement measures are applied in a way that ensures fairness and upholds procedural integrity. A balanced approach would help prevent any unintended negative impact on taxpayers' rights while maintaining the necessary rigor in tax collection.

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Denis is the Managing Partner of the Firm. He is qualified both as a Lawyer and Chartered Accountant with UK training and vast experience serving local, regional and international companies in Sub Saharan Africa. He is recognized as a notable corporate and commercial law practitioner in Uganda.

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 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.

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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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