

Recent Developments in Tax Law – Uganda

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Not since the chaotic period year 1995 when Value Added Tax (VAT) was being introduced has the Uganda landscape experienced as much drama as the year 2018. The convergence of excise duty, Withholding Tax (WHT) and VAT on telecommunication transactions in form of mobile money and what was later defined as Over the Top Services (OTT) generated so much debate not only from the elite class who normally pay attention to tax amendments but to all segments of society.

Mobile Money Tax

The Excise Duty (Amendment) Act 2018 introduced a 1% duty on mobile money transactions. This led to an uproar from the public as this tax not only increased the cost of transactions but it was levied on deposits to own account and transfers from bank to “e-wallets”. Most Ugandans resorted to other means of transferring money and according to a report from Bank of Uganda, the volume of mobile money transactions declined by Shs. 672 billion (\$165.2 million) within the first two weeks from the time the law came into effect.

The President having accented to the bill stated that he had been misadvised and ordered a refund of the tax paid in “error”. The Act was later returned to Parliament for debate and has since been revised from 1% to 0.5%.

Over the Top Services

The Act also introduced Ushs. 200 (\$0.05) per user per day of access to Over the Top Services i.e. transmission or receipt of voice or messages over the internet protocol network including access to virtual private networks save for educational or research sites prescribed by the Minister.

As a precursor to the tax bills, the President had already sent a missive to the Minister of Finance indicating that he felt taxation of social media was not only likely to be a cash cow but that social media needed to be deterred through taxation. The message read that “...*olugabo (gossip) on social media and advertisements by google and I do not know who else must pay tax because we need resources to cope with the consequences of their lugambo ...if we introduced a small fee Uganda Shs. 100 per day from sim-cards that are used by these OTTs, that would generate about Shs. 400 billion additional revenue*”.

The bill was finally passed into law and came into effect on 1st July 2018. However, not everyone is paying this tax as some Ugandan’s have resorted to accessing social media through VPN.

Withholding VAT

The VAT Amendment Bill allowed the Minister by notice in the Gazette to designate persons responsible for withholding VAT of 50% before making a payment for a taxable supply and the designated persons would then remit the VAT invoiced to URA.

Strangely when the bill cleared the parliamentary hurdles it turned out as an Act legislating for 100% WHT rather than 50% which was in the bill. The list of Withholding Agents was published in the Uganda Gazette of 29th June 2018 and that is when the actual disruption started and an uproar ensued.

It became very difficult for registered tax payers to continue accounting on the accrual basis yet the WHT was being deducted on cash basis. It was also difficult to know whether or not a client had deducted and remitted the tax to URA and consequently the VAT accounting processes was in a state of flux within a single month of its operation.

The legal notice providing for withholding agents was recalled hence affecting the implementation of the law. Whether or not this was the proper way to handle the legislation remains to be seen.

Of course, the Government had acted with “greed” in an attempt to get the VAT in its pockets even to the detriment of due process of input – output VAT accounting which is standard practice not only in the VAT regimes in the world over but also in the VAT accounting formula which had not been amended within the VAT Act 1996.

The story of VAT will remain incomplete without reflecting on how the government has in the recent past been a victim of a highly systematic and well-orchestrated VAT invoice fraud schemes. A group of fraudsters created a scheme whereby VAT registered traders would buy tax invoices to increase their purchases, thereby increasing their input tax and ultimately reducing their VAT liability. Some of these perpetrators have been penalized but for some strange reason neither the media nor the government were eager to give the story the gravity that it deserved.

Electronic Fiscal Devices

The proposed Tax Procedure Code (Amendment) Act under Section 73A provides for electronic receipting and invoicing, and the use of Electronic Fiscal Devices. By the financial year 2019/20 taxpayers will be capturing all transactions via EFDs and URA will be able to access most of the transactions hence improving tax compliance. This however seems to be mainly targeted at sale of goods rather than services.

The question that remains is how these devices will be administered in an economy with such a large informal sector.

Withholding tax on gaming and betting activities

Section 118C of the Income Tax Act provides for a withholding tax of 15% on gross payments made to a winning player of gaming or betting. This provision was enacted in 2014, repealed in 2016, re-enacted in 2017 and amended in 2018.

According to URA, the amount to be taxed is the amount of money paid to the winner including the winner's stake (investment). Ideally 'win' does not include the amount invested and therefore only the profit made should be taxed.

There is a challenge of determining when the win has occurred. For instance slot machines run up to 50 spins per minute with each spin constituting a separate bet. These are usually multiple continuous and small transactions which makes it practically impossible to consider each win. Also, some wins are usually wagered over and over again which would mean that the same amount is taxed more than once.