BIRUNGYI BARATA & ASSOCIATES

ADVOCATES, LEGAL & TAX CONSULTANTS

The Legal Brief

Always Evolving

Beyond the 20 years

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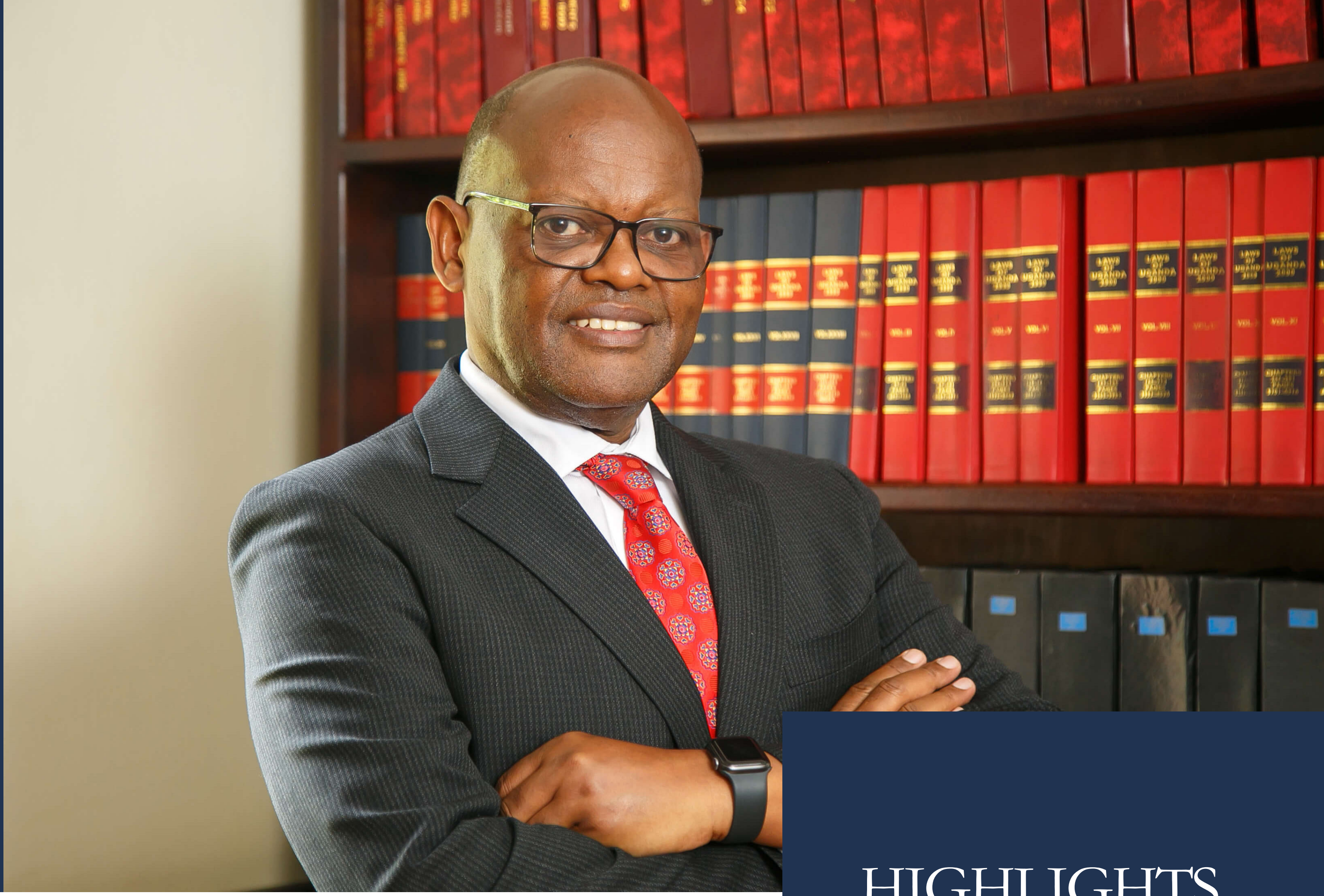

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FOREWORD

Birungyi Cephas Kagyenda

Dear friend

As we draw towards the end of the calendar year, I hope that together we shall sail through it successfully and dive into 2025 with confidence, hope, and ambition.

Birungyi, Barata & Associates (BBA) is glad and grateful that you have considered us worthy of providing you with important information in the respective areas in which we share our expertise.

Considering that tax is one of the areas for compliance, we can bet that you will continue to require year-in and year-out information. In the Legal Brief, we are offering our view of what we consider to be the highlights of the year 2024; and what we expect will be key areas to watch out for in the year 2025.
Enjoy reading the tax cases, legislation, and trends in 2024.

In conclusion, BBA wishes you a very happy end of the season in 2024 and bumper profits in the year 2025 that will make you smile as you pay your taxes.

Remember us, Birungyi, Barata & Associates the tax champions.

ABOUT BBA

Birungyi, Barata & Associates celebrated its 20th anniversary in November 2023. It was a joyful celebration of 20 years of excellence, serving, and delivery to our esteemed clients.

BBA is a legal and tax law firm in Uganda offering the best service to our clients and a one-stop center for all legal and tax services. BBA believes in always evolving to deliver the best strategic solutions and excellence to our customers.

BBA offers tax services, Corporate and Commercial, advocacy and litigation, employment and Labor law, real estate and conveyance, banking and financial law, Arbitration, Immigration, Insolvency, Construction, energy, oil and gas, and consultancy services.

BBA was recognized in Tier 4 of Financial and Corporate Services in Uganda for 2024 by IFLR 1000. ITR recognized BBA under Tier 2 of general Corporate Tax and Tier 1 for transfer pricing.

Game-Changing Court Rulings Shaping Uganda's Legal Landscape

By Lizzan Kemigisha

At BBA, we don't just follow the law; we shape it. As true game changers in the legal field, we are proud to be at the forefront of landmark rulings that redefine industry standards and set powerful precedents.

This year, our involvement in several high-profile cases has had a transformative impact, from groundbreaking VAT rulings in Uganda's broadcasting sector to pivotal decisions on time-barred tax assessments. These cases not only reinforce BBA's commitment to legal excellence but also pave the way for future legal innovation.

Here's a closer look at the cases that are making waves:

Africa Broadcasting (U) Ltd v. Uganda Revenue Authority – Civil Appeal No. 0052 of 2020: Court Ruling on VAT Treatment of Imported Foreign Programs

In a landmark decision, **Africa Broadcasting Ltd** successfully challenged a UGX 1.23 billion VAT assessment imposed by **URA** on foreign programs delivered on DVDs. The Tax Appeals Tribunal had previously classified the programs as imported services, subject to imported VAT.

The Court ruled that the foreign programs, when delivered on DVDs, should be treated as goods, not services, as VAT had already been paid at customs. This aligns with Section 12(1) of the VAT Act, which classifies services related to goods as part of the supply of goods.

This ruling is a significant victory for Uganda's broadcasting sector, reducing the tax burden and setting an important precedent for the treatment of VAT on foreign programs with broad implications for the broadcasting and entertainment industries in Uganda.

Kasese Cobalt Company Limited v. Uganda Revenue Authority – HCCA No. 4 of 2020: Court Ruling on Time-Barred Additional Assessments

In a ruling delivered on the 19th of February 2024, the High Court sided with Kasese Cobalt Company Ltd, overturning a UGX 8.16 billion PAYE assessment imposed by URA. The case centered on whether the company was required to withhold PAYE on expatriate staff payments between 2009 to 2015, considering exemptions in the Kasese Project Development Agreement.

The Court ruled that URA's additional assessments were time-barred, as they were issued beyond the three-year limit stipulated by Uganda's tax laws, and that KCCL was entitled to the exemption.

This decision underscores the critical importance of adhering to the three-year statutory time limit for tax assessments, protecting businesses from retrospective tax demands. It also affirms the continued validity of tax exemptions under the Kasese Project Agreement.

Samaliya (Kiganja) Tea Estate Ltd v. Takaya Frank & Others – Civil Suit No. 116 of 2023: Court Dismisses Execution Dispute on a Preliminary Objection

On 6th November 2024, the High Court dismissed **Civil Suit No. 116 of 2023** filed by Samaliya (Kiganja) Tea Estate Ltd, challenging the execution and sale of its land. The Plaintiff claimed the sale was fraudulent and violated legal procedures.

The 2nd to 4th Defendants raised a preliminary objection, arguing the matter should be handled by the executing court, as required by Section 34(1) of the Civil Procedure Act.

Hon. Lady Justice Victoria N. N. Katamba upheld the objection, ruling that disputes over decree execution must be resolved by the court that issued the decree. The Court also noted the Plaintiff's repeated lawsuits as an abuse of court process and dismissed the suit.

The ruling highlights the need to follow proper legal procedures in execution disputes and discourages frivolous litigation. It reaffirms that execution-related issues should be resolved by the executing court.

Court Orders UNRA to Compensate Joyce Lucia Burungi for Exploration Rights Violation

The High Court of Uganda directed the Uganda National Roads Authority (UNRA) to pay Joyce Lucia Burungi USD 2,542,600 (Shs 9.3bn) in special damages for the violation of her exploration rights. The case stemmed from UNRA's construction of the Hoima-Kaiso-Tonya Road, which interfered with Burungi's exploration license area and led to the excavation of 25,426 tonnes of bentonite.

Joyce Lucia Burungi, who held Exploration License No. EL 0760, filed a case against UNRA and the Attorney General after her attempts to secure compensation for the loss of her mineral resources were unsuccessful. Burungi's exploration rights were violated when UNRA's road construction activities encroached on her licensed area, resulting in the removal of bentonite.

The High Court ruled that Burungi's exploration rights, protected under the Mining Act and the Constitution, had been violated. Justice Esta Nambayo emphasized that Burungi held exclusive rights over the minerals within her licensed area, and these rights could not be interfered with by the government without compensation. The court noted that Article 26 of the Constitution guarantees protection from the deprivation of property and mandates compensation in such cases.

This ruling is a significant legal victory for the mining and exploration sector in Uganda. It underscores the obligation of government agencies to respect exploration licenses and compensate affected parties. The decision also reinforces the constitutional protection of property rights, setting a precedent for the treatment of exploration rights in future cases.

These landmark rulings reflect BBA's commitment to driving legal progress and setting precedents that shape Uganda's legal landscape. We remain dedicated to providing expert counsel and fostering meaningful change in the legal field.

CHANGES TO THE LAW

By Belinda Lutaya Nakiganda, Jonathan Rukikaire

TAX LAWS:

1. Waiver of Interest and Penalty
Taxpayers who pay their outstanding principal tax by the 31st of December 2024 shall have all the interest and penalty waived.

Taxpayers are urged to carry out self-examination on their ledgers on the URA portal and pay the outstanding principal to benefit from this waiver before the 31st of December 2024.

2. Filing Corporate returns together with Audited Financial Statements.
Effective 1st September 2024, the Uganda Revenue Authority will require taxpayers with an annual turnover of Ushs.500,000,000 or more to submit Audited Financial Statements prepared by a registered member of the Institute of Certified Public Accountants of Uganda when filing their Income Tax Returns. ***(Per Section 16(5) of the Tax Procedures Code Act)***

This applies to:

- Final Income Tax Returns for Non-Individuals
- Final Income Tax Returns for Individuals
- Final Income Tax Returns for Partnerships

3. VAT on meals to hotel Staff
URA notified hotels to charge VAT on all food provided to their employees per ***S.18 (11) VAT***.

Therefore, Hotels have to begin to account for VAT on food given to their employees.

4. Customs Baggage Claim
Passenger baggage allowance has been increased from **USD.500** to **USD.2000** for passengers who have been outside Uganda for a period exceeding 24 hours. Authenticated receipts are required to confirm the value of goods.

If goods exceed the **USD.2000** allowance, assessments are issued at the airport/border, and payment is made by the passenger within 2 hours, failure of which the baggage is transferred to the cargo terminal for further processing.

Other Limits for Passengers to take note of:

Spirits	1 Litre
Wine	2 Litre
Perfumes and toilet water	250ml
Cigarettes, cigars, cheroots, tobacco and snuff	250 grams

5. Ugandan Residents working in Diplomatic Missions are not exempted from Taxes.

URA reminded residents working in diplomatic missions to file their returns starting with the financial year 2023/2024. The employees are advised to file income tax returns and make monthly installment payments toward their liability.

6. Salient Tax Amendments 2024/2025

a) Amendment of the **Income Tax Act** by inserting **Sections 78A** and **78B** to provide for permanent establishments and calculation of chargeable income of permanent establishments, respectively.

This is a more detailed definition and aligns with the definition of a Permanent Establishment under the UN Model Double Taxation Agreement and Uganda's Double Taxation Agreements.

The concept of *"permanent establishment"* is used to determine the right of a State to tax the profits of an enterprise of the other State.

Specifically, the profits of an enterprise of one State are taxable in the other State only if the enterprise maintains a permanent establishment in the latter State and only to the extent that the profits are attributable to the permanent establishment.

b) Amendment of **Section 18** of the **Value Added Tax Act** to provide that the supply of goods or services by an employer to an employee for no consideration is a taxable supply except where the employer was not entitled to input tax credit.

The amendment aligns with the decision in **Celtel Uganda Ltd v URA CACA No. 22 of 2006**, whereby Airtime supplied by an employer (Celtel) to its employees for official use was held to be taxable under **Section 18(7)** of the **VAT Act** as they received a taxable supply under reduced consideration.

Employers who provide free taxable goods or services to their employees are now obliged to account for the VAT based on the fair market value of the supply and shall only apply to employee benefits, which are taxable supplies under the law.

Please check out www.taxconsultants.co.ug for a detailed paper on all tax amendments for 2024/2025.

7. Revised Edition of the Principal Laws of Uganda, 2023.

On 1st July 2024, the Revised Edition of the Principal Laws of Uganda, composed in volumes, came into force. It consolidates all Acts of Parliament from independence up to 31st December 2023 into a single Statute Book popularly referred to as *"the Red Volume."*

The 7th Revised Edition does not alter or amend the substance of any enactment. Certain aspects in the arrangement and format have, however, changed, e.g., the characterization of Acts, re-numbering of sections and paragraphs, and correction of errors.

The Laws are available in both print and electronic formats. The Commission developed an online system that allows access to the laws of Uganda through a Web and mobile App. This provides easy and quick access to the law.

Other amendments in the Law:

a) Tier 4 Microfinance Institutions and Money Lenders Act Cap 61 S.89 (1), prescription of maximum interest rate Notice 2024, which set 2.8% per month or 33.6% per annum as the maximum interest rate money the lender can charge on the principal or the actual sum of money advanced as a loan.

b) Non-Governmental Organisations (Amendment) Act 2024

This Act dissolved the NGO Bureau and mainstreamed the functions of the NGO Bureau into the Ministry of Internal Affairs.

c) Business Names Registration (Amendment) Rules, 2024, statutory instrument No. 43 of 2024

A firm/individual is required to file a statement of business continuity every year-end confirming that they are carrying on business using the registered name.
(S. 8A) The format of the statement of business continuity is provided for in the Second Schedule of the rules as amended.

Failure to comply with this rule for three consecutive years shall cause the registrar to commence removing the name of the firm or individual per **Section 14** of the Act (Business Names Registration Act).

All business owners are thus advised to adhere to this amendment.

d) Agricultural Chemicals (Control) (Amendment) Act, 2024
e) Animal Feeds Act 2024
f) Appropriation Act, 2024
g) Children (Amendment) Act 2024
h) Civil Aviation Authority (Amendment Act) 2024
i) National Council for Older Persons (Amendment Act) 2024
j) National Planning Authority (Amendment) Act, 2024

New guidelines on acquiring Special Titles.

Owing to the rampant fraud, the Ministry of Lands has issued new guidelines for obtaining a special title in a bid to tighten the process and protect landowners as follows:

a) Police report detailing how the title was lost by the owner
b) The owner has to appear in person before the registrar of Titles for identification
c) The owner should produce their national identity card or passport and an LC1 letter introducing the owner of where the land is found.

IN THE NEWS

Motion to consolidate Tribunals

A motion was moved to Parliament to merge the Tax Appeals Tribunal and the Electricity Disputes Tribunal into one national tribunal called the National Tribunal, which shall adjudicate all disputes subject to the bill to enhance efficiency and reduce costs of administration.

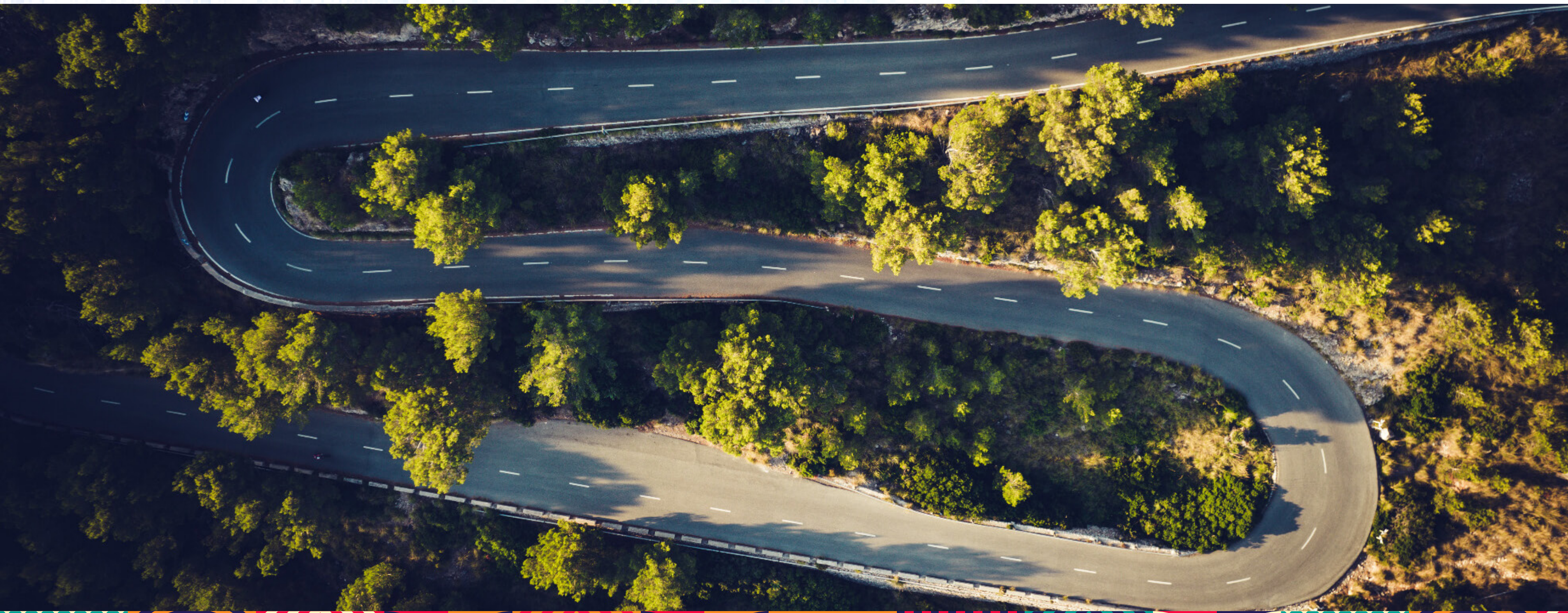
This bill was criticized as it was contrary to A. 152 (3) of the Constitution to handle tax disputes quickly and informally but with flexibility due to their sensitivity and their bearing on the economy of the country. The merging of the tribunals would thus slow down the speed with which these tribunals operate and cause a case backlog.

Further, there was inadequate consultation of the various stakeholders, and the views of those that were consulted were not taken into account, contrary to Article 8A of the Constitution and the decision of **Male H. Mabirizi & Ors vs A.G Civil Appeal No. 02 of 2018.**

This bill was rejected by Parliament

Real-Time Audits through Compliance Improvement Plan (CIP) 2024/2025

URA has introduced real-time audits through the Compliance Improvement Plan (CIP) 2024/25, where they will examine taxpayers' transactions in real-time, communicate to the taxpayers in case of any irregularities, and advise taxpayers on how to address the issues through Real-Time Tax Advisory (RTA).
The aim is for the taxpayers to minimize their tax liability, clean ledger, ease of getting a Tax Clearance Certificate, the Authorised Economic Operator status, and tax exemptions, among others.
Taxpayers are thus urged to carry out self-assessments to ensure that they have cleared their liability and to make payments on time.



Serviced Apartments are not VAT-exempt - Sharad Karia vs URA Application 57 of 2023

The Applicant owns apartments and URA raised VAT assessments on the basis that the Applicant deals in serviced apartments which attract VAT on the Rental Income earned from letting them out.

The Applicant argued that the property fell within the category of residential property and was thus VAT exempt as per *paragraph 1(f) (v) of Schedule 3 of the VAT Act.*

URA on the other hand argued that the Applicant is liable to pay the tax assessed since the Applicant added value to the premises through amenities like a gym, swimming pool, monthly internet, and Dstv among others; thus the Applicant went over and beyond the provision of mere space for accommodation.

The tribunal held that the amenities added value to the property and the Applicant was able to command a higher monthly rent compared to similar properties without amenities.

The Tribunal defined a serviced apartment as a temporary accommodation, halfway between a traditional apartment and a hotel which can be booked for both short-term and long-term stays, fully furnished with amenities like Wi-Fi, Internet Access, Tv with cable or satellite channels among others. As per this definition, TAT conclusively held that the applicant's property was a serviced apartment which is not exempt from VAT.

Implications of this case

1. This decision elaborates that modern residential properties with amenities as provided above that add value will attract VAT.
2. Thus, taxpayers are advised to reconcile with this decision by registering and charging VAT on the rent they derive from such properties.

BBA'S YEAR OF DYNAMIC ENGAGEMENTS: TRAININGS, PARTNERSHIPS, EVENTS, AND WORKSHOPS

At BBA, we are committed to providing continuous learning and fostering meaningful relationships within the legal community. This year, our team actively participated in an exciting array of events, workshops, training sessions, and strategic partnerships. *Here's a glimpse of what we've been up to:*

STRATEGIC PARTNERSHIPS:

Masterclass on Tax Dispute Resolution in Uganda.

In a significant move to strengthen professional capabilities in tax law, BBA partnered with the Alternative Legal Practitioners (ALP) to organize a high-level Masterclass on Tax Dispute Resolution. This workshop focused on resolving tax disputes at both the national and international levels, highlighting Alternative Dispute Resolution (ADR) strategies in the tax space.

The session also explored Uganda's position on international tax disputes. Birungyi Cephas Kagyenda, BBA Managing Partner, was a key presenter, sharing invaluable insights from his wealth of experience in tax dispute resolution with Belinda Lutaya Nakiganda, who presented on the ADR and Court process for tax disputes.

SMES BEYOND BORDERS (ABSA)

BBA partnered with ABSA Bank in conducting a series of training sessions aimed at enhancing SMEs' broader business understanding, including taxation. BBA was tasked with training the SMEs on taxation in Uganda in seven vibrant cities—Kampala, Mbale, Jinja, Lira, Arua, Masaka, and Mbarara.

The sessions were led by a powerhouse team of BBA facilitators: Mr. Birungyi Cephas Kagyenda, **Mr. Patrick Kabagambe**, **Ms. Belinda Nakiganda, Ms. Jackie Aturinda,** and **Mr. Richard Agaba.**

Their expert insights resonated with attendees, providing crucial knowledge on navigating complex tax and reporting challenges.

Uganda Law Society Trainings:

Litigation Training: Tax Practice Nuts and Bolts

Shaping the Future of Tax Law

BBA's commitment to enhancing legal expertise and fostering compliance was evident in our active participation in the **Uganda Law Society's** different workshops (aimed at **enhancing compliance and legal expertise** in the field of taxation, saw BBA representatives **Mr. Birungyi Cephas Kagyenda** and **Ms. Belinda Lutaya Nakiganda** take the stage as distinguished presenters. Their sessions were met with keen interest,

The firm also attended the IBDF masterclass and IBDF conference in Nairobi, Kenya.

New Hires

In 2024, BBA hired two Legal assistants with dynamic backgrounds, which will add to the firm's competence. The firm welcomes Ms. Lizzan Kemigisha and Ms. Tracy Ainebyona to BBA.

Clerkship

In a bid to have LDC students get practical experience in the legal field, BBA took on three clerkship students, namely Monica Acayo (LDC Kampala), Miria Nuwarinda (LDC Kampala), and Marvin Ahuhira (LDC Mbarara).

Internship Students

BBA also hired internship students for 2 months. These interns included Sabah Twine Busingye (Makerere University), Paul Mugumye (Makerere University), Irene Nakiberu (Islamic University in Uganda), Aaron Ashaba (Makerere University), Stella Ainempeira under Procurement (Victoria University), Ezekial Kiiza Tayebwa (Rwanda), Asiimwe Reina (Turi Nairobi).

Corporate Social Responsibility

BBA sponsored furniture to the Lutaya Dream Resource Foundation to enable students at St. Peter's Kabutemba to study and also equip the staffroom. For more information on how to contribute to the school, please view the website lutayadrf.org.

The firm also participated in the Cancer Run by Rotary raising money to create awareness and access to cheap and better medical care, the Seven Hills Run by ABSA to support the education of girl children in Uganda, and the Kabaka Run by Airtel to raise awareness against HIV/AIDS and empower the girl child.

BBA made a splash at the glittering Phantom of the Opera fundraiser at Serena Hotel, where our team was seen dressed to the nines in support of a great cause. It was a night of glamour, charity, and camaraderie—demonstrating that BBA is not only committed to the law but also to giving back

(BBA team members at the Seven Hills Run by ABSA)

Exciting Events:
Building Team Spirit and Giving Back

Back at the firm, BBA hosted several lively and engaging events to foster a vibrant and collaborative work environment. From our firm; annual retreat, and festive Easter Party to heartfelt send-off parties for clerkship and internship students, we made sure to celebrate every milestone with style.

Our team-building activities also included several fun-filled Sip "n" discussion drink-ups that provided the perfect opportunity for colleagues to unwind and connect.

At BBA, we're always looking for new ways to connect, learn, and grow—both within the legal community and beyond. With a packed calendar of exciting events and opportunities, we are energized and excited to continue contributing to the legal profession in meaningful ways. Stay tuned for more updates as we continue to push the boundaries of legal excellence!

FREQUENTLY ASKED QUESTIONS

As a specialized firm in tax, these are some of the frequently asked questions from our clients.

i. What is a TIN?
A TIN is a unique identifier assigned to individuals and entities to track tax obligations and report to tax authorities.

ii. Why do I need a TIN?
To be able to file tax returns.
Compliance with tax laws.
Eligibility for tax deductions and exemptions.

iii. What are the requirements to obtain a TIN?
National ID.
Certificate of registration in case of a business or non-individual.
Company Form 20 in case of a non-individual.

iv. How much tax am I required to pay as an employee?
This depends on how much you earn as a salary.

v. What types of taxes are businesses required to pay?
For Income Tax purposes, Business Income, Employment Income, and Property Income.
VAT if a business has a gross turnover in a year above UGX 150M.
Local Excise Tax, if a business deals in excisable goods.
Customs duty for import of goods.
Gaming and Betting Tax, and Stamp duty, among others.

vi. What is presumptive tax?
This is a simplified tax based on the estimated gross turnover for the year of income of a taxpayer.

vii. Who is eligible to pay presumptive tax?
Any resident person engaging in businesses whose gross turnover in a year of income is above UGX 10 million but below UGX 150 million.

viii. What is the difference between local government taxes and central government taxes, and are businesses required to pay both?

Taxes collected by the local government are usually known as Non-tax Revenue (NTR), for example, property rates, market dues, business licenses, and local service taxes.

Central government taxes, on the other hand, are administered by the Uganda Revenue Authority (URA) and are governed by national laws like the Income Tax Act and the VAT Act.

Businesses must comply with local tax obligations based on their location while also meeting broader central tax requirements managed by the URA.

Get to Know BBA Better

i) What does BBA mean?
Birungyi, Barata & Associates

ii) Does BBA only practice tax litigation and consultancy?
No, it does not. BBA's expertise covers all aspects of corporate and commercial law, advocacy and litigation, employment and labor law, conveyancing, Construction, Arbitration, banking and financial law, insolvency, intellectual property, and more.

iii) How does BBA attract a vast number of 'big' clients?
Among its varied staff, BBA boasts an unrivaled and vast career experience and specialty. BBA also provides exceptionally innovative and highly resourceful legal solutions to clients which are tailored to meet their specific needs.

Apart from BBA's experience and specialization, BBA deliberately focuses on understanding the clientele's business needs and goals.

iv) Who are the key clients of BBA?
Multi-national corporations, Government agencies, small and medium enterprises, individuals, and listed companies.

v) How can one contact BBA or schedule an appointment/ meeting to acquire legal services?

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vi) Is BBA involved in any pro-bono or CSR activities?

Yes, it is.

Last year, as part of its 20th anniversary celebrations, BBA carried out CSR at the Jinja Road Police Station, where it donated various items.

In 2024, BBA also partnered with ABSA Bank to provide free tax education and training in different parts of the country.

vii) How long has BBA been operating in Uganda?
For 21 years, BBA celebrated its 20th anniversary in November 2023.

viii) Does BBA provide any training or seminars?
Yes, it does, usually in partnership with ULS, EALS, and other organizations.

ACKNOWLEDGEMENT

We extend our appreciation to everyone who helped with research, drafting, and editing this newsletter. Moreso, we thank the firm for the resources provided, without which it would have been impossible to publish the newsletter.

To our Esteemed Clients, thank you. We are grateful for the trust, and confidence that you have in us. We are forever grateful.

We wish you a merry and festive holiday and a Happy New Year.

DISCLAIMER

The information contained in this newsletter is provided on an "as is" basis and is for general information purposes only. The firm, therefore, assumes no responsibility or liability for any errors or omissions in the contents of this newsletter as it is not a source of legal advice.
If you need legal advice upon which you intend to rely in the course of your business/personal affairs, do not hesitate to contact our firm for the same.

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