Annual International Bar Association Conference 2020

Recent developments in international taxation – Uganda

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Overview

Tax related changes in Uganda are normally informed by the budget for the corresponding financial year. During the last financial year (July 2019–June 2020), the most significant international tax developments in Uganda have been on tax treaties, withholding tax on interest payments to non-residents and free zones. Further, there have been some ongoing discussions about the structural implementation of the automatic exchange of information mechanism, which is still a work in progress. These developments are as a result of policy changes, tax law amendments and the judicial interpretations by the Tax Appeals Tribunal and other courts of law.

Policy and legislative highlights

Taxation of carry forward losses

Uganda's tax policy on assessed losses has been to allow the taxpayer to perpetually carry forward these losses until such a time when the entity's total allowable deductions for a year of income do not exceed its gross income. The country has however changed its policy and amended its law to impose tax at 0.5 per cent on all taxpayers with carried forward losses for a consecutive period of seven years**.**

Free zones and industrial parks – exemption of investments over USD10m

In order to encourage investment in country manufacturing and import substitution, the income Tax (Amendment) Act 2019 gave a ten-year income tax exemption to operators and persons leasing or letting facilities within and outside industrial parks and free zones with a minimum investment capital of USD10m for foreigners and USD2m for Ugandan citizens.

Definition of beneficial owner under international agreements

While various international tax treaties and agreements include a definition of beneficial owner, it was deemed important that this definition be harmonised for tax purposes in the application of various treaties/agreements under the Income Tax Act (ITA). With effect from 1 July 2019, a beneficial owner for purposes of tax exemption or tax reduction for purposes of Section 88 (5) ITA under a tax treaty is determined by applying the definition under the amended Section 2(ae) of the ITA which states: '"beneficial owner" means a natural person who owns or has a controlling interest over a legal person other than an individual and who exercises control over the management and policies of a legal person or legal arrangement, directly or indirectly whether through ownership or voting securities, by contract or otherwise'.

The implication is that persons benefiting from reduced rates of tax or exemption under various treaties must fit within the definition of 'beneficial owner' under the ITA and not the respective agreements. It is important to note that while Section 88(2) gives international agreements supremacy over the ITA, subsection (5) above is excluded from the application of this rule.

Withholding tax (WHT) on interest payments to non-residents

The WHT rate for interest payments on government securities to non-residents was amended from a general 20 per cent to ensure different rates depending on maturity period. As a result, government securities with a maturity period of less than 10 years were maintained at 20 per cent while the WHT rate of securities with a maturity period of more than 10 years was reduced to 10 per cent with effect from 1 July 2019.

Mandatory tax identification number registration

Further in the financial year 2019-2020, the government made it mandatory for every local authority, government institution or regulatory body to require presentation of a Tax Identification Number (TIN) before issuing a licence or any form of authorisation to any person for purposes of conducting a business in Uganda. This change affects Multinational Corporations and foreign investors who take on large projects in the country under the licence regime, among others.

Electronic Fiscal Receipting and Invoicing System (EFRIS) and digital stamps

In the Financial year 2020/21, the Government has introduced a regulation to operationalise the e-invoicing and receipting system, which will require all taxpayers to integrate their systems with the central government system at the Revenue body, where the transactions will be captured real time. This will be part of the roll out of the Electronic Fiscal Receipting and Invoicing System (EFRIS).
In 2019/20, the government introduced the Digital Tax stamps on manufactured goods. In 2020/21, the Government will increase its efforts in rolling out the use of Digital Tax Stamps and expand the range of products covered in order to deter under-declaration at production and importation of goods. Digital stamps will also ensure that goods on the market meet the required health and safety standards (per the Uganda National Standard Board).

Double taxation agreements (DTAs) and treaties and automatic exchange of information

In order to ensure harmony and align its principles across various double tax agreements, Cabinet in 2016 approved a Double Taxation Policy whose main objective is to provide guidance on the process of negotiation and conclusion of Uganda's DTAs with the core objective of relieving double taxation and thereby promoting international trade and investment.

It is against this background that the country has started the process of reviewing its existing DTAs to bring them into conformity with the Policy. Uganda is in the process of reviewing and renegotiating its double taxation agreements with the Netherlands and Mauritius. The renegotiations are in advanced stages and it is hoped that they will be concluded within the 2020/21 financial year.

Judicial precedents

There have been some tax decisions that have had some significant impact in the area of international taxation. The following are noteworthy:

The High Court of Uganda, in the case of *Target Well Control(U) Ltd v URA HCCS No. 751 of 2015* [decision delivered on 19 June 2019], re-echoed emphasis on the precedence of tax treaties over domestic provisions save in provided exceptions. The Court further offered guidance on when a subsidiary may be considered a *permanent establishment* for its parent company; that is, where the parent company *trades through* as opposed to *trades with* the subsidiary. Otherwise, the subsidiary does not constitute a permanent establishment.

In *Cooper Motors Corp. (U) Ltd v URA TAT Appn. No. 67 of 2018* [decision delivered on 17 March 2020], the Tax Appeals Tribunal clarified on seemingly conflicting provisions noting that whereas accrual recognition applied to other payments for purposes of WHT, there is an exception regarding interest payments which are only subject to WHT when ‘paid’.

In this case, the plaintiff company had acquired loans from its non-resident holding company. The latter was subsequently acquired by another non-resident company, after which the debt was allegedly converted into equity. It was the Ugandan Revenue Authority’s contention that interest was paid at the date of the conversion and that is when WHT was due, whereas the plaintiff averred that such was due on the date the interest accrued. The tribunal reconciled the accrual-nature of ‘payment’ as defined under s. 2 ITA and the provisions under s. 47(2) ITA which provide to the effect that WHT on interest payments is due when interest is paid by stating that the latter was an exception to the general rule of accrual recognition.