MMAKS ALN
MMAKS ADVOCATES

SIGNIFCANT TAX LAW DEVELOPMENTS IN UGANDA

Key Highlights from the 2019 amendments to Ugandan tax legislations

The National Budget Statement for the FY 2019/20 was read on 13 June 2019 by the Minister of Finance, Planning and Economic Development under the theme "**Industrialization for Job Creation and Shared Prosperity"**. Under its medium term macroeconomic plan and fiscal framework, it among others set out plans for domestic tax, most of these being adjustments to existing tax legislation effective 1 July 2019. The key highlights of these adjustments are set out below.

1.1 Beneficial Owner defined

The term beneficial owner, which had never previously been defined, was coined to mean a natural person owning or having 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.

Only individuals that qualify as beneficial owners under the Uganda Income Tax Act of Uganda can partake of the benefits of reduced tax rates or exemptions under Double Taxation Agreements with Uganda.

1.2 Citizen defined

In a bid to encourage investment in Uganda, the definition of citizen under Uganda tax laws has been extended beyond Ugandan nationals. Accordingly, the Income Tax Act, Stamp Duty Act and Value Added Tax Act now apply to citizens who are defined to include natural persons who are citizens of a Partner State of the East African Community ("EAC") or companies or bodies of persons incorporated under the laws of a Partner State of the EAC in which at least 51% of the shares are held by a person who is a citizen of a Partner State of the EAC. As a result of this definition, both EAC citizens and companies incorporated in the EAC that are majority controlled by EAC citizens can enjoy the same tax benefits as Ugandan nationals.

1.3 Cap on deductible interest

The thin capitalization rules were repealed in 2018 by the introduction of a cap on deductible interest on all debts owed by taxpayers who are members of a group to 30% of the tax earnings before interest, tax, depreciation and amortization ("EBITDA"). Effective 1 July 2019, financial institutions and insurance companies are exempted from this provision. Interest in excess of the 30% of the tax EBITDA can now be carried forward for a maximum of three years.

1.4 Withholding tax on purchase of a business or business asset

A 6% withholding tax was introduced on the purchase of a business or business asset by a resident person. This amendment has greatly widened the tax base considering the term business asset is broadly defined to include assets which are used or held ready for use in a business, assets held for sale in a business and any asset of a partnership or a company. The tax authorities are currently enforcing this provision by reviewing the stamp duty register for stamp duty payments made from 1 July 2019, when this provision became effective, and issuing tax assessments to purchasers of property.

1.5 Withholding tax on payments of government securities

Withholding tax on long term bonds was reduced from 20% to 10% where the maturity period is at least 10 years to encourage investment in long term Government securities and also to reduce financing costs to Government.

1.6 Tax incentives for investing in Uganda

The period within which income derived from leasing or letting facilities in industrial parks and free zones (or conducting business outside these areas), is eligible for an income tax exemption was increased from five years to ten years - provided the minimum investment capital requirements are satisfied. The minimum investment capital requirements to qualify for the income tax exemption were also significantly reduced for both foreigners and citizens. The above tax incentives are aimed at enhancing competitiveness in the region by attracting investors to Uganda.

With regards to excise duty, the minimum investment capital requirements for developers of industrial parks or free zones was reduced from USD 100 million to USD 50 million to widen the scope of investors who can qualify for nil excise duty on construction materials for developing industrial parks or free zones. The same applies for operators within industrial parks, free zones, single factories or businesses outside the aforementioned whose minimum investment capital was reduced from USD 15 million to USD 10 million in the case of foreigners and USD 1 million for citizens.

To promote infrastructure development in Uganda, interest paid on infrastructure bonds was also exempted from income tax. Infrastructure bonds include listed bonds, notes or similar securities used to raise funds for public infrastructure and other social services with a maturity period of at least ten years.

1.7 Prohibition of issuance of licenses to persons without a Tax Identification Number ("TIN")

Local authorities, government institutions or regulatory bodies are now prohibited from issuing licenses or authorizations necessary to conduct business in Uganda to persons without a TIN. This amendment aims to expand the tax net to include persons conducting business in Uganda who are not tax registered – notwithstanding the fact that they qualify to register.

1.8 Return of Withholding Valued Added Tax ("VAT")

Withholding VAT which had been suspended in 2018 months after its introduction, was reintroduced effective 1 July 2019 at a reduced rate of 6% compared to the 18% in 2018. Compliant taxpayers will be exempted from withholding VAT. The exemption is intended to encourage taxpayers to be tax compliant.

1.9 Registration of manufacturers, importers and providers of excisable goods and services

All manufacturers, importers or providers of excisable goods and services (except retailers) are required to register with the Uganda Revenue Authority and also register their premises. A penalty of UGX 400,000, approximately USD 108, applies for each day a person operates without a certificate of registration. The certificate of registration is renewable annually.

1.10 Widening penalty on unpaid excise duty

Previously, interest had been levied only on the non-payment of excise duty in respect of the manufacture or importation of excisable goods however, services are now included in the ambit of the penal tax. This amendment was aimed at reducing revenue leakage from previously not penalizing non-payment of excise duty on services.

Case law

The Court of Appeal recently ruled on the imposition of interest by the Uganda Revenue Authority pending dispute resolution in ***Airtel Uganda Ltd V Commissioner General Uganda Revenue Authority Civil Appeal No. 40 of 2013***. The Court of Appeal held that:

"..it would be absurd to come to a conclusion that a person who objects to an assessment is deemed to have failed to pay the tax. This is because the Constitution envisages that disputes relating to tax assessments may arise and when that ensues, the provisions of the Tax Appeals Tribunal Act apply. The requirement to pay 30% of the objected tax suspends the requirement to pay the whole sum which is objected to which may only be paid after the objection is dismissed…A person who has objected to a tax assessed, appealed against it and paid 30% of

MMAKS ALN
MMAKS ADVOCATES

the assessed tax, paid interest on arrears cannot in our view be penalized for having sought redress by the Tax Appeals Tribunal."

The above decision removed the ambiguity on whether the Uganda Revenue Authority can impose interest on a tax in dispute, specifically where the taxpayer has applied for a review of an objection decision at the Tax Appeals Tribunal and has paid 30% of the assessed tax as required by law.

Contacts

Fiona N. Magona
Partner
magona@ug.africalegalnetwork.com

Flavia Suubo
Principal Associate
suubo@ug.africalegalnetwork.com