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Transfer Pricing 2024

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Global Practice Guides

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2024

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Published by
Chambers and Partners
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London
EC4A 2AE
Tel +44 20 7606 8844
Fax +44 20 7831 5662
Web www.chambers.com

UGANDA

Law and Practice

Contributed by:
Birungyi Cephas Kagyenda, Belinda Lutaya Nakiganda and Jaquiline Aturinda
Birungyi, Barata & Associates

Contents

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Birungyi, Barata & Associates was founded in 2003 and has since established itself as the leading tax law firm in Uganda, aiming to provide professional and efficient tax and legal services that optimise client value. The firm has been at the helm of tax litigation, firmly impacting and changing the legal landscape of tax with game changing tax decisions. The firm offers bespoke advisory services on domestic and international tax, tax litigation, planning, audit, and consultancy. The firm has grown to be recognised by local and international peers, as well as international legal ranking firms for its excellence in tax and legal services. The firm's expertise extends to individuals, multinational corporations, international organisations, and government agencies across a spectrum of tax-related matters.

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1. Rules Governing Transfer Pricing

1.1 Statutes and Regulations

The rules governing transfer pricing in Uganda are contained in the Income Tax Cap 340 which is the main statute, and the Income Tax (Transfer Pricing) Regulations.

- The Income Tax Act Cap 340 – Section 90 of the Income Tax Act (ITA) allows the Commissioner to adjust transactions between associates as necessary to reflect chargeable income at arm's length. In addition, Section 91 grants the Commissioner the authority to recharacterise transactions linked to tax avoidance or lacking substance, and to disregard those without substantial economic effect.
- The Income Tax (Transfer Pricing) Regulations – these came into force on 1 July 2011 and apply to controlled transactions between a resident and another resident party or non-resident entity. The Regulations are implemented in line with Article 9 of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines.

1.2 Current Regime and Recent Changes

History

The history of Uganda's transfer pricing regime traces back to the enactment of the Income Tax Act in 1997, which laid the groundwork for addressing tax avoidance practices under Section 90 and Section 91 of the Act which require taxpayers in related party transactions to deal at arm's length.

Current Regime

Uganda's Transfer Pricing Regulations came into force on 1 July 2011, and they apply to transactions between associated entities, for both domestic and cross-border transactions.

Changes and policy considerations

- On 5 May 2012, the Uganda Revenue Authority (URA) issued a Practice Note (General Notice 386 of 2012) providing guidance on the documents to be maintained by taxpayers for transfer pricing purposes. The practice note aimed at assisting taxpayers in complying with Transfer Pricing Documentation requirements and guiding the URA during the audit process.
- Section 90 of the ITA was amended by the Income Tax (Amendment Act) 2017 to broaden the rules' scope, extending their application to transactions between associates. Prior to the 2017 amendment, the provision only covered "taxpayers" which meant that persons who were not registered taxpayers, such as non-residents, would not be included.
- On 23 June 2023, Uganda signed into law The Convention on Mutual Administrative Assistance in Tax Matters Act 2023, and it took effect on 1 July 2023. The Act gives force of law in Uganda to the provisions of the Convention on Mutual Administrative Assistance in Tax Matters, the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, and Standard for Automatic Exchange of Financial Account Information in Tax Matters, alongside related regulations.
- The Uganda Revenue Authority has an International Tax Unit which was set up to handle international tax issues and transfer pricing audits.

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2. Definition of Control/Related Parties

2.1 Application of Transfer Pricing Rules

Definition of Associates

According to Section 3 of the Income Tax Act, a person is treated as an associate of the other if the person acts in accordance with the directions, requests, suggestions, or wishes of another person. This definition does not apply to an employee–employer relationship.

In the case of a company, an associate refers to a person who either alone or together with an associate or associates controls 50% or more of the voting power in the company either directly or through one or more interposed companies, partnerships or trusts.

Definition of Controlled Transactions

The transfer pricing Regulations define controlled transactions to mean transactions between associates.

Technical Control Test

The test is not flexible as the rules require technical control of 50% or more of the voting power in the company.

3. Methods and Method Selection and Application

3.1 Transfer Pricing Methods

The Transfer Pricing Regulations ("TP Regulations") specify the following transfer pricing methods:

- Comparable Uncontrolled Price Method;
- Resale Price Method;
- Cost Plus Method;
- Transaction Net Margin Method; and
- Transactional Profit Split Method.

3.2 Unspecified Methods

Regulation 7(5) of the Income Tax (Transfer Pricing) Regulations 2011 gives taxpayers the option to apply a transfer pricing method other than those explicitly outlined in Regulation 3 if they can demonstrate to the Commissioner that:

- none of the specified methods are suitable for assessing whether a controlled transaction aligns with the arm's length principle; and
- such other method yields a result consistent with that between independent parties engaging in comparable uncontrolled transactions in comparable circumstances.

3.3 Hierarchy of Methods

The law does not provide for a hierarchy for the transfer pricing methods. Uganda has a flexible approach in selecting the most appropriate transfer pricing method as long as the result of the transaction is at arm's length. The most appropriate method is evaluated based on:

- the strengths and weaknesses of the method in the circumstances of a case;
- appropriateness of the method having regard to the nature of the transaction and functions undertaken by each party;
- availability of reliable information needed to apply the transfer pricing methods; and
- degree of comparability between controlled and uncontrolled transactions, and the reliability of any necessary adjustments.

3.4 Ranges and Statistical Measures

There are no specific provisions in the law relating to the use of ranges or statistical measures. However, Regulation 8 of the TP Regulations requires taxpayers to provide sufficient information and analysis to verify that the controlled transactions are consistent with the arm's length principle.

The onus is on the taxpayer to demonstrate that their intercompany transactions are priced in accordance with what would have been agreed upon between unrelated parties in an open market setting.

3.5 Comparability Adjustments

Regulation 4 outlines factors that ought to be considered in determining comparability of transactions. These factors are:

- the characteristics of the property transferred;
- functions undertaken by the person entering into the transaction taking account of assets and risks assumed;
- contractual terms of the transactions;
- economic circumstances in which the transactions take place; and
- business strategies pursued by the associate to the controlled transaction.

According to Regulation 10, in cases where a competent authority of another country, with which Uganda has a Double Taxation Agreement (DTA), makes an adjustment resulting in taxation in that other state or the profits becoming taxable in Uganda, the Commissioner shall, upon request by the taxpayer, assess whether the adjustment aligns with the arm's length principle. If it is determined to be consistent, the Commissioner shall correspondingly adjust the amount of tax levied in Uganda on the income or profits, thereby preventing double taxation.

4. Intangibles

4.1 Notable Rules

The Transfer Pricing Rules ("TP Rules") and Income Tax Act do not provide for a definition for intangible property. However, under the ITA, an intangible asset is treated as immovable property.

Section 90(2) of the ITA allows the Commissioner to adjust the income arising from any transfer or licence of intangible property between associates so that it is commensurate with the income attributable to the property.

The documents to be maintained with respect to intangible property include the form of the transaction, the type of intangible, the rights to use the intangible that are assigned, and the anticipated benefits from its use.

The scope of the TP Rules in respect to intangibles includes their supply and acquisition. Since the TP Regulations follow the OECD Transfer Pricing Guidelines ("OECD TP Guidelines"), the rules and methods outlined therein are applicable.

4.2 Hard-to-Value Intangibles

The transfer pricing legislation in Uganda does not have any special rules regarding hard-to-value intangibles.

4.3 Cost Sharing/Cost Contribution Arrangements

The Practice Note issued by the URA in 2012 recognises Cost Contribution Arrangements. In order to prove that cost sharing is at arm's length, a party is required to provide supporting documents which include:

- copies of agreements and relevant changes to the agreements;
- a list of all parties involved;
- how much associated parties who are non-participants use the shared resources;
- how long the sharing agreement lasts, what activities are covered;
- who benefits from the agreement;
- any differences between expected and actual benefits;
- each party's responsibilities;
- how much each participant contributes; and
- what happens if someone joins or leaves the agreement.

The URA has the power to adjust the income or deductions of a taxpayer if it believes that the conditions of a cost-sharing arrangement do not comply with the arm's length standard.

5. Affirmative Adjustments

5.1 Rules on Affirmative Transfer Pricing Adjustments

The TP Rules do not provide for specific rules regarding affirmative transfer pricing adjustments. However, according to Section 24 of the ITA, the taxpayer may request the Commissioner to amend a return upon discovering an error within three years from the date of filing the return. In his case, the taxpayer may make the necessary adjustments in computing the assessable income. The Commissioner is obliged to notify the taxpayer of the decision within 30 days.

6. Cross-Border Information Sharing

6.1 Sharing Taxpayer Information

Uganda has a network of Double Taxation Agreements (DTAs) with various countries, namely: Denmark, India, Italy, Mauritius, Netherlands, Norway, South Africa, the United Kingdom and Zambia. These treaties were signed to avoid double taxation and promote economic co-operation.

The DTAs include provisions for the exchange of information to prevent tax evasion and ensure compliance with tax laws, for example, Article 26 of the DTA between Uganda and the UK provides for a mechanism for tax authorities in the UK and Uganda to exchange confidential information regarding taxpayers for the purposes of applying the treaty or domestic law.

On 4 November 2015, Uganda signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) becoming the 8th African country and the 90th jurisdiction of the convention.

Uganda is also a signatory to the East African Community Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income. Article 27 of the Agreement provides for the exchange of information between the member states to prevent fraud and tax evasion. However, this agreement is not in force due to the delay in ratifying it by one of the member states, Tanzania.

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7. Advance Pricing Agreements (APAs)

7.1 Programmes Allowing for Rulings Regarding Transfer Pricing

According to Regulation 9(1) of the TP Regulations, a person may request the Commissioner to enter into an advance pricing agreement to establish an appropriate set of criteria for determining whether they have complied with the arm's length principle for certain future controlled transactions undertaken over a fixed period of time.

7.2 Administration of Programmes

APAs are administered by the Commissioner of the Uganda Revenue Authority.

7.3 Co-ordination Between the APA Process and Mutual Agreement Procedures

In case of a dispute arising from an APA, the MAP may be invoked to resolve the dispute. Co-ordination between APA and MAP in this case facilitates a seamless resolution of any disputes or issues arising from the APA.

7.4 Limits on Taxpayers/Transactions Eligible for an APA

The law does not provide for limitations regarding which taxpayers or transactions are eligible for an APA.

7.5 APA Application Deadlines

The law does not specify a deadline by which a taxpayer must file an APA application.

7.6 APA User Fees

The law does not provide for any user fee for a taxpayer seeking an APA.

7.7 Duration of APA Cover

The law does not specify the number of years an APA can cover. However, Regulation 9(7) provides that the APA shall specify the years of income for which the agreement applies.

7.8 Retroactive Effect for APAs

An APA applies to the controlled transactions specified in the agreement that are entered into on or after the date of the agreement.

8. Penalties and Documentation

8.1 Transfer Pricing Penalties and Defences

Penalties

A taxpayer is liable on conviction to imprisonment for a term not exceeding six months or a fine not exceeding UGX500,000 (approximately USD127) or both for contravening the TP Regulations.

Section 49A(1) of the Tax procedures Code Act also imposes a penalty of UGX50 million (approximately USD12,700) for failure to provide records in respect of transfer pricing within 30 days following the request.

A taxpayer has a right under Section 24 of the Tax Procedures Code Act to lodge an objection with the Commissioner within 45 days from the date of receipt of the assessment.

Defending penalties

A taxpayer dissatisfied with an objection decision has a right to appeal the decision up to the Supreme Court.

Transfer Pricing Documentation

Regulation 8(1) of the Income Tax (Transfer Pricing) Regulations requires taxpayers to prepare and keep transfer pricing documentation.

Taxpayers are required to record in writing sufficient information and analysis to verify that the controlled transactions are consistent with the arm's length principle.

The documentation must be in place prior to the due date for filing the income tax return for the relevant year of income. The documents include:

- the ownership and organisational structure of the entity;
- operational structure;
- description of the controlled transactions;
- description of the comparables;
- economic conditions;
- description of the method selected and reasons why it was selected;
- functional analysis;
- cost contribution arrangements;
- management strategy/policy;
- where applicable, financial information relevant in comparing profit and loss between associated entities; and
- all outcomes from a comparability analysis, and explanation of capital relationship.

8.2 Taxpayer Obligations Under the OECD Transfer Pricing Guidelines

The law does not specifically mandate taxpayers to prepare all the files and reports as outlined in the OECD TP Guidelines. However, the documentation required from the tax payer as outlined in the TP Rules mirror the information required in a local file which contains detailed information relating to specific intercompany transactions.

9. Alignment With OECD Transfer Pricing Guidelines

9.1 Alignment and Differences

How are the OECD and Ugandan Income Tax Aligned?

Uganda's TP Regulations are aligned with the OECD TP Guidelines. Regulation 6 provides that the Regulations must be construed in accordance with the arm's length principle under Article 9 of the OECD Model Tax Convention on Income and Capital and the OECD TP Guidelines for Multi-national Enterprises and Tax Administrators. The Regulations also adopted the same transfer pricing methods as stated in the OECD TP Guidelines.

Uganda has also followed the OECD approach in the DTAs signed with other states, for example, in allocating taxing rights, taxing residents on their worldwide income, definition of a permanent establishment and beneficial owner, among others.

However, where there is a conflict between the Act and the OECD documents, the Income Tax Act prevails.

Differences

- OECD taxes royalties only in resident states, whereas Uganda taxes based on source of income in Uganda by way of withholding tax.
- Under the OECD, there is no withholding tax on payments made by resident companies, whereas in Uganda withholding tax is applicable to resident taxpayers providing goods and services.
- OECD allows for losses to be deducted but they cannot be added back, whereas in Uganda taxpayers can carry back losses.

- Uganda uses a criterion of 90 days/6 months for permanent establishment, while the OECD's period is 12 months.

9.2 Arm's Length Principle

Uganda's TP Rules apply the arm's length principle as embedded in Sections 90 and 91 of the ITA. The Rules do not provide for any other approach.

9.3 Impact of the Base Erosion and Profit Shifting (BEPS) Project

The BEPS project has influenced the country's transfer pricing landscape by prompting amendments to its domestic tax laws, aligning them with the transfer pricing principles to prevent base erosion, ensure arm's length transactions between related parties and limit on interest deductions. The amendments include the following.

- Amending the definition of beneficial ownership in 2022 (Section 2 (ea) of the ITA to include legal person and trusts).
- Restricting interest between related parties to 30% EBITDA (Section 25 (3)).
- Taxing non-resident contractors/professionals and ensuring taxation of Ugandan source service contracts (Section 88 (5) of the ITA).
- Expanding of definition and taxation of mining and petroleum operations (Part IXA of the ITA)
- Introducing Digital Tax in 2023 at a rate of 5% to bring the digital economy into the tax base alongside VAT on electronic services.
- Expanding the definition of source of income under Section 79 of the ITA to include income derived from the direct or indirect change of ownership by 50% or more of a person other than an individual, a government, a political subdivision of a government and a listed institution located in Uganda.

Controversies often arise in respect to income sourcing and beneficial ownership definitions. For example, the dispute in the case of Rwenzori Bottling Co. Ltd V URA TAT No 21 of 2021 arose from the application of the amended interest deduction rules. The dispute in the case of Aponye Uganda Limited V URA TAT 80 of 2021 related to the definition of beneficial ownership.

9.4 Impact of BEPS 2.0

Uganda has not clearly stated its position on the OECD two-pillar solution but has participated in proposing a fair tax deal through the African Tax Administration Forum.

Pillar 1, aiming to allocate taxing rights to market jurisdictions, is viewed as fair to curb profit shifting and base erosion by MNEs.

Uganda, like other developing countries, opposes the rules under Pillar 2, citing that the 15% rate is low compared to the corporate tax rate of 30%, which could still allow for tax avoidance. Uganda also offers tax incentives to attract foreign direct investment, such as exemptions, and implementing the minimum tax could impact such investments.

9.5 Entities Bearing the Risk of Another Entity's Operations

The law does not permit an entity to bear the risk of another entity's operations by guaranteeing the other entity a return.

10. Relevance of the United Nations Practical Manual on Transfer Pricing

10.1 Impact of UN Practical Manual on Transfer Pricing

While Uganda's TP Guidelines explicitly state adherence to the OECD TP Guidelines, Uganda has also incorporated and adheres to certain provisions of the UN Model Tax Convention (UN MTC) regarding the allocation of taxing rights. However, there have been no amendments to the rules or administrative guidance by the URA to incorporate the UN Practice Manual on Transfer Pricing.

Source of Income

Uganda taxes all income derived from sources within its territory which mirrors the principles outlined in the UN MTC. This includes income from agreements, shipping, air transport, dividends, interest, and digital services.

Permanent Establishment

Uganda follows the UN MTC's criteria for determining a permanent establishment, particularly in the context of construction projects. This includes:

- a place where a person is engaged in a construction, assembly or installation project for 90 days or more;
- a place where a person is installing substantial equipment or machinery; and
- provision of services through employees or other personnel within a period of 90 days in any 12-month period.

Double Taxation Agreements (DTAs)

In some of its DTAs, Uganda adheres to the guidelines outlined in the UN MTC. For example, the DTAs with India and South Africa allocate taxing rights to the source state concerning the definition of permanent establishment, business profits, independent personal services and dependent personal services. In addition, the DTA with India allocates fees arising from the provision of technical services to the source state.

11. Safe Harbours or Other Unique Rules

11.1 Transfer Pricing Safe Harbours

The TP Rules in Uganda do not offer any exceptions to the penalty regime for transactions considered immaterial. According to the Practice Note issued by the URA, the documentation obligation is applicable to controlled transactions involving associated entities that in aggregate amount to UGX500 million (approximately USD127,200). Consequently, the requirement for TP documentation does not extend to controlled transactions valued below USD127,200.

11.2 Rules on Savings Arising From Operating in the Jurisdiction

Uganda does not have specific rules on location savings but since the country follows the OECD TP Guidelines, they would apply.

11.3 Unique Transfer Pricing Rules or Practices

Uganda does not have unique rules for disallowing marketing expenses by a local entity that is a licensee claiming local distribution intangibles or practices specific to the transfer pricing context. The general practice is that all allowable deductions relating to associated enterprises undergo extra scrutiny by the URA.

12. Co-ordination With Customs Valuation

12.1 Co-ordination Requirements Between Transfer Pricing and Customs Valuation

The TP Rules do not provide for co-ordination between transfer pricing and customs valuation. However, the practice is that the rules apply in the same manner as they do to other related-party transactions.

Customs valuation in Uganda is based on the value of the goods and follows sequential methods, namely:

- Transaction value;
- Transaction value of identical goods;
- Transactional value of similar goods;
- Deductive method;
- Computed method; and
- Fall-back method.

(These follow the GATT rules.)

The arm's length principle is applicable in Customs transactions. Therefore, in the case where the URA queries the transaction value of imported goods, adjustments may be made to the price based on the best method such as transaction value of similar or identical goods.

13. Controversy Process

13.1 Options and Requirements in Transfer Pricing Controversies

Administrative Appeal

According to Section 24(11) of the Tax Procedures Code Act 2014 and Rule 2 of the Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations, 2023, a taxpayer can challenge the results of a transfer pricing audit through alternative dispute resolution. The methods used under this process are conciliation and negotiation. A taxpayer is required to indicate the preferred method, and, where applicable, indicate a proposal for settlement of the dispute.

Payment of Disputed Amount

A taxpayer who lodges an objection is mandated under Section 15 of the Tax Appeals Tribunal to pay 30% of the tax assessed or that part of the tax assessed not in dispute, whichever is greater. The Tax Appeals Tribunal in the case of Century Bottling Company V Uganda Revenue Authority Misc Application No 32 of 2020, and in several other cases that followed, has allowed taxpayers to pay the 30% in instalments.

Jurisdiction of Courts

In July 2017, the Supreme Court ruled in the case of Uganda Revenue Authority v Rabbo Enterprises (U) Ltd and Mt. Elgon Hard wares Ltd (Civil Appeal No. 12 of 2004) that the Tax Appeals Tribunal holds original jurisdiction over all tax dispute. Consequently, all tax appeals from the Commissioner's decision must first be filed and heard by the Tax Appeals Tribunal. Previously, the Income Tax Act allowed taxpayers to appeal either to the High Court or the Tax Appeals Tribunal, but this provision was appealed in 2014. Therefore, there is no longer a choice of court to pursue appeals.

Judicial Appeal

A taxpayer aggrieved by the decision of the Tax Appeals Tribunal may within 30 days after receipt of the decision lodge an appeal in the High Court only on questions of law. Where a taxpayer is dissatisfied with the decision of the High Court, he/she may, within 30 days upon receipt of the decision of the High Court, lodge an appeal in the Court of Appeal only on questions of law.

A taxpayer dissatisfied with the decision of the Court of Appeal may, with leave of court, lodge an appeal in the Supreme Court. Such an appeal to the Supreme Court may be lodged with a certificate of the Court of Appeal concerning that the matter raises questions of law of great public importance, or if the Supreme Court in its overall duty to see that justice is done, considers that the appeal should be heard.

14. Judicial Precedent

14.1 Judicial Precedent on Transfer Pricing

Whereas Uganda has a known established transfer pricing legal and administrative frameworks, the judicial precedent in respect to transfer pricing is not yet well developed. There are very few decided cases by the Tax Appeals Tribunal and some of the matters have been settled by ADR between the URA and the taxpayer.

14.2 Significant Court Rulings

Bondo Tea Estates Ltd. v URA, TAT No 65 of 2018

The applicant supplied tea to an associated company, Kijura Tea Company Limited. URA adjusted the price on grounds that there were under declarations made and the two had related party transactions. The applicant challenged the adjustment stating that the price set with Kijura Tea Company limited was at arm's length and that URA ought to have put into consideration factors like additional expenses, prices charged, location of fields and tea factories to establish differences and information on unrelated companies.

One of the issues for determination by the Tribunal was whether the average price adjustment by the URA was in conformity with the law. The Tribunal held that there was no under declaration since the URA did not put into consideration factors to determine the arm's length and thus the adjustments made were not in conformity with the law.

East African Breweries Ltd v URA, TAT No 14 of 2017

East African Breweries Limited International (EABLI) is a wholly owned subsidiary of East African Breweries Limited and incorporated in Kenya. The URA audited Uganda Breweries, also a subsidiary of EABLI, and found information relating to transactions with EABLI and issued an assessment on the basis that EABLI sourced income in Uganda while marketing products on behalf of group companies in Uganda.

The applicant challenged the assessment on the basis that it did not source any income from Uganda as it was not resident and did not conduct any marketing activities in Uganda. The applicant purchased goods from Uganda Breweries Limited at a cost-plus markup of 7.5% and sold the goods to external customers at a cost-plus markup of between 70 and 90%.

The Tribunal found that the markup of the sale of the goods by Uganda Breweries Limited to the applicant was far lower than that between the applicant and the final consumers in other countries, and that the transfer pricing arrangement between the companies was not at arm's length.

White Sapphire & Crane Bank v URA HCCS No 465/2015

The 1st plaintiff was a company incorporated under the laws of Mauritius and a shareholder in Crane Bank Uganda. The 1st plaintiff was wholly owned by a Kenyan resident. The 2nd plaintiff paid dividends to the 1st plaintiff and withheld tax at 10% pursuant to Article 10 of the Uganda–

Mauritius DTA. The defendant raised an additional assessment on the basis that tax ought to have been withheld at a rate of 15%.

The issues for determination by the Tax Appeals Tribunal were whether the plaintiffs were entitled to a deduction under the provision of Article 10 of the DTA and whether the plaintiff was entitled to a reduction by virtue of Section 88(5) of the ITA and on account of residence of the first plaintiff.

The court held that the 1st plaintiff was a resident in Mauritius and entitled to benefit from Article 10(2) of the DTA. The court also found that the plaintiff cannot file such an action in the High Court and directed that the case should be resolved by Mutual Agreement Procedure with competent authorities of Mauritius.

Target Well Control Uganda Ltd v URA HCCS No 751/2015

Target Well Control Uganda, a company incorporated under the laws of Uganda, was leased directional drilling equipment by Target Well Control (UK). The URA raised an additional assessment on the ground that the defendant contended that the lease payments ought to have been subjected to withholding tax which would be remitted to the defendant. The plaintiff challenged the assessment on the ground that the income arose from payments the plaintiff made to Target Well Control (UK) for intercompany equipment leasing and did not attract withholding tax deductions under the Double Tax Agreements between Uganda and the United Kingdom.

The issue for determination before court was whether the plaintiff would be liable to pay withholding tax on the intercompany lease payments. The court found that the lease payments made to Target Well Control (UK) were not subject to withholding tax under the Income Tax Act as its collection was barred by the double tax covenant between Uganda and the UK.

Target Well Control (UK) would only be required to pay tax under the Convention if it could be demonstrated that it conducted business directly or through a permanent establishment in Uganda.

Rwenzori Bottling Company Ltd v Uganda Revenue Authority TAT 21 of 2021

Rwenzori Bottling Company incurred interest expenses from banks and other institutions and claimed interest deduction based on EBITDA. The URA disallowed the deduction and issued an additional assessment said to arise from overstated interest expenses.

The dispute revolved around the interpretation of Section 25(3) of the ITA, which sets a limit on interest deductions, and its application. The varying interpretations of the provision resulted in different computations. The difference was due to the depreciation and amortisation which the URA did not include when determining EBITDA. The Tribunal found that interest, depreciation and amortisation should be added back to chargeable income to determine the 30% limit on interest, and that including tax and interest while excluding depreciation and amortisation would be to deliberately distort the formula.

15. Foreign Payment Restrictions

15.1 Restrictions on Outbound Payments Relating to Uncontrolled Transactions

The TP Rules in Uganda do not restrict outbound payments relating to uncontrolled transactions.

However, the Income Tax Act under Section 83 subjects such payments to withholding tax. These include interest, royalties, dividends, management charge, natural resource payments and agency fee in cases of Islamic financial institutions. Withholding tax under this provision does not apply to an amount attributable to the activities of a branch of the non-resident in Uganda.

Outbound payments in Uganda are subject to the Anti-Money Laundering Regulations 2015 which were enacted to prevent the illicit flow of funds and ensure the transparency and legitimacy of financial transactions.

The AML framework typically includes measures such as customer due diligence, transaction monitoring, and reporting of suspicious activities.

In the context of outbound payments, including royalties, factors that may be considered to prevent money laundering include:

- source of funds;
- recipient verification;
- transaction monitoring; and
- documentation requirements.

15.2 Restrictions on Outbound Payments Relating to Controlled Transactions

The TP Rules include restrictions on outbound payments relating to uncontrolled transactions which are applied similarly to outbound payments relating to controlled transactions. The key consideration is that the pricing from which the payments are made is at arm's length.

15.3 Effects of Other Countries' Legal Restrictions

The TP Regulations, do not explicitly address the effects of other countries' legal restrictions on transfer pricing. However, international tax matters, including issues related to double taxation and the interaction of legal restrictions between countries, are often addressed through Double Taxation Agreements (DTAs) or other recognised international treaties that have been ratified by Uganda.

To understand how Uganda handles the effects of other countries' legal restrictions on transfer pricing, one would need to refer to the specific provisions of the relevant DTAs that Uganda has in place with other jurisdictions. These agreements establish principles for avoiding double taxation and provide mechanisms for resolving disputes, including situations where the tax treatment in one country is affected by legal restrictions imposed by another.

16. Transparency and Confidentiality

16.1 Publication of Information on APAs or Transfer Pricing Audit Outcomes

Uganda does not have a public database or platform where information on Advance Pricing Agreements or transfer pricing audit outcomes is routinely published.

16.2 Use of "Secret Comparables"

There is no provision under Uganda's tax regime that expressly prohibits the use of secret comparables.

15.3 Effects of Other Countries' Legal Restrictions

The Transfer Pricing Rules do not provide for rules regarding the effects of other countries' legal restrictions.

16. Transparency and Confidentiality

16.1 Publication of Information on APAs or Transfer Pricing Audit Outcomes

The ZRA does not publish information on APAs or transfer pricing audit outcomes.

16.2 Use of "Secret Comparables"

The Transfer Pricing Rules do not prohibit the use of secret comparables. In fact, the ZRA has procured a database for the use of comparables.

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