THE LEGAL FRAMEWORK OF WITHHOLDING TAX (WHT) COMPLIANCE AMONG THE CONSTRUCTION COMPANIES IN KAMPALA

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OCTOBER , 2018

DECLARATION

I, **BUSULWA SAMUEL**, declare that this research report is of my own work and effort, and has not been presented anywhere for any academic purposes.

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APPROVAL

This is to certify that this Research report entitled **"The legal framework of withholding tax (WHT) compliance among the construction companies in Kampala"**.

MR. ISAAC AFUNADUULA **Signature..**

(SUPERVISOR) **Date.......** 18th/oct/2018 **..........**

DEDICATION

This Research report is dedicated to my beloved parents, also my Siblings, for moral support. Also to all my beloved and brothers, sisters and to all my Friends most especially political friends.

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I wish to acknowledge the indispensable assistance rendered to me by all people who made my research Report successful; Above all thanks goes to the almighty God for giving me life and all the necessary strength, knowledge, wisdom, financial and moral ability, and my supervisor and my fellow students.

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I am indebted to my friends who always believed in me and have also been there for me emotionally, physically and financially.

May Almighty God bless you all?

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ABSTRACT

The study aimed at examining the legal Framework of Withholding tax (WHT) Compliance among the Construction Companies in Kampala. The objectives of the study were; to analyze the Formulation of Tax Policy in Uganda, to examine the Uganda's tax legal regime and institutional framework's implications on construction companies, to evaluate the impact of laws on Withholding tax of construction companies in Uganda and to find out recommendations for the improvement of the Withholding tax of construction companies in Uganda. A few books and scholarly writings have been written on the legal framework of withholding tax (WHT) compliance among the construction companies in Kampala, quite a number of foreign published literature has been made available for example in libraries like Kampala International University Library and Uganda National Library.

In order to achieve the objectives of this study, the researcher used an exploratory research design in which both qualitative and quantitative aspects were observed. This method was purposely selected because it focused on perceptions, facts, and feelings where through interview, the research questions designed required illustrative and analytical clarifications. This was through use of guided interviews containing short and clear statements which sought to generate information on major variables of this study. It was revealed that URA has fairly curbed non-compliance with WHT and the said measures already being applied by URA include; sensitization of the public, encouraging voluntary tax compliance, empowering local authorities, automating the process of tax credit certificate, and less of publishing detailed list of transactions liable to WHT, publishing list of tax defaulters, fining tax defaulters, reprimanding tax defaulters, and pursuing legal actions against tax defaulters. The study recommended regular tax audits in particular for withholding tax by URA to trigger most of the companies and other eligible tax payers or payees to comply with paying or withholding expected taxes and the remitted to URA.

CHAPTER ONE

1.1 Introduction

Withholding tax is a form of income tax. This tax is deducted at source by one person upon effecting payment to another person. The person making payment and obliged to withhold tax is defined as the **withholding agent** and the person receiving payments from which tax is required to be withheld is the **payee**. The law provides for the persons who are required to withhold the tax and the persons from whom to withhold. This depends on the nature of transaction and the circumstances of the transaction.

1.2 Background of the study

Withholding tax is a form of income tax where by tax is deducted at source by one person upon effecting payment to another person. The person making the payment and obliged to withhold is a withholding agent and the person receiving the payment from which tax is required to be withheld is the payee[1].

Yiga (2013) noted that withholding tax can be in form of various categories and they include; withholding of tax by employers, withholding tax on payments to contractors and professionals, withholding tax on interest and dividends, withholding of tax on international payments, withholding tax on imports, and among other withholding taxes.

On a general note, a tax like withholding tax is part of the price one pays for living in a modern society as a result of taxation. And, taxation includes all charges and burdens imposed by the taxing authority upon individual persons, corporate bodies, their property or rights, the revenue from which can be utilized to offer public service[2]s.

On the other hand, tax compliance refers to fulfilling all tax obligations as specified by the law freely and completely 'Marti. 2010). and, tax non-compliance refers to the range of activities that are unfavorable to a state's tax system, which may include tax avoidance — tax reduction by legal means, and tax evasion — criminal non-payment of tax liabilities (Investopedia, 2015; Wikipedia, 2015).

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[1]URA, 2011

[2] [2] See Lieven A. Denys: The ECJ Case Law on Cross-Border Dividends Revisited, in European Taxation 2007 p. 221 at p. 228 and 232.

As noted by Kayaga (2007), the international Monetary Fund (IMF) strongly recommended use of withholding taxes as a way to improve the administration of tax systems of developing countries. The idea was that the method is effective as tax is withheld by the payer and handed over to the government directly before it reaches the taxpayer who might be reluctant and thus become non-compliant. On the same note however, Kayaga (2007) and Muzirakizza (2013) recognized that in developing countries in which a majority of the population operates in the informal sector, a withholding system is so challenging due to increased rates of non-tax compliance.

In line with the above caution by Kayaga (2007) and Muzirakizza (2013) regarding the benefits and challenges associated with withholding tax system, the recent report released in 2015 by International Monetary Fund (IMF) indicated that there is still high non-tax compliance amongst small and medium enterprises across the world and especially in low developed countries including Uganda. IMF (2015) reported that due to non-tax compliance issues, small and micro businesses with gross annual turnover below UGX 2 billion (US$ 720,000) or total tax payable in a year less than UGX 700 million (US$ 252,000) contributed to 95.7% as the percentage of all businesses in Uganda and yet to have contributed only 16.7% as the percentage of all Uganda's taxes collected (IMF 2015). This called for a study to assess tax non-compliance in particular of withholding tax and to identify suitable remedies to curb non-compliance[3].

Tax is imposed on every non-resident person who derives any dividend, interest, royalty, natural resource payment or management charge from sources from Uganda. The tax is withheld by the payer at 15 percent of the gross amount before payment/remittance of the amount is effected under section 120(1) ; However interest paid abroad by a resident person in respect of debentures which were issued by a foreign company for purposes of raising loan capital to carry out business in Uganda is exempt.

Withholding tax on payments to non – residential public entertainers or sports persons (Section 84) ,Tax is imposed on every non-resident public entertainer or sports person who derives income from any performance in Uganda. The tax is charged at 15 percent of the gross amount of the remuneration derived by a public entertainer/sports person or receipts derived by any theatrical,

[3] Local Governments Act 1997; [Act No.1 of 1997]

musical or other group of public entertainers/sports persons. The tax is levied on the group in this case but every member of the group is jointly and severally liable for payment of the tax.

The obligation to withhold the tax is placed with the person making the payment e.g. promoter, agent, or such similar person is under Section 120(2) (a) and (b)

Withholding tax is also imposed on every non-resident person deriving income under a Ugandan - source service contract. This is a contract under which the principle purpose is the performance of services which gives rise to income sourced in Uganda, and any goods supplied under the contract are only incidental to the purpose.

For purposes of this tax, Ugandan-sourced service contract does not include an employment contract. The tax is charged at 15 percent of the gross amount of payment and the person making the payment should withhold the relevant tax before effecting payment (Section 120).

Any person who enters into any service, contract with a non-resident is required to notify the Commissioner General of the nature and duration of the service contract, and disclose the particulars of the non-resident to whom the payment is to be made, as well as the full contract value. Basing on this, the Commissioner General may require the payer to withhold the relevant tax at a rate specified in the Commissioner General's notice (Section 121(2)).

Withholding tax imposed in the above categories of payments under Section 84, 85 and 86 is a final tax and the liability of the payee is settled if the tax is withheld and paid to Uganda Revenue Authority.

Where Government of Uganda, a Government institution, a local authority, a company in which Government has interest or any person designated in a notice issued by the Ministry of Finance pays amounts in aggregate exceeding one million shillings to any person in Uganda for the supply of goods, materials of any kind or services, the payer is required to withhold 6 percent of the gross amount. The threshold of one million shillings is in respect of the total contract value, implying that separate supplies which constitute one contract are subject to the 6 percent withholding tax regardless of the amount paid per supply or transaction.

Withholding tax on professional fees (Section 119A)

With effect from 1st July 2001, a resident person who pays management or professional fees to a resident professional is required to withhold tax at 6 percent of the gross amount of payment. Excluded from this provision are professionals whom the Commissioner General is satisfied they have regularly complied with the obligations imposed by the Income Tax Act, and those professionals ordinarily engaged as payroll employees.

In respect of Section 119A of the Income Tax (Amendment Act) 2001, Cap 340, any professional meeting the following requirements will be deemed to have regularly complied with the obligations imposed under the Income Tax Act –

- *i)* *Is registered with URA;*
- *ii)* *Has submitted the Provisional, Final / Self Assessment Returns for the company and individuals (including directors); and monthly PAYE and VAT returns by the due dates for the three preceding years;*
- *iii)* *Has submitted all the directors' returns (for companies only);*
- *iv)* *Has fully settled all the taxes by the due dates for the three preceding years of income;*
- *v)* *Has fully complied with the obligations to withhold tax under the Act;*
- *vi)* *Has paid all the customs dues to date; and*
- *vii)* *Has entered and honours an arrangement to pay any URA arrears of tax due.*
- *viii)* *Has complied with any notice or any requirement to provide information under the Income Tax Act.*

The withholding agent is required by law to remit to URA the tax withheld (or that should have been withheld), within 15 days after the end of the month in which the payment was made. In the case of a person about to leave Uganda, the tax should be withheld and remitted before the payee leaves.

The agent is further required to maintain and keep available for inspection by URA records of all payments to the payee(s) and the corresponding tax withheld for 5 years after the end of the year of income to which such records relate.

Except where it is a final tax, tax withheld is a credit against the tax assessed on the payee for the year of income in which the payment is made.

Upon receiving the payment of tax, URA should issue, to the payee a Tax Credit Certificate, setting out the tax withheld. The withholding agent is required to obtain from URA and deliver the tax credit certificate to the payee.

Failure to withhold and/or remit the tax (Section 124)

A withholding agent who fails to withhold tax is personally liable to pay to URA the tax which has not been withheld and/or remitted. The agent, however, is entitled to recover the amount from the payee thereafter. URA is mandated to recover the tax from the agent as though it were tax due from such agent together with the accrued interest.

Priority of tax withheld (Section 127)

Like any other Government tax, the tax withheld is held by a withholding agent in trust for the Government of Uganda. It is therefore not subject to attachment in respect of a personal debt or liability of the agent and it does not form part of the estate of the agent in event of liquidation or bankruptcy.

1.3 Problem Statement

Withholding Tax is a tax type where government collects significant revenue. However, there is a high rate on non-compliance among tax payers and this makes government lose a lot of revenue due to poor sensitization, tax evasions and bureaucracy in recovery of tax. There are various challenges in WHT administration ranging from non-compliance to recovery of tax withheld from the tax authority.

Despite the tax body's efforts to improve tax compliance like encouraging voluntary registration or compliance, tax audits conducted by URA, and technological advancement strategies like a tax system, tax payers continue to evade and avoid taxes including withholding tax. And if these challenges are not addressed, government through URA would continue to lose billions of money and this highlighted the magnitude of the problem, which warranted us to assess noncompliance with withholding tax in particular of construction companies.

1.4 Objectives of the Study

i. To analyze the Formulation of Tax Policy in Uganda
ii. To examine the Uganda's tax legal regime and institutional framework's implications on construction companies
iii. To evaluate the impact of laws on Withholding tax of construction companies in Uganda.
iv. To find out recommendations for the improvement of the Withholding tax of construction companies in Uganda.

1.4.1 Research Question

i. What is the Formulation of Tax Policy in Uganda?
ii. What is the Uganda's tax legal regime and institutional framework's implications on construction companies?
iii. What are the impact of laws on Withholding tax of construction companies in Uganda?
iv. What are the recommendations for the improvement of the Withholding tax of construction companies in Uganda?

1.5 Justification of the Study

This study was carried out to give, appropriate solution to problems arising from among the construction companies in Kampala.

The study further analyzed and identified the legal gaps in the legal systems regulating Land Acquisition.

By attempting to answer the research questions posed in this study seeks to contribute to the existing literature.

16 Scope of the Study

1.6.1 Geographical scope

This research was conducted using a case study of C&G Andijes Group Limited, which is geographically located in Luzira, a few meters away from Kampala City Centre, central region of Uganda.

1.6.2 Subject scope

The study examined the legal framework of WHT compliance amongst construction companies. Thus, the study has been limited to legal frame work of WHT compliance and in relation to construction companies.

1.6.3 Time scope

The study included mainly current information. The said information and findings presented in this study was relating to the period-range of the past fifteen years, from 2000 to 2015 — except for specific sources like Acts of parliament, and other related publications.

1.7 Significance of the Study

The study will contribute a considered awareness on the loopholes in the law in Construction companies in Uganda.

The study is expected to contribute towards improvement on law to provide away forward to finding proper and appropriate immediate solution to loopholes inland wrangles in Construction companies in Uganda.

The study shall help in giving ideal solutions on ways to curb withholding tax non-compliance. Furthermore, Uganda Revenue Authority as a tax body administrator and other relevant policy makers have been informed by the study's findings and recommendations, for further actions.

The study would help in addressing challenges faced in attempting to comply with WHT, how to address them, and how to recover their tax assets.

For reference purposes, the study would be of great use to the researchers in the specific field of withholding taxes and its relevant compliance by private construction companies. The study has been a source of additional knowledge and skills to the researcher — especially practical knowledge and skills regarding research and field areas of tax non-compliance and withholding tax.

The same case settled the confusion that has been created by courts as to when and how does **Article 274** of the Constitution apply, when it comes to interpreting constitutional provisions that will be reserved by this Article to be read with modifications.

1.8 Literature review.

A few books and scholarly writings have been written on the legal framework of withholding tax (WHT) compliance among the construction companies in Kampala, quite a number of foreign published literature has been made available for example in libraries like Kampala International University Library and Uganda National Library.

1.9 Methodology of Research

In order to achieve the objectives of this study the researcher used an exploratory research design in which both qualitative and quantitative aspects were observed.

This method was purposely selected because it focused on perceptions, facts, and feelings where through interview, the research questions designed required illustrative and analytical clarifications.

This was through use of guided interviews containing short and clear statements which sought to generate information on major variables of this study which was;

The method was purposely selected because would allow for a systematic flow of information and was directly carried out by the researcher who ensured that interviews were impressionistic and free from suspicion.

Primary data was obtained through use of self-administered structured interview by the researcher.

The researcher also based on information found in various text books, law journals, newspapers, statutes and any other written relevant material for qualification of the findings. These were reviewed from KIU, Makerere University, Law Development Centre, FIDA, (U) etc

1.10 Synopsis of Chapters.

The dissertation is divided into five chapters.

Chapter One

The general introduction and it covers the background to the research, the statement of the problem, objectives and significance of the study, research questions, the literature review, scope of the study and the methodology used.

Chapter Two

Looked at the Formulation of Tax Policy in Uganda

Chapter Three

Focused on the Uganda's tax legal regime and institutional framework's implications on construction companies

Chapter four

Focused on the legal out recommendations for the improvement of the Withholding tax of construction companies in Uganda.

Chapter Five

This chapter focus on the impact of laws on Withholding tax of construction companies in Uganda

Chapter Six

This chapter includes summary, conclusion and recommendation.

CHAPTER TWO
Formulation of Tax Policy in Uganda

2.0 Introduction
Tax policy refers to the choice of tax instruments, the rates at which taxes are set, the nature of exemptions and the assignment of taxes to different levels of government. A good tax system should be defined so as to meet the requirements of equity in burden distribution, efficiency in resource use, the goal of macro policy and ease of administration. The main objective of this chapter is to review and analyze how tax policies are made in Uganda, the role of government in policy formulation, while analyzing the input of other stakeholders.

2.1.1 The Role of Parliament
The broad legal framework as laid out in the Constitution of the Republic of Uganda 1995 mandates the Parliament of Uganda to impose taxes. **Article 152(1)** of the Constitution provides that no tax shall be imposed except under the authority of an Act of Parliament. The power to grant tax exemptions however is not restricted to Parliament since in **Article 152(2)** it recognizes that a person or authority may have powers to grant such exemption but requires such person or authority to report to Parliament periodically on the exercise of such powers[4]. This implies that other institutions with power to grant tax exemptions may grant such exemptions thereby eroding the tax base and being an enabler to IFFs.

2.1.2 The Role of the Executive
Tax policy and proposals for amendments to tax laws invariably originate from the Ministry of Finance Planning and Economic Development (MFPED) while Uganda Revenue Authority (URA) which is charged with policy maintenance usually participates in tax policy formulation through proposals it forwards to the ministry. MFPED is responsible through its tax policy department to formulate tax and non-tax policies aimed at generating domestic revenues and promoting investment, consumption and savings.

[4] local govt ammendment Act 2. of 2001

The broad tax policy objectives contained in related tax laws like the Finance Management Act 2015 reveal MFPED's efforts at initiating, evolving and formulating tax policies to achieve economic policy goals and objectives and to raise domestic revenue to finance the government budget. The MFPED also makes annual and medium term revenue forecasts, participates in East African Community (EAC) negotiations, Common Market for Eastern and Southern Africa (COMESA) and World Trade Organization (WTO) activities and handles negotiation of Double taxation Agreements (DTAs), investment promotions and protection agreements. These functions are achieved in coordination with organizations like Bank of Uganda (BOU), Uganda Investment Authority (UIA) and Private Sector Foundation (PSF) with support from donor agencies like the World Bank and International Monetary Fund (IMF).

The PFMA requires the National Budget Framework Paper (NBFP) to be presented to parliament by the end of December. This implies that tax and fiscal policy will now be based on performance data for the first two quarters of a fiscal year (July to Dec) as opposed to the first three quarters (July to March). The NBFP now serves as the primary reference report for most up to date information on the performance of the economy and informs the changes that need making to the prevailing tax policy.

Such changes have led to revenue performance based budgets and an improvement in fiscal discipline which helps government to determine the effects of IFFs on its revenue mobilization efforts. However, the government has not developed a comprehensive system for exchanging tax information which is as vital as preventing tax evaders and money launderers from hiding their illgotten gains. It also has not ensured that cross-border financial flows use formal financial systems which are key to tackling IFF[5].

2.2 Withholding tax on goods and services

The Income Tax Act Cap 340 (2014) section 119(1) stipulates that where Government of Uganda; a Government institution; a local authority; a company in which Government has interest or any person designated in a notice issued by the Minister of Finance, pays amounts in aggregate

[5] The Income Tax (Approved Industrial Buildings) Regulations, 2003

exceeding one million shillings to any person in Uganda for the supply of goods, materials of any kind or services, the payer is required to withhold tax at a rate of 6% of the gross amount paid[6].

It is important to note that this tax is imposed on any part payments for the contract if all payments for this contract when aggregated exceeds the threshold of one million shillings (Grant Thornton 2013). The Income Tax Act Cap 340 (2014) section 119(2) further clarifies that the same tax would be applied (as per sub section 1) where there are separate supplies of goods or materials, or services and each supply is made for an amount that is one million shillings or less, and that, it would be reasonably be expected that the goods or materials, or services would ordinarily be supplied in a single supply for an amount exceeding one million shillings.

2.2.1 Withholding tax on imports

The Income Tax Act Cap 340 (2014) section 119(3) stipulates that every person who imports goods into Uganda is liable to pay withholding tax at the time of importation on the Customs Value of the good at 6%[7]. The value of the goods is determined based on the value of the goods ascertained for the purposes of customs duty under the laws relating to customs (ITA 2014 Section 119, subsection 4).

2.2.3 Withholding tax on professional fees

The Income Tax Act Cap 340 (2014) section 118(A) stipulates that a resident person who pays management or professional fees to a resident person is required to withhold tax at a rate of 6% of the gross amount of the paymen[8]t. This same tax is exempted from specific payees (resident persons) who the commissioner is satisfied have regularly complied with the obligations imposed on that person under Income Tax Act (2014) laws of Uganda, as noted by the Income Tax Designation of Payers Notes (2015).

However, there are exceptions to Income Tax Act Cap 340 (2014) section 119 sub-sections (3) and (4). Thus, the said subsections 3 and 4 do not apply to the following categories of supplies and imports: petroleum or petroleum products including furnace oil, other than lubricants, cosmetics and fabrics or yarn manufactured out of petroleum products, plant and machinery, human and animal drugs, scholastic materials, imports or supplies by organizations persons exempt from

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[6] Local Governments Act 1997; [Act No.1 of 1997]

[7] The Income Tax (Withholding Tax) Regulations, 2000

[8] The Income Tax (Designation of Payers) Notice, 2006

income tax, raw materials imported by a manufacturer solely for generating finished products, and not applicable to suppliers or importers and resident persons whom the Commissioner General is satisfied have regularly complied with the obligations imposed by the Income Tax Act.

2.2.4 Withholding tax on interest payments

A resident person who pays interest to another resident person is required to withhold tax at 15% of the gross amount of the interest paid. However, this withholding tax is not applicable where interest is paid by a natural person, interest, other than interest from government securities, paid to a financial institution, interest is paid by a company to an associated company, and interest paid is exempt from tax in the hands of the recipient (Income Tax Act Cap 340 (2014), Sec 117).

2.2.5 Withholding tax on dividends

A resident Company which pays a dividend to a resident shareholder is required to withhold tax at 15% of the gross amount of the dividend paid, except where the dividend income is exempt from tax in the hands of the shareholder (Income Tax Act Cap 340 (2014), Sec 118). Where the shareholder is a natural person (resident individual), the tax withheld on such dividend income is final.

2.2.6 Withholding tax on international payments

According to the Income Tax Act Cap 340 (2014), Sec 83 and Sec 120(1), tax is imposed on every non-resident person who derives any dividend, interest, royalty, rent, natural resource payment or management charge from sources in Uganda. The tax is withheld by the payer at a rate of 15% of the gross amount before payment/remittance of the amount is made. However, this does not apply to amounts from activities of a Ugandan branch of the Non Resident.

however interest paid abroad by a resident person is exempt from tax if: borrowing is through debentures which were widely issued for purposes of raising loan capital to carry out business in Uganda; and borrowing is made from a financial Institution of a public character (Income Tax Act Cap 340 (2014)).

2.2.7 Withholding on payments to non—residential entertainers or sports persons

Tax is imposed on the income derived in Uganda by every non-resident entertainer, sports person, or theatrical, musical or other related groups of entertainers (Income Tax Act Cap 340(2014 Sec 84). The tax is charged at a rate of 15% of the gross amount of the remuneration derived by the public entertainer/sports person. Where the tax is levied on a group, every member of the group is jointly and severally liable for payment of the tax (Income Tax Act Cap 34 2014) Sec 84(3) and Sec 84(4).

The obligation to withhold the tax under this provision is placed with the person making the payment e.g. promoter, agent, or such similar person. The tax is payable before the person leaves the country (Income Tax Act Cap 340 (2014)).

2.2.8 Withholding tax on payments to contractors or professionals

In line with the Ugandan tax laws as per Income Tax Act Cap 340 (2014) Sec 85 and Sec 121 withholding tax is also imposed on every non-resident person deriving income under a Uganda

- Source service contract. The Act (2014) defines such a contract as the contract under which the principle purpose is the performance of services which gives rise to income sourced in Uganda and any goods supplied under the contract are only incidental to the purpose. A Ugandan sourced service contract does not include an employment contract. The tax is charged at a rate c 15% of the gross amount of any payment to the nonresident under the Ugandan sourced service contrac[9]t.

The Act (2014) further states that any person who enters into any service contract with a non resident is required, within 30 days of entering into the contract, to notify the Commissioner c the nature and duration of the service contract, and disclose the particulars of the non-resident t whom the payment is to be made, as well as the full contract value. Basing on this, the Commissioner may require the payer to withhold the relevant tax at a rate specified in the Commissioner notice. Yiga (2013) and URA (2015) further clarifies that failure to notify the Commissioner makes that person personally liable to pay the tax that should have been paid b the non-resident person, and that the person is entitled to recover this amount from the nor resident.

2.3 Challenges Faced with Compliance with WHT and in Administration

It was established by UN (2015) that Uganda has consistently failed to meet tax revenue target because of different loopholes in the tax system and other challenges being faced by tax PAYEE especially regarding withholding taxes. Some of the identified challenges by UN (2015) include; tax officials are bribed by tax payers to set them free for failure to withhold WHT. Also some tax

[9] The Income Tax (Withholding Tax) Regulations, 2000

payers bribe to be included on the WHT exemption list even when they do not qualify as per requirements. This makes the government represented by URA to lose billions of money in corruption (UN, 2015).

The political advantages of ambiguity seem always to outweigh the potential social gains from transparency. Law makers support exemption of some goods and services to gain competitive advantage over their competitors during elections. This does not only demoralize tax administration but also creates dissatisfaction among other taxpayers who will in return prefer to evade since they can't get political protection (UN, 2015).

Kayaga (2007) and UN (2015) were in agreement that there are difficulties in establishing tax administrators especially in low-developed countries like Uganda, due to low salaries paid lack of skilled and well trained personnel and lack of equipment. This makes the authority carryout marginal reforms instead of full reforms. It also implies it cannot attract or retain skilled and competitive staff (UN, 2015).

Varying withholding tax rates were recognized by UN (2015), noting that Uganda is torn between balancing raising required revenue and avoiding adverse effects of tax competition. It needs to have tax rates at levels which will attract and not discourage investment both local and Low WHT rates result in low revenue. The priorities regarding rates must be set correctly by government.

In line with varying rates identified by UN (2015), absence of a single tax rate was equally recognized by Deloitte (2014). As far as some of the Ugandan taxpayers are concerned, absence of single rate applicable to all transactions and beneficiaries has made the WHT process very confusing. They include 15% on interest, 6% on professional fees and imports, 20% on treasury income (interest on government securities), 10% on dividends and varying PAYE tax rates applied on employment income (Deloitte, 2014)

Ugandans naturally hate tax. They are forced to comply in most cases after being penalized with such attitude; withholding tax is not deducted on goods and services hence loss of billion of money (UN, 2015).

Most Ugandans are illiterate and they do not know that even WHT exits. Those who know about it lack knowledge on its administration, tax rates applicable, the kind of goods and services or which it is charged, when and how to obtain a tax credit certificate. This makes compliance very difficult (UN, 2015).

A taxpayer that has suffered source deduction of WHT needs to obtain a WHT credit certificate from the tax authorities through his/her customer that deducted the tax from his or her income. The taxpayer then forwards the WHT credit certificate to tax authorities for confirmation before the credit can be applied to offset the taxpayer's eventual income tax liability. In reality a lot ol taxpayers sit on huge amounts of WHT receivable accounts for which they are unable to obtain tax credits because they could not get the credit notes from their customers (Deloitte,,2014).

This is a challenge to tax payers which requires more transaction enlightenment. Most of the ta payers do not withhold tax on professional services like audit, legal and surveying' service (Deloitte, 2014).

CHAPTER THREE

UGANDA'S TAX LEGAL REGIME AND INSTITUTIONAL FRAMEWORK'S IMPLICATIONS ON CONSTRUCTION COMPANIES

3.0 Introduction

This chapter examines Uganda's legal framework **of Withholding tax (WHT) compliance** as occasioned through transfer pricing, thin capitalization rules, money laundering during the levying of personal and corporate taxes and institutional frameworks in place and their adequacy. The chapter highlights tax related components of illicit financial flows such as tax evasion and avoidance which become illicit financial flows if the proceeds are transferred across borders. International tax evasion and avoidance is another. This part examines the present loopholes in the tax laws before proceeding to other non- tax related components like money laundering and domestic corruption.

3.1 The Income Tax Act Cap 340

Uganda's tax system is residence-based, with standard corporate tax rate of 30%. Capital gains are aggregated with business income and taxed at the standard corporate income tax rate. Withholding tax is deducted at source on specified payments both to residents and non-residents. Withholding tax is generally an advance tax in the case of residents and a final tax in case of non-residents. The statutory institution in place to enforce tax laws is the Uganda Revenue Authority established by the Uganda Revenue Authority Act Cap 196 as the central body for assessing and collection of specified revenue and the administration and enforcement of laws relating to such revenues. The laws administered by URA include; East African Customs Management Act 2004, East African Tariffs Act, Income Tax Act Cap 340, Value Added Tax Act Cap 349, Stamps Act, Traffic and Road Safety Act (All provisions for the collection of license fees and other fees, fines, other than fines imposed by courts and other levies collectible under the Act) and Excise Act. This part focuses on the Income Tax Act being the main tax head through which domestically generated revenues are exposed to IFFs.

3.1.1 Tax Avoidance and Evasion

Tax avoidance is a strictly legal arrangement used to lower a tax payer's tax liability through contradicting the intent of a country's tax law. In Uganda under the income tax regime in section 4 of the Income Tax Act cap 340, corporation tax is charged on chargeable income which is arrived at after reducing gross income by allowable deductions. Tax payers have a duty in Section 129 to maintain proper accounting records and even retain them for a period of 5 years after the period to which they relate. However, the practice is different; the economy is mainly dominated by cash 13 transactions. With no paper trail, it has been fairly easy to flout the Income Tax Act requirement to keep proper records. This has also led to under-reporting corporate or personal income which is then transferred across borders.

The law addresses this situation by imposing legal sanctions to penalise improper record keeping such as a fine of not less than fifteen currency points (Ugx 250,000) or imprisonment not exceeding one year where the failure was deliberate or in any other case, a fine not exceeding twenty five currency points (Ugx 350,000) as provided in Section 139 of the ITA. Whereas this would provide the incentive to keep proper records there by leaving a trail against which IFFs can be traced, this sanction is not deterrent enough to discourage tax payers from not keeping proper records and is therefore inadequate.

URA as the institutional framework has also not made use of the sanction as a way of ensuring compliance with the record keeping requirement. It has instead chosen a mechanism through which some reported expenses which are not accompanied by proper records are disallowed. This does not go far enough to reduce compliance. It has also not also gone far enough to demand and ensure the reduction in the informal sector through the mandatory use of banking instruments as a way of effecting legally permissible tax related transactions which have only ensured that an environment through which IFFs can thrive subsists.

URA as an institutional framework should lobby a change in the legal framework requiring transactions of a certain threshold to be carried out only by bank as a way of ensuring there is a proper trail against which IFFs can be measured and stopped. URA as a compliance measure should pay special attention to investigating SME's business records. This could be achieved through targeting small businesses keeping inaccurate records dating back 5 years which is the statutory period mandated by law through which an audit can be carried out to ensure businesses keep their records in order on an on-going basis rather than once a year.

3.1.2 The Self-Assessment Regime

The income tax regime operates on a self-assessment regime as seen in Section 96 where tax payers assess themselves as the starting point in paying income tax, file returns and pay tax on those returns. According to this provision, where a taxpayer has furnished a return of income, the commissioner is deemed to have made an assessment of the chargeable income of the tax payer. This is in line with modern tax administrations seeking to optimise tax collections while minimizing administration costs and taxpayer compliance costs. However, this legal provision is not having the intended results since it operates best in jurisdictions with high compliance levels and is being undermined due to under-reporting of income and over- reporting of expenses, falsification of records and other means tax payers use in the self-assessment regime to file erroneous returns to pay less or no tax.

The law addresses this by providing for querying returns by the URA as seen in Section 95 of ITA where the commissioner may according to his or her best judgement make an assessment if unsatisfied with one furnished by a tax payer. As such, the institutional mechanism in place is to rely heavily on "desk" auditing, disregarding the self-assessment and coming up with another assessment based on best judgement or an additional assessment. These audits can have the effect of exposing IFFs since through the discovery of undeclared incomes or mismatches can reveal lost revenue that has/ been taken out illicitly but this tool has not been successful due to a general lack of compliance by tax payers and capacity challenges faced by URA such as its risk management practices being largely underdeveloped and/or underutilized (use of risk analysis is either non-existent since audit selection may be based instead on judgment of senior officials) and time limits imposed by the law. Consequently, the reach of these interventions has been greatly curtailed leading to profiling of tax payers.

By way of recommendation URA and government of Uganda should create to enhance the design and delivery of client-focused taxpayer service programs, and better engage with the private sector and other stakeholders. Audits need to be driven by an objective determination of the risk of non-compliance. There is also need to utilize a range of verification and audit products according to nature of risk. A broader mix of audit products would better address the tax risks and expand audit coverage leading to a broader perception by the taxpaying public of the risks of not complying with the tax rules.

Audit effort is not effectively evaluated by URA. Uganda like most countries does not maintain or track performance indicators outside of the number of audits carried out and the additional assessments raised. To have an effective audit programme there is need for strengthened evaluation practices focusing on the quantity and quality of audits conducted, the voluntary collections generated, the filing of amended returns by tax payers after an audit etc. A wide range of tools for monitoring performance of the audit program is therefore required.

Efforts should be made by URA to assess whether the self-assessment regime is operating in the manner that was intended or whether it is realising its full potential. An examination of the right balance should be struck between protecting the rights of the individual taxpayers and protecting the revenue for the benefit of the Ugandan community and it should be determined whether refinements to the present self-assessment regime should be undertaken that would reduce the level of uncertainty for taxpayers, reduce compliance costs and enhance the timeliness of the URA audit function and amendments while preserving the capacity of URA to collect legitimate tax liabilities.

In accordance with good international practice Uganda has enacted a Tax Procedures Code (TPC) which brings together, in one act, a set of harmonised rules for administration of all taxes. This should generally provide for greater clarity in the law and reduce compliance and administrative costs. However, a statutory instrument aimed at making the same come into effect has never been issued. Government is encouraged to operationalize the TPC.

3.2 International Tax related components

Globalisation has resulted in a shift from country-specific operating models to global business models. Businesses have found it easy to locate many productive activities to geographical locations that are distant from the physical location of their customers. This has facilitated none or low taxation of economic activity also fuelling illicit financial flows. This part will examine such practices and how the current legal regime has dealt with the same while making recommendations.

3.2.1 Transfer Pricing

The use of debt-equity structures for the sole purpose of lowering multinational enterprises' (MNE's) tax burden as well as the relocation of profitable movable assets (intangible assets) such as trademarks and patents to artificially lower tax owed is one of the tax planning tools at the international taxation level to avoid tax and shift profits and cause illicit financial flows. Transfer pricing which is a mechanism by which cross-border intra-group transactions are priced is the main tool used to further IFFs. If the price that is charged between different companies belonging to the same group does not reflect their true economic value, and is thus not at arm's length, profits might effectively be shifted to low tax or non-tax jurisdictions and losses and deductions to high tax jurisdictions. This practice, commonly referred to as transfer miss-pricing, unfairly deprives a country of tax revenues. Such miss-pricing is achieved by the use of differences in corporate tax rates by over-invoicing taxable outbound transfers from high-tax countries.

Transfer pricing is at the intersection of tax policy as it relates to the competing objectives of three parties: the revenue maximising objective of URA, the revenue maximising objective of the foreign tax authority, and the tax minimizing objective of the tax payer. Because of the inherent differences in judgment and interpretation of facts when analysing a company's transfer pricing, together with the clashing revenue objectives of multiple tax authorities and taxpayers, the risk of adjustments to taxable income, double taxation and potential for penalties is a concern for all the players.[10]

In 2011 Uganda enacted the Income Tax (Transfer Pricing) Regulations 2011 aimed at ensuring arm's length principle in relation to controlled transactions (if one party to the transaction is subject to tax in Uganda and the other party is located outside Uganda) to ensure that the results of the transaction are consistent with the results that would have been realised in a transaction between independent persons dealing under the same conditions. These regulations are meant to apply to controlled transactions for multinational enterprises or controlled transactions in aggregate equal to or exceeding 25,000 currency points in a year of income (500 million UGX).

Whereas this was a good step in dealing with transfer mis-pricing, the fact that the tax payer is not required to submit disclosures to the URA on an annual basis but is only required or expected to keep all information which can be provided to URA upon request, this has exposed URA to inability to conduct proper transfer pricing audits because even when it calls upon the information it is in most cases unable to get it in sufficient forms. Similarly, the regulations do not indicate a time limit for transfer pricing adjustments to be made. So upon submission of the transfer pricing

[10] www.taxjustice.net/topics/corporate-tax/transfer-pricing/

policy to URA, a company can negotiate with URA until an agreement is reached, after which no further adjustments can be made by either party.

This coupled with a general lack of technical expertise has led MNEs to get away with excessive or unwarranted intra group payments such as interest on loans, management fees or technical fees, or payment for intellectual properties. It has made it difficult to determine if these payments are excessive or represent a fair return for the value of service received. These deductions are generally allowable when computing income of a company and will result in a reduction of tax paid. The methods delineated in Regulation 6 of the transfer pricing regulations which adopts the application of Article 9 of the OECD Model tax convention are given no priority but the appropriate method is used according to the facts and circumstance of each case. A person may also apply a transfer pricing method other than the standard OECD methods, if they can establish none of the methods reasonably applies in the controlled transaction. All these variances create uncertainty, ambiguity and complexity which can be exploited to occasion IFFs.

3.2.2 Source Rules

The ITA's nexus to tax income from multi nationals that are not residents is through the source rules. A close examination of the source rules as seen in Section 79 of the ITA and recent litigation reveals that the source rules are not robust enough to capture all incomes that are attributable to activities in Uganda since multinationals have found ways to artificially source the activities giving rise to that income outside Uganda. While section 79 of the ITA sets out several instances where income is deemed by law to have been derived from sources in Uganda, the law is inadequate in capturing services performed by non-resident service providers who perform the services outside of Uganda but in relation to activities being performed in Uganda such as the oil and gas exploration activities. This has led to payments being made by oil and gas contractors who claim it back as recoverable costs without having withheld tax on it before the money leaves the country.

Again since scrutiny in the application of the Ugandan Transfer Pricing rules against tax avoidance takes the form of re-characterisation which may take one of the following forms; re-characterisation of the transaction or elements of it that were entered in a bid to avoid tax or disregarding a transaction with no substantial economic effect or re-characterisation of a transaction whose form does not reflect the substance, determining the income adjustments and the source of such income and the nature of the payment or loss as revenue, capital or otherwise is very difficult.

3.2.3 Thin Capitalization rules

Section 89(1) ITA which was amended recently provides that where a foreign controlled resident company other than a financial institution has a debt (the greatest amount at any time during the tax year, of the debt obligations of the company on which interest is payable as determined according to international financial reporting standards) to equity (the greatest amount at any time during a tax year, of the equity of a company as determined according to international financial reporting standards and includes a debt obligation on which no interest is payable in excess of 1.5:1 ratio at any time during a year of income), a deduction is disallowed for interest paid by the company during that year of income on that part of the debt that exceeds the 1.5:1 ratio for that period the ratio was exceeded.

Whereas the principal permitted ratio of controlled debt to the borrower's equity (its net asset value) was 2 to 1 which has now been moved to 1.5: 1 and whereas the thin capitalization rules apply indiscriminately without taking into consideration the business relationship between parties to the transaction and without considering commercial motives for their decision, the fact that those rules do not apply if the amount of debt is at arm's length yet determining that intra group transactions are at arm's length is difficult then this weakens this provision of the law.

3.2.4 Double Taxation Treaties

Multinational enterprises with a presence in Uganda have either registered by continuation or headquartered in jurisdictions with which Uganda has domestic tax agreements. Usually, these tax agreements take precedence over the provisions of the income tax Act in cases of inconsistencies. For example, Section 88 provides that (1) an international agreement entered into between the Government of Uganda and the government of a foreign country or foreign countries shall have effect as if the agreement was contained in this Act. Subsection (2) provides that to the extent that the terms of an international agreement to which Uganda is a party are inconsistent with the provisions of the ITA, the terms of the international agreement prevail. The gaps in the interaction of the different tax systems with those countries, the application of those bilateral tax treaties and the poor negotiation skills with which Uganda negotiated the same have all conspired to lead income from cross-border activities to go untaxed anywhere, or be only unduly lowly taxed.

The ITA's way of dealing with this mischief lies in Section 85 which provides that where an international agreement provides that income derived from sources in Uganda is exempt from Ugandan tax or the application of the treaty results in a reduction of Ugandan tax, the benefit of that exemption or reduction is not available to any person, who for the purposes of the agreement, is a resident of the other contracting state where fifty per cent or more of the underlying ownership of that person is held by an individual or individuals who are not residents of that other contracting State for the purposes of the agreement.

3.3 Institutional Frameworks to address, tax avoidance and tax evasion.

3.3.1 The Banking Sector

The Financial Institutions Act (FIACT) 2004 provides for the regulation, control and discipline of financial institutions by the Central bank. The FIACT creates prohibitions against transacting financial institution business unless it is licensed under the Act (S.4). The FIACT in a bid to fight IFFs and money laundering requires financial institutions to demand proof of and record identity of its clients whether usual or occasional when establishing business relations and they are mandated to report to national law enforcement agencies any suspected laundering activity (S.129).

The Financial Institutions (Anti-Money Laundering) Regulations 2010 also seeks to operationalize the FIACT by placing large cash transactions in the banking sector especially if occasioned by non-face-to-face customers to scrutiny to counter money laundering as seen in regulation 5. It created a category of suspicious transactions which are inconsistent with a customer's known legitimate business and requires financial institutions to establish and maintain specific policies and procedures to guard against the use of the financial system for the purpose of money laundering.

The BOU has also amended the Foreign exchange Act, regulating money transmission by forex bureaus. The BOU has also collaborated with Uganda Forex Bureaus Association in bringing informal remittance transactions to the formal sector by providing forex bureaus a new license for money transmission. Foreign exchange Regulations were also introduced to specify conditions for licensing and supervision, to provide guidance for remittances and payment flows. As a result, the remittance channels became formalised, and the BOU has enhanced access to data on remittance inflows.

While the BOU has been fairly successful in ensuring every financial institution in Uganda develops programmes such as internal controls, policies and procedures including the designation of compliance officers at management level who provide risk reports on a monthly basis in the absence of which sanctions are suffered, the fact that the unbanked sector is the largest sector makes the reach of the FIACT and Bank of Uganda's interventions limited. It has been estimated that about 6 million people in Uganda are using financial institutions while on the other hand over 19 million are now using mobile money services which are not adequately well regulated. This still makes it possible to occasion IFFs.

3.3.2 The Finance Intelligence Authority

To institutionalise the curbing of IFFs and money laundering, the Anti-Money Laundering Act (AML) establishes the Financial Intelligence Authority (FIA) which is a body corporate with perpetual succession. The aims of FIA are to enhance the identification of the proceeds of crime and the combating of money laundering, ensuring compliance with the Act, and enhancing public awareness and understanding of matters related to money laundering as well as availing and sharing financial intelligence information collected by it with competent authorities .

Perhaps no other regulatory institution is gaining prominence in the fight against IFFs like the Financial Intelligence Authority. It serves as the central authority for reporting. It has a mandate to process and analyse information disclosed to it and if necessary refer such information to the appropriate law enforcement agency and/or relevant supervisory authority.

The AML in a bid to curb IFFs creates a wide prohibition on acts of money laundering such as conversion, transfer, transport or transmission of property suspected to be proceeds of crime, concealing or disguising the true nature, source, location or ownership of or rights with respect to that property or even assisting another to benefit from known proceeds of crime. The Act places a duty to identify clients on a wide pool of people or professionals it calls accountable persons. The second schedule to the Act sets out the accountable persons of 15 different categories from professionals such as Advocates and accountants to all licensing authorities. All this is aimed at widening the pool of reporting centres.

The Act places a wide range of responsibilities on accountable persons ranging from; establishing and maintaining information obtained about the true identity of their customers for a period of ten years, maintaining records relating to that relationship for ten years including customer identification information and the duty to maintain such information in electronic form. The AML places an obligation on all accountable persons to pay special attention to all complex, unusual or large transactions or transactions made on behalf of a person whose identity has not been established to examine as far as possible as to the origin and destination of the money. The Act also removes the confidentiality impediment by providing that an obligation as to bank or professional secrecy on the disclosure of information shall not affect obligations under the law. The Act also raises an intriguing problem. As noted earlier, advocates are also accountable persons. They are obligated to report any suspicious transactions. However, the problem is that as controls have been tightened in the formal financial system, attorney-client privilege has made lawyers a particular attractive option for disguising the money trail. After all, isn't this privilege just another form of secrecy, which can cleverly substitute for bank secrecy to improperly cloak transactions and sources of funds? At the same time, isn't the advocate client privilege an important building block for a fair legal system? In the absence of a more refined mechanism on the reporting duties it is not impossible to see legal challenges on grounds of advocate-client confidentiality.

3.3.4 Other Institutions

Other IFF and anti-money laundering regulators include the Capital Markets Authority which regulates the capital markets industry in Uganda, pursuant to the Capital Markets Authority Act (CMA) chapter 84 and various regulations under it. The CMA imposes various disclosure obligations on entities it regulates. It requires an issuer to obtain particulars of a holder of securities including names and addresses of a beneficial owner.

The Director of Public Prosecutions (DPP) under the Directorate of Public Prosecution Act is designated for the disclosure and reporting by individuals of assets or money suspected to be derived from terrorist funds under the Anti-Terrorist Act. The DPP has powers to supervise police's powers to investigate corruption and IFFs and prosecute those cases that arise from such investigations.

The Inspector General of Government (IGG) under the Anti-Corruption Act is granted authority to cause the investigation of anyone who maintains a standard of living above that which is commensurate with his or her current or past known sources of income or assets; or is in control or possession of pecuniary resources or property disproportionate to his or her current or past known sources of income or assets. The IGG has constitutional powers to investigate and prosecute cases of corruption and abuse of power. The other institutions involved in anti-corruption works and curbing IFFs are the Auditor General, the Public Procurement and Disposal of Public Assets Authority, the Judiciary and others.

The main challenges bedeviling these institutions in curbing IFFs is the capacity to investigate cases of IFFs, corruption and then prosecute them. Like corruption, IFFs are by their very nature secretive vices. There may be no witnesses readily available as is often the case in other crimes. The efficient and effective enforcement of anti IFFs and anti-corruption and anti-money laundering legislation is a challenge to all institutions. The institutions have to put in more effort so that the vices are deterred from continuing unabated by paying a high price of severe punishment. For a global success in the fight against IFFs, agencies should work together and assist each other on all fronts.

CHAPTER FOUR

The Laws on Withholding Tax of Construction Companies

4.1 The 1995 Constitution of Uganda[11]

The 1995 constitution obliges the state to stimulate agricultural, industrial, technological and scientific development by adopting appropriate policies and enacting enabling laws.

In line with the constitutional mandate, the parliament passed the investment Code statue in 1991, this was later renamed the investment code act[12] following the comprehensive revision by the Uganda law Reform Commission of all laws of Uganda that were in force by 2000. This law provided a number of withholding tax to investors. Until 1997, the most critical incentive was tax holidays under S.25 of the code, Uganda investment authority could grant tax holidays for a period specified in the certificate of incentives to investors who invested in Uganda's economy investments that met a statutory threshold and did satisfy other requirements. The statutory lease of the tax holidays regime did not endure beyond six years and as well shall see later they are still alive.

In 1997, parliament enacted a new Income Tax Act[13] which repealed S.25 of the Code the application of the repeal to investors that enjoyed holidays before the ITA was enacted caused some pertinent legal problems, some of which have been litigated. ***In Total Uganda Ltd V URA***,[14]the tax appeals tribunal had to give its verdict on the seemingly retrospective character of the repeal sect. 167 of the ITA repealed Sect. 25 of the code, but under section 168(21) of the former Act, the certificate of incentives, validity acquired under S.25 of the code, were to continue in force until expiry of their life span. Subsection 21, however narrowed the exemption from withholding tax on dividends and interests paid by a corporate person to its shareholders. Unlike before, only resident shareholder would profit from the exception.

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[11] As amended
[12] Cap 92 Laws of Uganda 2000
[13] Cap 340 laws of Uganda 2000
[14] Application TAT 2/2001

The applicant paid dividends to its nonresident shareholders, restraining from 50% of the tax thereon, and relying on the certificate of incentives which granted such exemption and sec. 168 (21) or the applicant breached its statutory duty to withhold that certificate of incentives is entitled to a drawback of duties and VAT payable on imported inputs used in producing goods for export, if the duties were paid in compliance with a law requiring such payment of a tax at the payment of dividend. The tribunal ruled that the exemptions under S.168 (21) did not apply to non-resident share holders, a position that was later affirmed by the High Court on the retrospective effect of S.168 (21). The tribunal could not help lamenting that despite its finding which based on the law as it stands, the tribunal observes that the change in the law would be unfair and embarrass the investors. Following the statutory demise of the tax holidays, the range of withholding tax provided by the Code was reduced. In the following paragraphs, I do address the tax privileges that are still provided under the current Act.

4.2 The Value Added Tax Act[15]

(a) Sec, 19 and the second schedule to the VAT Act[16] give a list of commercial supply of specific goods which are exempt from VAT. These include among others, educational materials, unprocessed foods, medical, dental, and nursing services and social welfare of services for instance for the elderly. In related way, some supplies are zero rated for purposes of VAT. These include the supplies of drugs and medicine, agricultural implement, educational materials and cereals grown, milled or produced in Uganda.

These supplies carry no VAT obligations essentially because government believes they affect essential commodities and are in the interest of societal welfare to keep the prices of these commodities at affordable rates.

(b) Income Tax Act[17]

[15] Cap 349, Laws of Uganda 2000
[16] Cap 349, Laws of Uganda 2000
[17] Cap 340, Laws of Uganda 2000

1. Start-up costs deductions spread over 4 years.

The principal legislation is income tax, the ITA[18] , also provides a number of incentives.

Section 30 of the Act, allows an investor who incurs expenditure in starting up a business to produce income which is included in the business' gross income a deduction of an amount equal to 25 percent of the amount of expenditure was incurred. Recovery of start up costs continues in the three subsequent years; with the same fraction of 25% being recovered every year.

2. Scientific research expenditure of 100%

3. Training expenditure of 100%

4. Mineral exploration expenditure of 100%

5. Initial allowance on hotel, hospitals and industrial building of 20%.

6. Accelerated Depreciation deductions

Accelerated capital recovery happens to be the more dominant of withholding tax available under the ITA[19]. This acceleration is provided in a number of circumstances.

Section 28 of the Act [20] provides that an investor who places an eligible property into business for the first time during the year of income is entitled to a deduction of specific percentage of the cost base of the item determined in accordance with the location of the business. If the business is located in Kampala, Jinja, Namanve, Entebbe, and Njeru, the deduction is 50% of the cost base. If the location is outside these five major industrial zones, the deduction is f75%.

The difference in the amount of deduction depending on location of the business is intended to attract investors to invest outside the major industrial zones and therefore encourage an evenly balanced industrial growth.

The phase "item of eligible property" in section 28(1) is defined under subsection (3) thereof to mean plant and machinery wholly used in the production of income included in gross income. The

[18] Cap 340, Laws of Uganda 2000

[19] Cap 340 Laws of Uganda 2000

[20] Cap 340 laws of Uganda 2000

definition, however excludes goods and passenger transport vehicles, house hold appliance and office and house hold furniture, fixtures and fittings. The tax appeals tribunal has had occasion to rule on the application of this exclusion. In Security Group Alarms Ltd. V Uganda Revenue Authority[21], the applicant, a local security services company, imported tailor-made jeeps for use in its business operations. In the year in which the jeeps were placed in service for the first time, the applicant claimed an initial allowance or deduction amounting to 50% of the cost base of the jeeps under section 28(1) of the ITA. The respondent denied the deduction, arguing that jeeps were passenger transport vehicles excluded from items of eligible property by sub-section (3) of the section. The main issue before the tribunal was whether the jeeps were items of eligible property or excluded passenger transport vehicles within the meaning of the sub section(1) and (3) of section 28. Nothing that the Act does not define the phrase passage transport vehicles. The tribunal took recourse to definition of the term of this term under traffic law. And the ordinary dictionary meaning. Consequently, it held that the jeeps were not passenger transport vehicles and were items of eligible property for which an initial allowance or deduction was permissible under section 28(1)[22].

The initial allowance above adjusts down words the investors' basis in the capital asset for the purposes of determining subsequent ordinary depreciation deductions. This position is to be contrasted with the provision of the Degree, the law which the ITA repealed, which, in so far as it never required initial depreciation deductions to adjust the investor's basis in the property, appeared to perceive these deductions as a subsidy from government.

Where the cost base of an asset placed into business for the first time in the year of income is less than one million Uganda Shillings, whole amount is at once deductible during the year

[21] Application tax Appeals Tribunal 10/2004

[22] Cap 340 Laws of Uganda 2000

Accelerated depreciation deductions are also permissible in respect of capital investments in industrial buildings. Subsection (4) of the section 28 gives an investor who places a new industrial building into service for the first time during the year of income a deduction equal to 20 percent of the cost base of the building at the time of service. This incentive applies even to mere extensions or existing industrial buildings and relates to buildings erected or extended by or after July 1, 2000. The interpretation of the section defines an industrial building widely as any building which is wholly or partly used or held for use by a person in manufacturing operations, an approved hotel business or an approved hospital.

Investments in horticulture equally benefit from accelerated depreciation deductions. Under sub-section (2), (3) and (4) of section 35[23], a horticulturist is allowed a deduction equal to 20 percent of the expenditure made and the same deduction in each of the four subsequent years.

(c) The Investment Code Act[24]

Exemption from import duty and value added tax.

S. 21 of the investment code Act[25] gives an incentive and investor who imports plant, machinery, equipment vehicles or construction materials for an investment project the privilege of benefiting from concessional rates of import duty and other taxes as may be specified in the Finance Act from time to time. These rates vary every year as the Finance Act wherein they are stipulated almost always undergoes annual amendments.

Other related incentives this Code provides include exemptions from import duty and value added tax on motor vehicles for personal use and house hold items purchased by the licensed investor.

(e) Exporting promotion incentives and facilities.

(1) Manufacturing under bond.

(2) Duty exemption on plant and machinery and other in puts

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[23] Cap 340 Laws of Uganda 2000

[24] Cap 92 Laws of Uganda 2000

[25] Cap 92 Laws of Uganda 2000

(3) Stamp duty exemption

(4) Duty draw back. This is a refund of all or part of any duty paid on materials or inputs imported to produce for export.

(5) Withholding tax exemptions on plant and machinery, scholastic materials, human and animal drugs and raw material/

(6) Ten year tax holiday duty remission scheme for exporters involved in value added addition.

To qualify for the incentive above, an investor must propose an investment that will make a substantial contribution to the economic welfare of Uganda. Determined by taking into account a number of factors. These include,

(1) Utilization of local raw materials in the investor production activities.

(2) The creation of employment opportunities

(3) The introduction of advanced technology

(4) And the generation of new earning or savings of foreign exchange through exports, resource based import substitution or service activities.

(5) The investor must therefore inject into the economy at least[26]

   (a) Five hundred thousand US dollars for citizens of Uganda.

   (b) One hundred thousand US dollars for non-citizens[27]

A foreign investor who invests in non-priority activities forfeits the above withholding tax[28]. The policy reason behind this is to reserve investment in these activities to citizens of Uganda. As a procedural requirement, the investor must, in addition obtain a certificate of incentives form UIA in order to enjoy the tax privilege under the Code. This Certificate is issued under Sec. 23 of the code after the UIA is satisfied that the investor's application satisfies the legal requirements.

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[26] S. 22 (1) b of the Investment Code Act Cap 92

[27] S. 22 (1) b of the Investment Code Act Cap 92

[28] S. 22 (2) of the Investment Code Act Cap 92.

(f) **Double taxation**[29]. These are international agreements entered into between governments for allocation of fiscal jurisdiction. They become part of the tax law of each contracting state, whether by direct incorporation into the domestic law or by direct enactment into that law.

The conclusion of a double taxation treaty is therefore, part of an overall policy of each state to encourage foreign investment or to assist the state's investors to participate in overseas trade and development without undue financial hardships arising from double taxation.

Legal effect of double taxation

Section 89(1) of the ITA[30], 1997 provides that an international agreement entered into between the government of Uganda and that of a foreign country shall have effect as if such agreement was contained in the Act and the agreement prevails over the act in the case of inconsistency.

Where Uganda is a party to a double taxation agreement, credit is given for foreign tax payable in respect of income is allowed as a credit against tax chargeable is less by amount of tax credit.

Adverse effects of a double taxation treaty[31]

A major disadvantage of double taxation agreement occurs where an agreement between developed and undeveloped countries, the agreements are un likely to be more or less equivalent in their revenue effects. Capital flows tend to be one way from the developed countries to developing countries. As a result, the reductions in the tax by the country where the investment occurs may not be reciprocal in effect under the agreements. Consequently developing countries should constantly balance the need for tax revenue and the desire to attract foreign investment.

4.3 The Law on Withholding Tax Analyzed.

Compliance obligation

As a compliance matter, withholding tax require substantial paper work and record keeping if full benefits of these incentives are to yielded. This is a tall order especially to local investors in

[29] DJ Bakibinga, Revenue Law in Uganda (2003) Professional books publishers, Kampala at 129

[30] Cap 340 Laws of Uganda

[31]Pg 141, ibid, 14

Uganda, many of whom are not well groomed in business etiquette. This, with other factors like ignorance of the law and lack of adequate tax specialists affect the effectiveness and administration of withholding tax in Uganda.

Multi-faceted legislation

The law is multi-faceted, with different enactments giving diverse incentives to different investments. The diversity of the legislation has also compelled the existence of different administrative bodies.

While for instance, the incentives under the ITA and VAT Act are administered by URA, those under the code are administered bythe UIA. This duplication of administrative responsibility compelled by the lack of a consolidated law on withholding tax, was a mistake in waiting. The tax incentive provisions in the code typically put UIA and the URA in unhealthy situation and thus it was not a surprise that the two bodies ended in a battle between **Meera Investment Limited V URA, UIA, and AG**[32]. Court hard to interpret the legality and scope of the certificate of tax incentive issued by UIA to MIL on October 10, 1994, exempting the real estate entity from corporate tax and withholding tax on dividends distributed from its income for the taxable years between 1996 and 2003. URA disputed the scope of the certificate of incentives since 1999, and the proceeded to assess tax liability and penalties against MIL amounting to shs. 36.5 billion Hence the suit. Its emergence reflects the lack of fore sight on the part of the executive and the legislature. The establishment of URA in 1991 as the body charged with the administration of tax laws would have called for amendment of the code to remove all the provisions on withholding tax and remove such powers to grant incentives from UIA. The UIA would then remain with powers to assess the suitability of the investors for investment incenses to operate in Uganda.

[32] HCC No. 185/2006

TAX HOLIDAYS ARE STILL ALIVE AND WELL

In the foregoing discussion, I noted that the ITA was amended by doing away with section 25 of the code. This repeal, however, has had little practical significance. The current trends and practices of the executive shoe that tax waivers or holidays are still granted in Uganda. Their legality is a matter of speculation. What is beyond speculation? They are heavily politically motivated for their grant. Between 2002 and 2003, government granted a foreign oil company, BIDCO[33], and a textiles company, apparels Tri-Star, amazing tax package inducements. By agreement between the two parties, BIDCO received from government a twenty five year corporate tax waiver, a twenty – year VAT deferral. Exemption from withholding tax on interest payments in respect of loan obligation incurred for the purpose of funding the company's operations, an exemption from stamp duty for a similar period, payment by government of import duties on select plant and machinery and motor vehicles imported by the company, 26500 hectares of the land on lease basis and other facilitations. Apparels on the other hand received government commitment to meeting its corporate tax obligation, infrastructural assistance in terms a building for production and office space, land, government-acquired loans, accommodation and other facilitations went to the company that expressed interest in investing in Uganda only as a result of the US government's AGOA initiative and whose main investment goal was to sell textiles to the US Market, accessibility to which had been made possible by Uganda's being a beneficiary under this agreement.

Even Bassajabalaba, has benefited from these withholding tax, acting on the orders of President Yoweri Museveni, the Ministry of Finance approved a large payment of 13.4 billion of URA by Bank of Uganda[34]. The payment represented the VAT which but not for the exemption given Bassajabalaba by the president, the revenue body would have collected on the supplies for the

[33] Agreement signed between the Government of Uganda and BIDCO oil Refineries in April 4, 2003.
[34] Daily Monitor, Wednesday June 13, 2006 Museveni gives Bassajja another 13b in taxes pg 1

construction of a teaching hospital for Kampala International University's western campus at Ishaka, Bushenyi. The Executive actions regarding withholding tax has failed attempts made through the Code and ITA to standardize the conditions for the granting of withholding tax, and has made them another for rewording political loyalties.

CHAPTER FIVE

The Recommendations for the Improvement of the Withholding Tax

5.1 Training

Muzirakizza (2013) noted that URA can organize seminars for staff and business owners and train them about WHT. The training content should address the WHT meaning, its rates, goods and services it applies, due date for remitting tax after deduction, tax credit certificate and recovery cry of tax withheld. The author further argued that educational trainings or sensitization would address the poor attitude tax payers have towards WHT.

5.2 Publishing detailed list of transactions liable to WHT

A number of authors like Tuma (2015) recommends for provision of a full descriptive list of transactions liable to withholding tax as it is for Value Added Tax for exempt and Zero rated supplies would be a welcome development.

In addition to automation of tax credit certificate, Muzirakizza (2013) further noted that empowering local authorities would improve compliance with withholding taxes and other taxes since local authorities have the numbers and are on the ground and they are spread out in all districts. That, local authorities also know all the businesses in their jurisdictions since they issue them trade licences, collect property rates and can. Therefore, empowering local authorities to enforce tax compliance for instance registration for Taxpayer Identification Numbers (TINs) and compliance with withholding tax become effective.

Muzirakizza (2013) quoted Ssempebwa (2013) in year 2013 that Uganda Revenue Authority (URA) had embarked on a campaign to look out for businesses and individuals who are dodging tax and the campaign was aimed at encouraging the non-compliant (those who don1t know their tax obligations and those who are intentionally evading tax) to voluntarily declare their income and pay the tax due (Tuma, 2015). The campaign also targeted those who were already on the tax register, but were paying less than they should have been paying. Ssempebwa (2013) further noted that URA was making compliance easier through improved service delivery, tax education and compliance rewards.

CHAPTER SIX

DISCUSSION, SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

6.0 Introduction

This chapter covered the discussions of major findings, summary of major findings, conclusions for the study, recommendations to the study and areas for further research studies. This was done in line with the study topic titled "Assessment of non-compliance with WHT amongst construction companies in Kampala Uganda, a case study of C&G Andijes Group Limited".

Discussions were also made in line with specific objectives of the study which included; finding out the various forms of withholding taxes charged in Uganda, identifying the challenges faced in attempt to comply with WHT in Uganda, and ascertaining remedies to curb non-compliance with WHT in Uganda.

6.1 Discussions of Major Findings

In line with understanding of withholding tax by URA (2011) and Yiga (2013), the study findings revealed that withholding tax (WHT) is "the a certain percentage charge deducted by the tax agent (payer) from gross income earned by the taxable person before it is paid to the respective receiver (payee) in line with the tax laws of Uganda, and which is then remitted to the tax administration body of Uganda Revenue Authority (URA) within a prescribed period of time".

Findings under table 4.3.6 as presented in chapter four, all the respondents (100%) were aware of the different forms of withholding taxes charged in Uganda like as noted under table 4.3.7 and table 4.3.8. the study findings revealed that there are various forms of WHT but the most common applicable ones to construction companies included; employment income or PAYE (30%), withholding tax on payments to professionals like consultants, auditors, lawyers, and engineers. Other forms of WHT which are in agreement with the earlier noted forms by URA (2011), Grant-Thornton (2013), Yiga (2013) and Income Tax Act (2014) are WHT on international payments, WHT on imports, and WHT on payments for goods or services above one (1) million Uganda shillings.

The said challenges by Kayaga (2007), Deloitte (2014) and IJN (2015) and as per most of the respondents under presented study findings, were further clarified under table 4.4.10 and table 4.4.11 where different challenges causing high levels of non-compliance were recognized including; bureaucratic process of claiming tax credit, corruption amongst URA officials or tax administrators which makes it expensive, ignorance about WHT especially on rates and specific transactions to be subjected to withholding taxes, difficulties in establishing effective tax administration, and varying tax rates or due to absence of a single tax rate of withholding tax. However, the interviewed URA officials acknowledged noted that the tax administration body (URA) is effectively addressing the said issue with computerized strategies like e-payment, e-returns, e-registration, and among other electronic-based services offered or to be offered.

It was found out that URA's efforts are yielding something even-though not satisfactory to all as only 43% of the respondents acknowledged that URA's measures being employed have improved tax compliance with withholding tax especially though sensitization and encouraging voluntary compliance, as presented under tables 4.5.14 of the study findings. Similar views were given by the respondents like those of Muzirakizza (2013) and Tuma (2015) who had earlier suggested for measures like increasing educational training and awareness programs as they inform the tax payers to understand the various forms of taxes, publishing list of tax defaulters, specifying withholding tax payees (eligible persons), specify a list of transactions where WHT is applicable aimed at informing some of the tax payers and payees who are ignorant of what tax (rate or amount) to be paid or withheld, and from who (the eligible/qualifying tax payer, from which WHT is applicable).

6.2 Summary of Study Findings

Withholding tax (WHT) is "the a certain percentage charge deducted by the tax agent (payer) from gross income earned by the taxable person before it is paid to the respective receiver (payee) in line with the tax laws of Uganda, and which is then remitted to the tax administration body of Uganda Revenue Authority (URA) within a prescribed period of time", All the respondents (100%) were aware of the different forms of WHT charged in Uganda and these include; employment income (PAYE), WHT on payments to professionals, WHT on international payments, WHT on imports, and WHT on payments for goods or services above one million Uganda shillings.

The majority of the respondents agreed that non-compliance is as a result of some of the challenges associated with withholding tax and tax administration and these include; bureaucratic process of claiming tax credit, corruption, ignorance about WHT, difficulties in establishing effective tax administration, and varying tax rates or due to absence of a single tax rate of withholding tax.

These challenges are now being further addressed by the tax administration body (URA) with the introduction of computerized strategies like e-payment. E-returns, e-registration, and among other electronic-based services.

It was revealed that URA has fairly curbed non-compliance with WHT and the said measures already being applied by URA include; sensitization of the public, encouraging voluntary tax compliance, empowering local authorities, automating the process of tax credit certificate, and less of publishing detailed list of transactions liable to WHT, publishing list of tax defaulters, fining tax defaulters, reprimanding tax defaulters, and pursuing legal actions against tax defaulters. Other additional and emphasized measures suggested by the respondents include: increasing educational training and awareness programs as they inform the tax payers to understand the various forms of taxes, publishing list of tax defaulters, specifying withholding tax payees, and specify a list of transactions where WHT is applicable.

6.3 Conclusions

As per the presented, analyzed, interpreted and discussed findings of the study in line with the objectives of the study and main purpose of the study, there is still tax non-compliance with withholding tax amongst construction companies and in general, amongst eligible tax payers. Low compliance levels or high levels of tax non-compliance with WHT were attributed to associated challenges which constrain tax payers and payees to fully comply. For example. Bureaucracy in claiming withholding tax credit, corruption exhibited by tax administrators. ignorance due limited information on who to withhold or from who or on what business transactions, and difficulties in claiming refunds in case of over payment, were all said to discouraging and making it hard for some of the tax payers to fully comply and thus increased levels of non-compliance with withholding tax and other forms of taxes.

6.4 Recommendations to the Study

6.4.1 Carrying out WHT audits every year.

Regular tax audits in particular for withholding tax by URA would trigger most of the companies and other eligible tax payers or payees to comply with paying or withholding expected taxes and the remitted to URA. This would work since tax defaulters would be unearthed and forces eligible tax payers to comply before they are reprimanded or fined or legally prosecuted.

6.4.2 Specifying a list of transactions where WHT is applicable.

Like as earlier suggested by the respondents under the study findings, this would help most of the tax payers and payees who ignorant about what is the nature of business transactions that are subject to WHT, in addition to specific varying rates and eligible tax payers or payees of WHT.

6.4.3 Ease the procedure of claiming for WHT refund.

Since one of the main challenges identified as per study findings are difficulties in claiming for WHT refunds due to overpayment and bureaucracy in claiming withholding tax credit, it is vital and it would be very much appreciated by the tax payers including withholding tax agents if such processes or procedures are eased (quick and less stressing processes/procedures).

6.5.4 Filing returns and making payments in a timely manner.

On the side of tax payers and payees, the study recommends that returns should always be filled in time and payments to be made in time. That is, returns and payments should be done before the 15th day of the following month upon which WHT was applicable (withheld or paid). This would reduce non-compliance levels and even avoiding associated consequences with tax noncompliance like fines and damages (court fees).

6.5 Areas for Further Research

i. Relationship between withholding tax audits conducted by URA and compliance with withholding tax in Uganda

ii. Effect of tax payers' attitude regarding withholding tax rates on the compliance levels with withholding tax in Uganda

iii. Role of electronic tax systems introduced by URA towards improving tax compliance with withholding tax in Uganda