

VIEWPOINT AFRICA

Ugandan court rules on interest during tax dispute

In the recent Appeal Court case of *Airtel Uganda Limited v Uganda Revenue Authority*, the provisions of section 15 of Uganda's Tax Appeals Tribunal Act (TAT Act) and their wider implications came under scrutiny.

In the case at hand, Airtel Uganda (Airtel), a telecommunication company, lodged an objection to an assessment raised by the Uganda Revenue Authority (URA) on February 25 2004 with the Tax Appeals Tribunal.

In terms of section 15 of the TAT Act, a taxpayer who has lodged a notice of objection to an assessment shall, pending final resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.



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Airtel duly paid the 30% of the disputed tax in accordance with this legal requirement.

Both the TAT and the High Court subsequently ruled in favour of the URA and a further appeal to the Court of Appeal was dismissed. As a result, Airtel was liable for the total amount of the originally assessed tax and paid the outstanding 70% tax at that stage. However, the URA also demanded interest on the 70% that was

outstanding and had remained unpaid during the litigation process.

Airtel filed a suit in the High Court arguing that the URA does not have a right to claim interest on this amount and that the payment of 30% of the assessed tax in terms of section 15 of the TAT Act absolves the taxpayer from paying penalties in the event that the disputed tax is found to be payable. Any penal interest accrues only after the courts have determined in an objection or appeal that the tax is payable.

The URA was of the view that penal tax (interest) was a creature of statute provided for under section 34 of the Value Added Tax Act (VAT Act) and that in terms of section 65 and 66, the consequence of not paying tax assessed attracts interest

at the rate specified. The relevant assessment was issued on February 25 2004 with a due date for payment of the tax on the same date and, as Airtel's taxability and due date did not arise out of the court judgment but in terms of the law, 70% of the tax due was paid late and therefore subject to interest.

The URA also disagreed with the view that payment of 30% of the assessed tax absolves the taxpayer from the responsibility of paying the total amount due.

The High Court decided in favour of the URA and Airtel then approached the Appeal Court.

The Court of Appeal held that the constitution envisages that disputes relating to tax assessments may arise and when that ensues the provisions of the

TAT Act apply. The requirement under the TAT Act to pay 30% of the objected tax suspends the requirement to pay the whole sum which is objected to. Article 44 of the constitution provides for a nonderogable right to a fair hearing and, accordingly, a person who has objected to a tax assessed, appealed against it and paid 30% of the assessed tax cannot be

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penalised for having sought redress by the TAT, as this would put such person in the same position as a "tax cheat".

The court ruled on November 12 2019 that the interest imposed on Airtel by the URA had no legal basis and ordered that any interest or penal tax that may have been paid to URA in respect of the period in which the dispute was pending before the TAT and the High Court be refunded to Airtel with interest at 15% per annum from the date the payment was made.

The URA was also ordered to pay costs at the High Court and Appeal Court.

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