USE OF USE OF TAXATION AND LEADERSHIP CODE ACT TO RECOVER ILLICITLY ACQUIRED WEALTH AND COMBAT CORRUPTION IN UGANDA

By: Isingoma Peter (LLB (Muk) & LLM (Muk, 2021)

This is a draft paper and it may contain errors.

1.0 DUTY TO PAY TAX

1.1 According to Supreme Court in Uganda Revenue Authority v Kajura CIVIL APPEAL N0.09 OF 2015, every person has the duty to pay taxes under the Constitution of Uganda and unless exempted, the obligation to pay income tax is mandatory. According to the Supreme Court laws that permit tax exemptions must be construed strictissimi juris against the entity claiming the same. The law does not look with favor at tax exemption and he who seeks to be this privileged must justify it by words too plain to be mistaken and so categorical to be misinterpreted.

1.2 DUTY TO FILE A TAX RETURN

1.2.1 Section 92 (1) of the Act requires every taxpayer to furnish a return of income for each year of income of the taxpayer not later than four months after the end of that year, except where the tax payer is exempted under section 93 thereof. Under section 151 of the Act, a person who fails to furnish a return of income for a year of income within the time required under the Act is liable to pay a penal tax equal to 2 percent of the tax payable for that year or one currency point per month, whichever is the greater, for the period the return is outstanding.

1.2.2 The period to file tax returns may be extended by the Commissioner. Section 94 (3) states that the Commissioner by notice in writing may grant the taxpayer an extension of time for a period not exceeding 90 days, for furnishing a return where the taxpayer is unable to furnish the return by the due date because of absence from Uganda, sickness or "other reasonable cause." This discretion must be exercised properly and for reasonable cause.

1.2.3 Justice Stephen Mubiru in Radio Pacis Limited v The Commissioner General Uganda Revenue Authority Civil Suit No. 0008 of 2013 stated that under Section 2 (sss) of *The Income Tax Act*, “taxpayer” means any person who derives an amount subject to tax under the Act and includes;

(i) Any person who incurs an assessed loss for a year of income; or

(ii) For the purposes of any provision relating to a return, any person required by the Act to furnish such a return.

1.2.4 A tax payer can be both a natural or artificial person. An artificial person includes corporations, trusts, Non-Government organisation, states, partnerships, and unincorporated organisations such as registered business names[1].

1.2.5 Under section 4 (1) of the Act, the obligation to pay Income Tax is imposed for each year of income on every person who has chargeable income for the year of income. Any income derived by a person in carrying on a business is characterised by section 18 (1) as business income and forms part of gross income within the meaning of section 17 (1) (a) of the Act.

1.2.6 Under section 15 of the Act, the chargeable income of a person for a year of income is the gross income of the person for the year less total deductions allowed under the Act for the year (expenses wholly, exclusively and necessarily laid out or expended for the purpose of earning the income).

1.2.7 According to Justice Mubiru, the obligation to file annual income tax returns applies to every taxpayer, i.e. a person with reportable income (the liability is at the point of receipt of business income), although the obligation to pay tax is that of taxpayers who after assessment, have chargeable income (i.e. income minus deductions) during the year of income. **He stated that:**

> *Filing annual income tax returns is a method of bringing business income to assessment rather than an obligation for only taxpayers with chargeable income. The income tax payable by a taxpayer for a year of income is calculated by applying the relevant rates of tax determined under the Act to the chargeable income of the taxpayer for the year of income and from the resulting amount are subtracted any tax credits allowed to the taxpayer for the year of income (see section 4 (2) of The Income Tax Act).*

1.2.8 Justice Mubiru further explained that the obligation to file annual income tax returns is intended to provide the defendant with information, of which it likely to be uninformed unless the tax returns are filed. Tax returns contain declarations of the gross income earned from taxable activities on basis of which the liability to pay tax, if any, and the amount payable can then be determined.

1.2.9 By virtue of section 95 (1) of *The Income Tax Act*, it is on basis of the taxpayer' return of income that the Commissioner makes an assessment of the chargeable income of the taxpayer. It is after the returns are filed that the tax payable by an individual under *The Income Tax Act* is determined by application of prescribed rates to a taxpayer's chargeable income, if any, calculated in the prescribed manner.

---

[1] See Salomon v A Salomon & Co Ltd [1896] UKHL 1, [1897] AC 22. For states and international organisations see Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion of 11 April 1949 1949 I.C.J. 174 (Apr. 110. According to URA person includes an individual, company, partnerships, trustees, Government and sub divisions of Government. See, URA, **TAXATION HANDBOOK A Guide to Taxation in Uganda, 2nd 2015,** pg. 19

1.3 PAYMENT OF INCOME TAX IN UGANDA

1.3.1 Income tax is imposed on individuals by Section 4 (1) of the Income tax Act. It provides that Subject to and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income for the year of income. The income tax that is payable by a taxpayer for a year of income is calculated by applying the relevant rates of tax determined under this Act to the chargeable income of the taxpayer for the year of income and from the resulting amount are subtracted any tax credits allowed to the taxpayer for the year of income.

1.3.2 Tax exemption in respect of income tax are granted by section 21 (1). Farming income is not exempted from taxation by section 21(1). The following incomes are exempt from income tax—

a) The income of a listed institution;
b) The income of any organisation or person entitled to privileges under the Diplomatic Privileges Act to the extent provided in the regulations and orders made under that Act;
c) The official employment income derived by a person in the public service of the government of a foreign country if— (i) the person is either a nonresident person or is a resident individual solely by reason of performing such service; (ii) the income is payable from the public funds of that country; and (iii) the income is subject to tax in that country;
d) Any allowance payable outside Uganda to a person working in a Ugandan foreign mission;
e) The income of any local authority;
f) The income of an exempt organisation, other than— (i) property income, except rent received by an exempt organisation in respect of immovable property which is used by the lessee exclusively for the activities of the organisation specified in paragraph (bb) (i) of the definition of "exempt organisation" in section 2; or (ii) business income that is not related to the function constituting the basis for the organization's existence;
g) Any education grant which the commissioner is satisfied has been made bona fide to enable or assist the recipient to study at a recognised educational or research institution;
h) Any amount derived by way of alimony or allowance under any judicial order or written agreement of separation;
i) Interest payable on treasury bills or Bank of Uganda bills;
j) The value of any property acquired by gift, bequest, devise or inheritance that is not included in business, employment or property income;
k) Any capital gain that is not included in business income;
l) Employment income derived by an individual to the extent provided for in a technical assistance agreement where—(i) The individual is a nonresident or a resident solely for the purpose of performing duties under the agreement; and (ii) The Minister has concurred in writing with the tax provisions in the agreement;
m) foreign-source income derived by—(i) A short-term resident of Uganda; (ii) a person to whom paragraph (c) or (l) of this subsection applies; or (iii) a member of the immediate family of a person referred to in subparagraph (i) or (ii) of this paragraph;

n) A pension;
o) A lump sum payment made by a resident retirement fund to a member of the fund or a dependent of a member of the fund;
p) The proceeds of a life insurance policy paid by a person carrying on a life insurance business; or
q) The official employment income of a person employed in the Uganda Peoples' Defence Forces, the Uganda Police Force, or the Uganda Prisons Service, other than a person employed in a civil capacity.

1.4 Farming income as part of the Income Tax liability of any individual

1.4.1 Subject to Section 16, the chargeable income of a person for a year of income is the gross income of the person for the year less total deductions allowed under this Act for the year. Gross income is defined under Section 17 (1) as the total amount of business income; employment income; and property income, derived during the year by the person, derived from all geographical sources other than income exempt.[2].

1.4.2 Section 18 defines business income any income derived by a person in carrying on a business whereas Section 20 defines property income to mean any dividends, interest, annuity, natural resource payments, rents, royalties and any other payment derived by a person from the provision, use or exploitation of property; any other income derived by a person, but does not include any amount which is business, employment or exempt income.[3]

1.4.3 According to URA under para 4.1.1 of its taxation hand book, trade has the same meaning as commerce and it involves buying and selling or bartering of goods. There are many exceptions to this general definition but the following elements show the existence of a trade:
a) The element of profit
b) The regularity of the transactions.
c) The arrangements and effort, and,
d) Compliance with statutory obligations made to make the transactions work.

1.4.4 A person carrying out farming can be said to be carrying on a trade for profit. He can prepare his land, hire workers, plant his plants, harvest them and transport them to the market. Farming business is distinct from subsistence farming where a person engages in farming to produce food for the household though he may intend to sell the excess. Within the requirements enumerated

---

[2] According to URA, **Gross Income** of a person for a year of income is the total amount of business income, employment income and property income other than exempt income. In case of resident persons, Gross income is a person's income from all geographical sources. See, URA, **TAXATION HANDBOOK A Guide to Taxation in Uganda, 2nd 2015,** pg. 19

[3] Business is defined in the Income Tax Act to include any trade, profession, vocation or adventure in the nature of trade. See, URA, **TAXATION HANDBOOK A Guide to Taxation in Uganda, 2nd 2015,** pg. 21

by URA in 4.1.1 in its taxation hand book farming can be a trade and thus farming income can be business income within Section 18.

1.4.5 Farming income can also qualify as property income under Section 20 of the Act. This Section defines property income to mean any dividends, interest, annuity, natural resource payments, rents, royalties and any other payment derived by a person from the provision, use or exploitation of property. *Farming income is property income in that it is a payment derived by a person from the use or exploitation of property*. However, once it is treated as business income under section 18, it cannot be treated as property income under section 20.

1.4.6 According to Wilson Bahati Kazi, a Training Consultant at Uganda Revenue Authority, farming income refers to business income derived from carrying on farming operations. In arriving at chargeable farming income, total farming income of the taxpayer for a year of income less any deductions permissible under the income Tax Act (s.22).

1.4.7 Bahati further argues that Special allowances that can be claimed against farming income under s.35 of the Income Tax Act are:

a) Expenditure on farm works is included in a pool for class 4 assets under s.27 in the year of income in which the expenditure is incurred and depreciated at 20% per annum. Farm works includes labor quarters and other immovable buildings necessary for the proper operation of the farm, fences, dips,

b) Capital expenditure incurred on draining (i.e. land reclamation) or clearing the land forms part of the cost of horticultural plant. Note that the purchase of existing land and/or simply keeping it in good condition (e.g. fertilization) does not form part of the cost of horticultural plant.

1.4.8 According to justice Mubiru any income derived by a person in carrying on a business is characterised by section 18 (1) as business income and forms part of gross income within the meaning of section 17 (1) (a) of the Act. According to court in FC of T v. The Myer Emporium Ltd '...it may be said that if the circumstances are such as to give rise to the inference that the taxpayer's intention or purpose in entering into the transaction was to make a profit or gain, the profit or gain will be income..'.[4]. This was further explained by court in Westfield Limited v FC of T, Hill J (with whom Lockhart and Gummow JJ agreed) said[5]:

> *'...where a transaction falls outside the ordinary scope of the business, so as not to be a part of that business, there must exist, in my opinion, a purpose of profit-making by the very means by which the profit was in fact made. So much is implicit in the decision of the High Court in Myer".*

---

[4] (1987) 163 CLR 199; 87 ATC 4363; 18 ATR 693 Para 30.

[5] At 91 ATC 4243; 21 ATR 1408,

1.4.9 Where the intention or purpose of the taxpayer in entering into the transaction was to make a profit or gain; and (b) the transaction was entered into, and the profit was made, in the course of carrying on a business or in carrying out a business operation or commercial transaction then the resultant profit is taxable income. Even a one off transaction entered by a person for profit making purposes can give raise to taxable income.

1.4.10 According to court in Myer at 163 CLR 209-210, 87 ATC 4366-7, 18 ATR 697: 'Generally speaking, however, it may be said that if the circumstances are such as to give rise to the inference that the taxpayer's intention or purpose in entering into the transaction was to make a profit or gain, the profit or gain will be income, notwithstanding that the transaction was extraordinary judged by reference to the ordinary course of the taxpayer's business. Nor does the fact that a profit or gain is made as the result of an isolated venture or a "one-off" transaction preclude it from being properly characterized as income. Therefore, a person who carries out agriculture or farming for profit is engaged in business or trade within the income tax act.

1.4.11 According to URA, The basis for determination of Income tax liability for resident persons is the gross income of the person reduced by allowable deductions. It further explains that allowable deductions are expenditures and losses incurred when deriving chargeable income. The general rule is that for expenditure to be allowed it must have been incurred to produce the income that has been declared as gross income[6].

1.4.12 The Income Tax Act lists, under sections 22 – 38, a number of expenditures and loses that are allowable deductions. For instance, Interests, bad debts, repairs, depreciation, initial allowances, startup costs, meals, etc.

1.4.13 Illustration 6 in the URA taxation handbook explains the tax liability of an individual who has both business income, employment income, and interest. It demonstrates that an individual's tax liability is not limited to PAYE. It extends to his business income, rental income and interest. The illustration gives an example of Mr. **Acul Ocolo who earned income from different sources for the year 2014 as indicated below:**

Business income.....	**25,000,000**
Employment income.	**2,400,000**
Property income (interest from Stanbic Bank).....	**500,000**
Dividend from Total (U) Ltd.....	**275,000**
Interest on treasury bills.	**150,000**

[6] URA, **TAXATION HANDBOOK A Guide to Taxation in Uganda, 2nd 2015,** Pg. 37

In addition, he incurred expenses amounting to Shs 1,200,000 to earn the income.

Determine Acul Ocolo's gross income and chargeable income

SOLUTION

Gross income includes all income from all sources less tax exempt income

Business income.....	***25,000,000***
Employment income.....	***2,400,000***
Property income (interest from Stanbic Bank).....	***500,000***
Dividend from Total.....	***275,000***
Interest from treasury bills.....	***150,000***
Gross income.....	***28,325,000***

NOTE

Interest on treasury bills taxed separately.....	**150,000**
Dividend separately taxed.....	**275,000**
Interest income separately taxed.....	**500,000**
Employment income.....	**925,000**
Taxable income.....	**27,400,000**
Less expenses.....	**(1,200,000)**
Chargeable Income.....	**26,200,000**

Where chargeable income is Ushs 26,200,000 for Acul Ocolo as above, tax is calculated as follows;

Ushs 26,200,000 falls in the top band of the tax rate for individuals in the Third Schedule of the Income Tax Act. Deduct Ushs 4,920,000 from Ushs 26,200,000 to get Ushs 21,280,000

Tax on Ushs 4,920,000 is Ushs 546,000

Charge to tax Ushs 21,280,000 at 30% to get Ushs 6,384,000 Add Ushs 546,000 to Ushs 6,384,000 to get tax payable by Acul Ocolo, which is Ushs 6,930,000

Deduct tax withheld at source (PAYE) 84,000 from total tax of 6,930,000, giving Ushs 6,846,000 as tax payable

TAX DETERMINED SEPARATELY:

Treasury bill interest 150,000 × 15%.....	**22,500**
Tax on interest 500,000 × 15%	**75,000**
Tax on dividend 275,000 × 15%.....	**41,250**
Total tax separately paid.....	**38,750**
GRAND TOTAL OF TAX.....	**(6,846,000 + 138,750)**
	= 6,984,750

1.5 Declarations under the leadership code as evidence of farming income earned.

1.5.1 Under section 7 (1) of the Leadership Code Act, the contents of a declaration under this Code shall be treated as public information and shall be accessible by the public in accordance with this section. The Inspectorate can grant access to a declaration submitted under this Code on being satisfied that the access to the declaration will help in the enforcement of this Code or any other law. Under Section 7 (8), the Inspectorate can upon request, grant access to a declaration submitted by a leader to the Director of Public Prosecutions and the Uganda Police Force. Under Section 3A (g) of the Leadership Code Act in enforcing the Leadership Code Act, the Inspectorate shall collaborate with other Government agencies to facilitate the enforcement of this Code.

1.5.2 Under 3(2) of the Leadership Code Act In enforcing this Code, the Inspectorate shall investigate and report on any allegations of high handed, outrageous, infamous or disgraceful conduct or any other behaviour or conduct on the part of a leader. Under Section 19 (3) of the Leadership Code Act, 2002, in the case of criminal offences, the report may contain a recommendation that criminal proceedings be commenced against the leader or any other person.

1.5.3 After reporting criminal offenses under Secretion 19 of the Leadership Code Act, 2002, the IG can disclose declaration forms to the agency concerned under section 7. Section 7(2) provides that a person intending to access a declaration submitted by a leader shall make a written application to the Inspectorate. A person can be both a natural person and an artificial person such as URA.

1.5.4 Within sections 3(2), 3A(g), 7(1), 19(3) of the Leadership Code Act, the Inspectorate is authorised to collaborate with other Government agencies to facilitate the enforcement of this Code, to report criminal conduct and any other conduct on the part of the leader. Therefore, there is nothing in the Leadership Code Act or any other law to prevent IG from reporting tax offenses to URA. To the contrary, Section 19 (3) of the Leadership Code Act allows the IG to report criminal cases and recommend criminal proceedings.

1.5.5 A leader has a duty to provide a truthful declaration of his or her assets. Under section 6 of the Leadership Code Act, a leader who knowingly or recklessly submits a declaration or gives an account of any matter which is false, misleading or insufficient in any material particular, commits

a breach of this Code. Therefore a leader is under obligation to provide a honest declaration of his or her assets.

1.5.6 In addition to Section 6 of the Leadership Code Act, under section 24 of the Anti-Corruption Act, a person who, being employed in the public service in such a capacity as to require him or her or to enable him or her to furnish returns or statements touching any sum payable or claimed to be payable to himself or herself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any matter which is to his or her knowledge, false in any material particular commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both

1.5.7 Further, under section 40,of the Anti-Corruption Act, a person who, with the intent to conceal an offence or frustrate the investigation of a suspected offence of corruption under this Act (b) makes or is privy to making any false entry in a book, document, account or electronic record. Also under Section 15 (1) of the Leadership Code Act, without derogating from any other written law, a leader shall not act to the detriment of Government by refusing or neglecting to settle his or her lawful financial obligations to Government or any public body.

1.5.8 The above provisions in 1.5.5 to 1.5.7 are clear authorities for the proposition that a leader must make a truthful declaration at the penalty of law. A false declaration is evidence against him in a criminal trial on offenses discussed above. Therefore, it would not in his interest to turn around and claim that his declaration under the Leadership Code Act was in fact false. This would expose him to the various offenses discussed above that deal with false declarations.

1.5.9 Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves relevant. Under Section 30 (c) of the evidence Act when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or her or would have exposed him or her to a criminal prosecution or to a suit for damages. These statements are admissible against the maker in both a civil and criminal trial.

1.5.10 In a civil trial such statements can constitute an estoppel against the maker. This prevents him or her from turning around and alleging the contrary. In a criminal trial such statements can amount to admissions against the maker.

1.5.11 The house of Lords in Regina v. Myers on considering such evidence explained; First, the evidence could--leaving aside the question of other objections--have been led by the Crown, because it is relevant to the Crown case against the accused who made the statement and it has always been

competent to lead evidence of admissions made by the accused as part of the Crown case.[7] Second, evidence which tends to incriminate the accused who made the statement is relevant also to the defence of the co-accused, where only one of them could have committed the crime. Third, as the statement contains an admission against the interest of the person who made it, it is more likely to be true than false and it is therefore evidence which should be made available at the trial. Fourth, the evidence of those to whom the statement was made or heard it being made is the best evidence of the fact that the statement was made, as the person who made it is not a compellable witness at his own trial. And fifth, as the accused is a party to the proceedings at which the evidence is to be led, he or she has the protection which the law gives to accused persons in cases where evidence is to be led which may be incriminating.

1.5.12 Presumptive tax is provided for by Subject to Section 4(5), where the gross turnover of a resident taxpayer for a year of income derived from carrying on a business or businesses is less than fifty million shillings, the income tax payable by the taxpayer for the year of income shall be determined in accordance with the Second Schedule to this Act, unless the taxpayer elects by notice in writing to the commissioner for subsection (2) to apply; and—

1.5.13 According to URA, Under Income tax- the threshold for presumptive Taxpayers is 150 Million Uganda Shillings. The rate for Presumptive Taxpayers with Annual income between UGX 10M - UGX 50M are based on the location and nature of business. For Presumptive Taxpayers with Annual income above Ushs 50Million shillings but not exceeding Ushs 150M, there are specific tax amounts applicable as prescribed in the Income-tax act or 1.5%, whichever is lower.

1.5.14 According to URA, persons employed in Medical practice, Dental practice, Architectural service, Engineering service, Accounting and audit practices, Public entertainment services, Legal practice, Public utility service, Any other professional services and Construction service persons in the following business activities are excluded from presumptive tax:[8]

1.5.15 Under para 7.3.2 of the taxation hand book **a Small Business** In order to benefit from the presumptive tax regime, a taxpayer MUST keep records of his or her daily sales which is the basis for determining the tax bracket under which he or she falls.

1.5.16 URA, advises that every taxpayer i.e. any person who is in business is expected to register with URA for tax purposes. Registration enables URA to issue the taxpayer with a Taxpayer Identification Number (TIN) which is the key identifier of the taxpayer.

<u>References:</u>

URA, **TAXATION HANDBOOK A Guide to Taxation in Uganda, 2nd 2015,** Pg. 46

---

[7] [1997] 4 All ER 314,

[8] URA, **TAXATION HANDBOOK A Guide to Taxation in Uganda, 2nd 2015,** Pg. 46