Uganda Revenue Authority
DEVELOPING UGANDA TOGETHER
URA

Head Office: Plot M193/M194 Nakawa Industrial Area
P.O.Box 7279, Kampala, Uganda
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LEG/32/114/1

Our Ref: URA/CG/8.0
Your Ref: LEG/32/114/1

13th May, 2015

ELECTRICITY REGULATORY AUTHORITY
27 MAY 2015
RECEIVED BY REGISTRY

Electricity Regulatory Authority,
Plot 15, Shimoni Road, Nakasero,
P.O Box 10332,
Kampala, Uganda.

Attention: Benon M. Mutambi

GUIDANCE ON TAX IMPLICATIONS/TAX EXEMPTIONS FOR PROJECTS UNDER FIT PROGRAM

Reference is made to yours dated April 17th, 2015 and various correspondences on the matter.

We wish to advise as follows.

a) VAT on imported goods and services

We wish to confirm that the broad exemption available to hydro electric power projects under Section 19 and Paragraph 1(dda) of the second schedule to the VAT act is not available for solar power projects during construction.

However Section 19(1) and Paragraph (t) and (ta) of the Second Schedule of the VAT Act exempts the supply of photosensitive semiconductor devices, including photovoltaic devices whether or not assembled in modules or made in panels and the supply of power generated by solar respectively from VAT. Other than these exemptions related to solar power, there are no other exemptions available to persons engaged in establishment of solar power plants. Therefore, all the other imported goods and services listed by you in respect of solar power projects shall attract VAT at the standard rate of 18%.

The application of VAT on inputs that feed into the solar power projects may not necessarily disadvantage these projects because as correctly stated, the supply of solar power (the output power) is exempt from VAT.

The above notwithstanding, broad exemptions for solar power projects or otherwise are matters of policy for which the Uganda Revenue Authority is not mandated to address. None the less we shall keep the discussion open with the Ministry of Finance for a possible remedy if the need arises.

b) VAT on Domestic Goods and Services

The above position also applies to supply of local (domestic) goods and services to the solar power projects.

c) Withholding Tax:

Withholding tax is applicable generally on importation of goods at the rate of 6% except on plant and machinery and raw materials among others under Section 119(5) or where the Commissioner is satisfied that a given person is compliant with all their tax affairs.

Consideration for Withholding tax exemption on imported goods maybe given in exceptional circumstances to solar power projects with long gestation periods as the Commissioner deems fit. The respective project companies shall apply to the Commissioner for this exemption. This exception does not apply to non-resident suppliers of services who derive income from Ugandan sourced service contracts in which case 15% withholding tax shall be applicable under Sections 83 and/or 85 of the Income Tax Act.

d) General tax liability of payments through the GET FiT Premium Payment Mechanism

We wish to confirm our position contained in ours dated 30th December, 2014, that no VAT is applicable on the amount of subsidy under the GET FiT program under Section 25(5) of the VAT Act.

However, whereas a subsidy is not part of consideration under the VAT Act, it is none the less business income in the hands of the person receiving it in consideration of supplying electricity. The subsidy therefore shall be part of the gross business income in the terms provided by Section 18 of the Income Tax Act. There is therefore no ambiguity on the treatment of such subsidies for income tax purposes. Please note that corporate income tax is not imposed on subsidies per se but on business profits as adjusted for tax purposes.

"Developing Uganda Together"

Doris Akol
COMMISSIONER GENERAL

Copy to: The Permanent Secretary, Ministry of Energy and Mineral Development

The Permanent Secretary/Secretary to the Treasury, Ministry of Finance, Planning and Economic Development

The Managing Director/ CEO, Uganda Electricity Transmission Company Limited

The Commissioner Tax Policy, Ministry of Finance, Planning and Economic Development

GET FIT Secretariat, ERA House, Plot 15, Shimoni Road Nakasero Kampala

Uganda Revenue Authority
DEVELOPING UGANDA TOGETHER

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LEG/32/114/1

URA/CG/8. 0

December 30, 2014

The Chief Executive Officer
Electricity Regulatory Authority
Plot 1, Shimoni Road
P O Box 10332
Kampala

Attention: Mr. Benon M. Mutambi,

GUIDANCE ON THE IMPLICATION OF THE 2014 TAX AMENDMENTS TO THE ELECTRICITY SUPPLY INDUSTRY

Reference is made to your letter dated 29th November 2014 following ours dated 13th November 2014 on the above subject.

We wish to advise that Section 21(5) of the Value Added Tax Act provides that the taxable value of a taxable supply of goods or services where the Government has provided a subsidy is the consideration paid in money or in kind by all persons for the supply less the subsidy.

From the agreement between Kfw, Frankfurt am Main and the Government of Uganda, the GET FiT Programme qualifies as a subsidy within the meaning of the above provision. No VAT shall be payable on the amount of the said subsidy.

ERA ELECTRICITY REGULATORY AUTHORITY
13 JAN 2015
RECEIVED BY REGISTRY

Developing Uganda Together

Doris Akol
COMMISSIONER GENERAL

Copy to: The Permanent Secretary Ministry of Energy and Mineral Development
The Permanent Secretary/Secretary to the Treasury MOFPED
The Managing Director UETCL
GET FiT Secretariat
Commissioner Domestic Taxes –Uganda Revenue Authority

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URA

Uganda Revenue Authority
DEVELOPING UGANDA TOGETHER

LEG/32/14/1

URA/CG/8. 0 **13th November 2014**

URA\DTD\BP\15\1000026992

The Chief Executive Officer,
Electricity Regulatory Authority,
Plot 1, Shimoni Road,
P.O.Box 10332,
Kampala Uganda.

ERA ELECTRICITY REGULATORY AUTHORITY
18 NOV 2014
RECEIVED BY REGISTRY

Attention Mr. Benon M. Mutambi,

RE: GUIDANCE ON THE IMPLICATION OF THE 2014 TAX AMENDMENTS TO THE ELECTRICITY SUPPLY INDUSTRY

Reference is made to your letter dated 21st October 2014, the response from the Permanent Secretary/Secretary to the Treasury, Ministry of Finance, Planning & Economic Development dated 13th October 2014 and our meeting held on 10th November 2014 on the above subject.

We wish to further clarify as follows:

I. Repeal of paragraph 1(aa) of the Second Schedule to the VAT Act

Paragraph 1(aa) of the Second Schedule to the VAT Act which provided for exemption for the supply of specialized vehicles, plant and machinery, feasibility studies, engineering designs, consultancy services and civil works **related** to among others the hydro-electric power sector was repealed effective 1st July 2014.

The repeal of the above Paragraph does not affect hydro power projects because the VAT exemption for supplies to the sector is covered by Paragraph 1(dda) of the Second Schedule to the VAT Act.

We wish to clarify that the exemption under Paragraph 1(dda) above is limited to construction and related services of projects and does not extend to transmission and distribution of electricity. Therefore, the supply of any civil works, plant and machinery and other supplies for transmission and distribution shall attract VAT with effect from 1st July 2014.

II. Exemption of solar and other renewable technologies

The supply of solar power related equipment is exempt from VAT under Paragraph 1(t) of the Second Schedule to the VAT Act. The supply of power generated by solar is also exempt from VAT under Paragraph 1(ta) of the same Schedule. Furthermore, the importation of plastic bag biogas digesters is exempt from import duty under Item 27, Part B of the Fifth Schedule to the East African Community Customs Management Act (EACCMA) and consequently exempt from VAT at importation only under Section 20 of the VAT Act. Please note that there are no tax exemptions under the law for the other forms of renewable energy.

III. Repeal of Section 28 of the Income Tax Act.

The repeal of Section 28 of the Income Tax Act implies that accelerated depreciation (initial allowance) shall no longer be available to any person effective 1st July 2014. However, all eligible properties will be entitled to only normal depreciation under the terms provided by Section 27 and 29 and Part I of the Sixth Schedule to the Income Tax Act. Therefore, the items listed in your letter shall be treated as follows:

a. The diversion intake/weir, the channel/canal including potential tunnels, the desilting basin, the fore bay and surge, water tank, penstock, tailrace, electro mechanical equipment, and power evacuation infrastructure, shall be categorized as plant and machinery under Class 4 of Part I of the Sixth Schedule for purposes of Section 27 of the Act. The depreciation rate applicable shall be 20% on the declining balance scale.

b. The power house is an industrial building within the meaning of Section 2(jj) and shall be treated under Section 29 and Part III of the Sixth Schedule to the Act. The depreciation rate applicable is 5% on a straight line basis.

c. Access roads to waterways, powerhouse and intakes are not qualifying expenditure since they are neither plant nor industrial buildings and therefore no depreciation allowances shall be applicable to the said roads.

IV. Amendment of Section 89(1) of the Income Tax Act

The thin capitalization ratio was changed from 2:1 foreign debt to foreign equity to 1:1 with effect from 1st July 2014. This implies that interest payments to related foreign parties exceeding the 1:1 ratio would not be tax deductible. This limitation does not apply to borrowing from financial institutions of public character at arm's length.

V. Treatment of Excise Duty

The Excise Duty Law exempts Gas Oil for thermal power generation to the National Grid. The exemption however does not apply to gas oil for thermal power generation for off- grid operators.

VI. Global Energy Transfer Feed-in-Tariff (GET FiT)

Our understanding of GET FiT is that premium payments will be provided by development partners to independent power producers under agreement with the Government of Uganda. This is to request you to avail us a copy of the agreement between the Government of Uganda and the Development Partners in relation to the Global Energy Transfer Feed-in-Tariff program to enable us advise you on whether or not VAT is applicable to the donor funded premium payment.

Developing Uganda Together,

Doris Akol

COMMISSIONER GENERAL

Cc: Minister of Energy and Mineral Development

Minister of Finance, Planning and Economic Development

The Permanent Secretary Ministry of Energy and Mineral Development

The Permanent Secretary/Secretary to the Treasury MOFPED

CDT-URA

The Managing Director UETCL

GETFiT Secretariat

LEG/32/114/1

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FOR GOD AND MY COUNTRY

THE REPUBLIC OF UGANDA

Ministry of Finance, Planning & Economic Development
Plot 2-12,Apollo Kaggwa Road
P.O. Box 8147
Kampala
Uganda

In any correspondence on this subject please quote No. *EDP.140/154/02 TC*

ELECTRICITY REGULATORY AUTHORITY
★ 21 OCT 2014 ★
RECEIVED BY REGISTRY

13th October, 2014

The Chief Executive Officer,
Electricity Regulatory Authority
P.O. BOX 10332
KAMPALA.

GUIDANCE ON THE IMPLICATIONS OF THE 2014 TAX AMENDMENTS TO THE ELECTRICITY SUPPLY INDUSTRY.

Reference is made to a letterRef: LEG/32/114/1 dated 1st October, 2014 on the above subject.

We have studied the request, and wish to advise as follows;

1. Repeal of paragraph 1(aa) of the Second Schedule of VAT

In line with Government policy of rationalizing tax exemption, paragraph 1(aa) of the Second Schedule of VAT ACT, was repealed effective July 2014. However this does not affect Hydro-Electric Power Projects because the VAT exemption to the sector is covered by paragraph 1(dda) of the VAT Act, Cap 349. Paragraph 1(dda) reads as follows;

> *"The supply of any goods and services to the contractors and subcontractors of hydro-electric power projects"*.This comprehensively cover supplies of goods and services to hydro-electric projects.

2. Exemption for Solar and other Renewable technologies

Currently the VAT Act, Cap 349, exempts the "supply of power generated by solar. Government policy is moving away from exemptions and this one is under consideration. However, we have noted your concern and will review the tax policy on other renewable technologies as part of the budget considerations for next financial year.

3. Repeal of Section 28 of the Income Tax Act, Cap 340

Section 28 of the Income Tax Act, Cap 340 was repealed effective July 2014. The Section provided for accelerated depreciation of eligible property i.e. plant and machinery on the location of investment. The repeal implies that all properties will be entitled to only normal depreciation according to part one of the Sixth Schedule of the Income Tax Act. The rates of depreciation range from 20% to 40% depending on the type of the property. In case of more clarity as what qualifies to be a depreciable asset, with rates of depreciation, you should get in touch with URA.

4. Amendment of Section 89(1): the Thin Capitalization Rule.
Effective July 2014, the thin capitalization rule was changed from 2:1 debt to Equity to 1:1. The objective of the amendment is to minimize abuse by associated companies. The rule applies to debt from associated companies. This implies that it does not limit borrowing from the financial institutions of public character at arms-length principle.

5. Treatment of Excise duty
According to excise duty law, Gas Oil for thermal power generation to National Grid is exempt from excise duty. The law does not exempt thermal power generation off-grid operators.

Keith Muhakanizi
PERMANENT SECRETARY/SECRETARY TO THE TREASURY

C.C. Hon. Ministry of Finance, Planning and Economic Development
Hon. Minister of Energy and Mineral Development
The Permanent Secretary, Ministry of Energy and Mineral Development
The Commissioner General, Uganda Revenue Authority
The Managing Director, UETCL