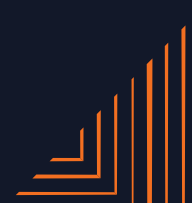
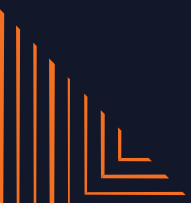




 **LEGAL ALERT**

## **CROSS-BORDER M&A AND UGANDAN TAX EXPOSURE:**

### **KEY LESSONS FROM THE KUKU FOODS DECISION**



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## INTRODUCTION

The globalisation of commerce has made cross-border mergers and acquisitions (M&A) a routine approach for corporate restructuring and investment. Such transactions increasingly involve Ugandan entities either directly or through multinational group structures. However, amendments to the Income Tax Act in 2018 significantly expanded Uganda's ability to tax certain ownership changes involving Ugandan entities.

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## KEY TAKEAWAY

A change in ownership of 50% or more in a Ugandan company, whether directly or indirectly, can trigger capital gains tax in Uganda. Significantly, the tax liability may be imposed on the Ugandan company itself, even where it did not sell any assets, receive any sale proceeds, or participate in the transaction.

This position was recently affirmed by the Tax Appeals Tribunal in *Kuku Foods Uganda Limited v Uganda Revenue Authority (TAT Application No. 54 of 2025)*, highlighting the importance of assessing Ugandan tax exposure at the earliest stages of any cross-border acquisition, restructuring or investment transaction.

This article examines the tax framework governing changes of ownership of 50% or more in a Ugandan company where the disposing party is a non-resident, with particular reference to Sections 74 and 78(h) of the Income Tax Act Cap 338. It also highlights the practical implications for investors and transaction parties.

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## THE LAW

Section 78(h) of the Income Tax Act provides that income is deemed to be sourced in Uganda where it is derived from a direct or indirect change of ownership of fifty percent or more of an entity.

The provision covers both direct transfers (where the shares in the Ugandan company itself are sold) and indirect transfers (where shares in a foreign holding company are sold, resulting in a change in the ultimate ownership of a Ugandan subsidiary). As a result, a transaction may fall within Uganda's tax net regardless of where the actual sale agreement is executed, where the buyer and seller are located, or whether the Ugandan entity benefited from the consideration paid.

Section 74(2) of the Act provides that where ownership of an entity changes by fifty percent or more within a period of three years, the entity is deemed to have realised all of its assets and liabilities at market value immediately before the ownership change and then re-acquired them at that same value.

In simple terms, the law treats the company as though it sold all of its assets at market value immediately before the ownership change and then bought them back again. Any increase in value between the original tax cost and the market value of the assets may give rise to a taxable gain.

## PRACTICAL EXAMPLE

Assume a private equity fund owns seventy percent of a Ugandan agribusiness company. The fund later exits part of its investment by selling its entire stake to another foreign investor.

Although the Ugandan company receives none of the sale proceeds and continues operating as usual, the change in ownership exceeds the fifty percent threshold under the Income Tax Act, and this is the mechanism through which the Act subjects unrealized gains embedded in the assets of the Ugandan entity to income tax upon a qualifying change in ownership.

Ugandan tax law may therefore treat the company as having disposed of all its assets at market value immediately before the transaction, potentially resulting in a capital gains tax liability for the company itself, even though no actual sale of its assets has taken place.

## IMPLICATIONS OF THE LAW

### *Uganda entity liable for the Capital Gains Tax (CGT) liability*

The Tax Appeals Tribunal recently confirmed this position in the case of Kuku Foods Uganda Limited v Uganda Revenue Authority TAT Application No. 54 of 2025. The Tribunal ruled that the liability for capital gains tax arising from the deemed realisation is chargeable on the Ugandan company itself by virtue of Sections 74(2) and 78(h), even though the Ugandan company received no sale proceeds and was not a party to the sale transaction.

### *Expanded Tax Base Following a Change in Ownership*

Ordinarily, capital gains tax is confined to gains (or losses) realised on the disposal of business assets. The deemed realisation mechanism significantly broadens the capital gains tax base in the M&A context. Rather than being limited to situations where a company actually disposes of assets, the law treats all assets of the company as having been disposed of whenever the ownership threshold of fifty percent or more is crossed.

The market value of each asset at the time immediately before the ownership change serves as both the deemed disposal proceeds and the new cost base for future tax purposes.

### *Three-Year Assessment Window*

The provisions apply where ownership changes by fifty percent or more within a period of three years. This means that the Uganda Revenue Authority (URA) will not assess the liability based on a single transaction or a single year of income, but rather a rolling three-year period. Therefore, incremental acquisitions that individually fall below fifty percent but cumulatively exceed that threshold within three years will trigger the tax provisions on deemed realisation.

Parties structuring acquisitions in tranches or through staged transactions must therefore assess the aggregate ownership change over the preceding three years before concluding that the threshold has not been crossed for compliance purposes.

## *Valuation Risk*

The change in control of the company also requires all the assets and liabilities to be deemed realised at market value. Since the tax computation under section 74(2) depends on market value, taxpayers are required to maintain contemporaneous valuation evidence supporting the values attributed to material assets and liabilities. The Act does not necessarily prescribe a detailed methodology for determining the market value.

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## **STRUCTURING AND PLANNING CONSIDERATIONS**

Given the significant tax exposure that can arise under Sections 74 and 78(h) as discussed above, parties to M&A transactions involving Ugandan entities should consider the following:

- a. **Indemnities and price adjustment provisions within the M&A Agreement:** Since the tax liability arising under Section 74(2) of the Act falls on the Ugandan company, and therefore indirectly on its new owners, purchasers of equity directly or indirectly affecting Ugandan companies should negotiate appropriate indemnities or price adjustment provisions with the non-resident seller to compensate for the tax cost borne by the company in Uganda.
- b. **Staged acquisitions and ownership threshold monitoring:** Non-resident acquiring persons considering staged acquisitions should monitor the three-year cumulative ownership threshold. Structuring M&A tranches so that the fifty percent threshold is not crossed within any rolling three-year period, if commercially practicable and justifiable, would avoid triggering the provisions on deemed realisation.
- c. **Independent valuations:** These may significantly reduce exposure to disputes during a URA audit, by significantly strengthening the taxpayer's position because the tax under Section 74(2) is entirely dependent on the market value assigned to the assets and liabilities at the time of the ownership change. An independent valuation prepared by a qualified valuer would therefore demonstrate that the values were determined using recognised valuation methodologies rather than being randomly selected by management.

It should be noted that other tax planning considerations such as utilising Uganda's double taxation agreements (DTAs) with several countries may not apply in this case. This is because the tax under Section 74(2) of the Act is assessed on the Ugandan company, and not the non-resident seller; therefore, the treaty protection available to the non-resident seller may have limited effect on the tax imposed at the Ugandan entity level.

## CONCLUSION

The Kuku Foods decision confirms that ownership changes involving Ugandan companies can trigger significant tax liabilities even where the transaction takes place outside Uganda and the Ugandan company receives none of the sale proceeds.

Investors, private equity funds, lenders, corporate groups and transaction advisers should therefore evaluate these tax consequences at the earliest stages of any transaction involving a fifty percent or greater change in ownership.

While the provisions ensure that value extracted from Uganda through offshore transactions is not allowed to escape the domestic tax net entirely, the practical consequence is that they also introduce additional tax costs and structuring considerations.

These tax considerations must be factored into the economics of any cross-border acquisition and investment that triggers a fifty percent or greater change in a Ugandan company's ownership. Ultimately, these added layers could slow down local M&A activities in Uganda, and discourage foreign investment, by increasing transaction costs and valuation considerations in acquisitions involving Ugandan entities.

Legal and tax advisers acting for buyers, sellers, and the Ugandan entity itself must identify and quantify this exposure at the pre-transaction due diligence stage, and must ensure that appropriate contractual protections, valuation evidence, and tax compliance measures are in place before and after closing the deal.



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**For additional information in relation to this alert, please contact the following;**



**Stephen Tumwesigye**  
**Managing Partner**

M: +256 (0) 774 334 908

E: [stumwesigye@taslafadvocates.com](mailto:stumwesigye@taslafadvocates.com)



**Immaculate Akwar**  
**Manager - Tax**

T: +256 782 300 422

E: [tax@taslafadvocates.com](mailto:tax@taslafadvocates.com)



**Ms. Jemimah Atukunda**  
**Senior Associate**

M: +256 770 974 786

E: [jatukunda@taslafadvocates.com](mailto:jatukunda@taslafadvocates.com)



**Robin Omara**  
**Senior Tax Associate**

M: 0777292485

E: [romara@taslafadvocates.com](mailto:romara@taslafadvocates.com)



**George Okitoi**  
**Legal Associate**

M: +256 781 843 633

E: [gokitoi@taslafadvocates.com](mailto:gokitoi@taslafadvocates.com)



**Leah Kangangye**  
**Tax and Accounts Associate**

M: +256 776 761 704

E: [lkangangye@taslafadvocates.com](mailto:lkangangye@taslafadvocates.com)

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Our team combines a breadth of experience, education, and training in the best institutions in the world. We are always on the lookout for the most talented and ambitious professionals to join the team. With a mix of lawyers and accountants across the board, our service offerings are unequalled in both tax & legal assignments.

Our pro-bono arm provides free legal services to leading SME's and social enterprises in Uganda helping them to save legal fees and create impact in their areas of operation.



9<sup>th</sup> Floor Trust Tower,  
Plot 4 Kyadondo Road, Nakasero  
P. O. Box 75577 Kampala, Uganda  
T: +256 (0) 393 208 043  
E: [info@taslafadvocates.com](mailto:info@taslafadvocates.com)

