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LEGAL ALERT

HIGH COURT OF UGANDA AFFIRMS NET INTEREST APPROACH UNDER EBITDA INTEREST LIMITATION RULES

INTRODUCTION

The High Court of Uganda on 28th June 2026, delivered a significant judgment in Ambitious Construction Company Limited v Uganda Revenue Authority (Civil Appeal No. HCT-00-CC-CA-0082-2025), fundamentally clarifying the application of Uganda's interest limitation rules under Section 25(3) of the Income Tax Act Cap 338. This case addressed a question that has generated significant uncertainty since the introduction of Uganda's earnings before interest, tax, depreciation and amortisation (EBITDA) based interest limitation rules in 2018:

Should the 30% EBITDA cap under Section 25(3) apply to gross interest expense or net interest expense?

BACKGROUND

The taxpayer, Ambitious Construction Company Limited, obtained commercial financing for its construction business, and due to cash flow timing differences, part of the borrowed funds was temporarily advanced to third parties, thereby generating taxable interest income.

When preparing its income tax returns for the 2019 to 2021 financial years, the taxpayer calculated deductible interest by offsetting taxable interest income against interest expense before applying the 30% EBITDA limitation under the Act.

Uganda Revenue Authority (URA) rejected this methodology and instead applied the limitation to gross interest expense, resulting in additional tax assessments. The Tax Appeals Tribunal agreed with URA, prompting an appeal to the High Court.

KEY TAKAWAYS

The court held that, in appropriate circumstances involving borrow-to-on-lend arrangements, the 30% EBITDA limitation applies to net interest expense i.e. interest expense less taxable interest income, rather than gross interest income. In doing so, the court overturned the Tax Appeals Tribunal's earlier decision and quashed the additional tax assessments.

1. OECD BEPS Action 4 is a Legitimate Interpretive Aid

Although Uganda is not an Organisation for Economic Co-operation and Development (OECD) member and OECD guidance does not have the force of law, the Court observed that Uganda's 2018 amendment introducing the EBITDA based interest limitation rule was clearly modelled on the OECD's fixed ratio rule, and consequently held that such guidance remains highly persuasive where domestic legislation has clearly been modelled on internationally recognised tax standards and recommendations.

The Court found that Parliament's adoption of the EBITDA approach, repeal of the former thin capitalisation rules, and subsequent amendments excluding financial institutions all demonstrated an intention to align Uganda's law with the OECD framework.

2. Section 25(3) Must Be Read Purposively and Avoidance of Double Taxation

A major concern identified by the Court was the risk of economic double taxation. Interest income earned by the taxpayer forms part of taxable income and is already included in the EBITDA calculation. If the related interest expense is subjected to limitation on a gross basis without recognising the corresponding interest income, the taxpayer effectively suffers tax on income generated from funds whose financing costs are only partially deductible.

The Court considered this outcome inconsistent with the objective of the OECD fixed ratio rule and contrary to the principles of tax neutrality, hence rejecting an exclusive literal interpretation adopted by the Tax Appeals Tribunal, and instead applied a purposive approach holding that legislation should be interpreted consistently with its commercial objective of preventing base erosion without imposing unintended economic double taxation.

Court reaffirmed that statutory interpretation should promote commercial reality rather than produce artificial tax outcomes.

3. The Act Does Not Refer to "Gross Interest"

One of the decisive findings was that neither Section 25(1) nor Section 25(3) uses the words "gross interest," where URA argued that only gross interest qualified for limitation.

The Court rejected this argument, noting that adopting URA's interpretation would effectively insert words into the statute that Parliament deliberately omitted. Applying the well established principle that courts cannot add words to taxing legislation, the Court declined to reach "gross" into Section 25.

4. Ambiguity Must Be Resolved in Favour of the Taxpayer

Perhaps the most important legal principle emerging from the judgement is the application of the *contra fiscum* rule.

The Court noted that the Act does not use either the term “gross interest” or “net interest,” and since the legislation is capable of supporting both interpretations, the provision was found to be ambiguous. Applying the Supreme Court authority in *URA v Uganda Tax Operators and Drivers Association*, the Court held that ambiguity in tax legislation must be interpreted in favour of the taxpayer. Consequently, the Court adopted the interpretation that allows application of the EBITDA limitation to net interest expense.

PRACTICAL IMPLICATIONS FOR TAXPAYERS

Taxpayers should carefully assess whether this decision affects their current or historical tax positions. Businesses should particularly review;

a. Interest limitation calculations under Section 25(3);

b. Intra-group financing arrangements;

c. On-lending transactions;

d. Existing or pending URA audits involving interest deductibility.

CONCULSION

The decision in this case represents an important judicial pronouncement on Uganda’s interest limitation regime since the 2018 tax amendments. By recognising net interest as the appropriate measure for purposes of the 30% EBITDA cap, the High Court has aligned Uganda’s interpretation of Section 25 of the Act with international practice and commercial reality.

Unless overturned on appeal, the judgement currently stands as a persuasive authority on Uganda’s interest limitation rules and will influence both tax planning and tax dispute resolution for years to come. The decision therefore provides welcome clarity for taxpayers engaged in financing and treasury activities and marks another step toward harmonising Uganda’s tax jurisprudence with internationally accepted tax principles.

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