

# Tax Alert

## Withholding tax on transportation payments to non-residents for goods embarked or disembarked in Uganda

### **Goods embarked in Uganda**

Where cargo/ goods are embarked (outbound) in Uganda, income derived by non-resident transporters is subject to tax at a rate of 2% in accordance with Section 86 (1) of the Income Tax Act (ITA).

Section 86 (1) provides that “a tax of 2% is imposed on every non-resident person carrying on the business of ship operator, charterer, or air transport operator who derives income from the carriage of passengers who embark, or cargo or mail which is embarked in Uganda and on a road transport operator who derives income from the carriage of cargo or mail which is embarked in Uganda”



July 2016

Prior to 1 July 2016, the 2% was not a withholding tax unless the Uganda Revenue Authority (URA) specifically directed the payer to withhold.

However from 1 July 2016, this is now applied as a withholding tax and resident persons are required to withhold tax at the rate of 2% on payments to non-residents for the transportation of goods embarked in Uganda.

### **Goods disembarked in Uganda**

Where cargo is embarked outside Uganda (inbound), our view is that the payments made to non-resident suppliers for the provision of transportation services should not be subjected to withholding tax. This is based on our interpretation of Sections 79, 85 and 86 of the ITA below and is consistent with URA's view on the matter.

Section 79 (c) (ii) of the Act provides that a fee for the provision of services is sourced in

Uganda “to the extent to which it is paid by a resident person other than as an expenditure of a business carried on by a person outside Uganda through a branch.”

This means that payments made by a resident person to a non-resident for transport services gives rise to income sourced in Uganda.

Please note however that Section 79 is not a tax charging section and we therefore have to consider the charging provisions of Sections 85 and 86.

According to Section 85 (1) of the ITA, a tax is imposed on every non-resident person deriving income under a Ugandan-source services contract.

Therefore, *prima facie*, the income derived from a resident by a non-resident supplier of transportation services would be subject to withholding tax at a rate of 15%.



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Where cargo is embarked outside Uganda (inbound), our view is that the payments made to non-resident suppliers for the provision of transportation services should not be subjected to withholding tax.

As noted, Section 86 (1) provides for taxation of non-resident ship operators, charterers or air transport operators who derive income from the carriage of passengers cargo or mail embarked in Uganda and on road transport operators who derive income from the carriage of cargo or mail which is embarked in Uganda.

Our view is that Section 86 is the relevant charging section in this case since it specifically addresses transport services, as opposed to Section 85 which is a blanket charging section for services in general. Therefore Section 86 applies in preference to Section 85 (such that Section 85 does not apply).

**Based on the above:**

- A payment to a foreign transport operator for the carriage of goods embarked in Uganda is liable to withholding tax at 2%.
- Such a payment for goods embarked outside Uganda (e.g. imports) is not liable to withholding tax as it is outside the ambit of Section 86 above.

This view is consistent with that of the URA as provided in recent correspondence. However, there have been prior instances where the URA has been inconsistent in this view and imposed withholding tax at a rate of 15% on payments for transportation services where the goods are disembarked in Uganda.

The application of withholding tax may also be modified by an applicable double tax treaty.



**Let's talk**

For a deeper discussion on how this issue might affect your business, please contact:

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