



Uganda Revenue Authority

DEVELOPING UGANDA TOGETHER

Case Study on Tax Dispute:- HOGL and GoU

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Presentation Outline



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from the resolution

Relationship Btw HOGL and GOU

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FACTUAL BACKGROUND

Licensee under PSAs for EA 1 and 3A

- ❑ Joint Licensees with TUL (Tullow) under PSA and Operators under a Joint Operating Agreement with TUL (PSA gave either party pre-emption rights in case of disposal of interests by other party) These PSAs granted HOGL long term and exclusive rights to conduct petroleum operations in the respective contract areas and the right, following commercial discovery, to share in the production from any discoveries.
- ❑ In 2008, HOGL announced the discovery of oil in Exploration Area 3A
- ❑ HOGL under SPA with ENI, decided to dispose its holding in Uganda in 2010
- ❑ TUL exercised pre-emption rights under same terms agreed btw HOGL and ENI.
- ❑ HOGL and TUL then signed SPA with HOGL interest in EAs 1 and 3A being disposed off to TUL for total consideration of USD1,450,000

*Tax and Legal Issues in
Dispute btw HOGGL and
GoU*

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MAIN ISSUE OF CONTENTION BTW HOGGL AND GOU

Whether or not the Disposal by HOGGL was a disposal of a Business Asset and subject to Capital Gains taxation

- ❑ The Disposal of the Business Assets with a Capital Gain by HOGGL attracted liability to tax
- ❑ HOGGL holding in EAs 1& 3A was a business asset within meaning of ITA as a disposal of interest in immovable property. (various definitions of immovable property in ITA, Uganda Mauritius DTA and Common law utilized to delineate HOGGL interests under PSA as interest in immovable property)
- ❑ Source rules under Sections 79 ITA – Income sourced in Uganda (under Uganda Income Tax Act Sections 4, 17, 18, 79 (g) and 79(s).)
- ❑ Art 13(4) Mauritius/Uganda DTA – Income taxable in Uganda.
- ❑ Of course, HOGGL did not agree with all above hence the tax dispute
- ❑ December 2010, URA issued an agency notice under Sections 106 and 108 of the Income Tax Act (ITA), appointing TUL as collection agent for purposes of recovering the amount covered in the

AVENUES FOLLOWED / ACTIONS TAKEN IN RESOLVING DISPUTE

- ❑ Tax Assessments Raised
- ❑ HOGGL follows Objection and Appeal process under ITA challenging assessments and URA position
- ❑ HOGGL appealed against objection decision at the Tax Appeals Tribunal
- ❑ Judgment entered against HOGGL (both TAT and High Court)
- ❑ HOGGL Files Arbitration Claim in London Permanent Court of Arbitration following UNCITRAL RULES Claim based on following grounds.
 - Proceeds of disposal did not amount to taxable capital gains hence no tax liability since interests not immoveable property
 - Changes introduced to S. 89G of Part IX A of the ITA created a change in law hence HOGGL not taxable

SALIENT TAX JURISPRUDENCE ISSUES

- ❑ Disposal amounted to taxable capital gain since it was disposal of interest in immovable property and/or attributable to activities carried out in Uganda
- ❑ Changes in ITA did not have effect of exempting proceeds of disposal from taxation of the capital gain.
- ❑ HOGGL move to Mauritius unsuccessful Treaty Shopping attempt
- ❑ Assessments can be raised on Taxpayer that is disposing all assets (i.e clearly leaving Uganda) prior to end of Tax Year
- ❑ Tax Disputes not Arbitrable but to be resolved following procedures under domestic tax laws (ITA)
 - ❑ *"[T]ax matters in Uganda are statutory and not contractual that is why in Article 14 of the PSA it was agreed that all taxes, duties, levies or other lawful impositions applicable to the licensee would be paid by the licensee in accordance with the laws of Uganda in a timely fashion. I am of the opinion that this Article of the PSA also implied that any dispute relating to the payment of those taxes would be resolved in accordance with the laws of Uganda. This is because the mechanism for tax dispute resolution in Uganda is explicit under the ITA." per Obura J High Court Commercial Division.*

Outcomes for Uganda

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- ❑ Vindication at International levels
- ❑ Success at International Arbitration and Collection of USD 434m in capital gains tax. This entire tax was collected by URA and remitted to the treasury.
- ❑ HOGGL was ordered to pay costs to Government of Uganda in the region of US\$ 4,000,000.
- ❑ The High Court of Uganda found that taxability was within the sole jurisdiction of Ugandan courts and the International court of Arbitration also agreed that it did not have jurisdiction to entertain tax disputes between HOGGL and GoU
- ❑ Appeals filed by HOGGL in the Ug Court of Appeal are yet to be heard, what is unmistakable is that the question of HOGGLs taxability can only be finally settled by Ugandan courts.
- ❑ A number of important lessons learnt in the process such as need for capacity development in Petroleum Sector taxation issues



- ❑ Important precedent on how disposals in natural resources sector to be treated.
- ❑ Renewed focus on Mining Sector 2015 Amendments to ITA
- ❑ Policy and Legislative changes made to clarify issues surrounding disposals of interests by Licensees under the PSAs
 - The Income Tax (Amendment) Act, 2015 in order to address the issues arising from the Heritage case introduced a definition of immovable property under Section 78 of the Income Tax as follows
 - “(aa) immovable property includes a mining right, petroleum right, mining information or petroleum information.”
 - The same Act introduced an amendment to Section 89A (this is the definition section for petroleum operations) to inter alia define a petroleum right to mean a reconnaissance permit, petroleum exploration right, or a petroleum production license

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Thank You for Listening