Cristal Advocates

ICPAK 2nd Accountants Convention
Kampala, Uganda

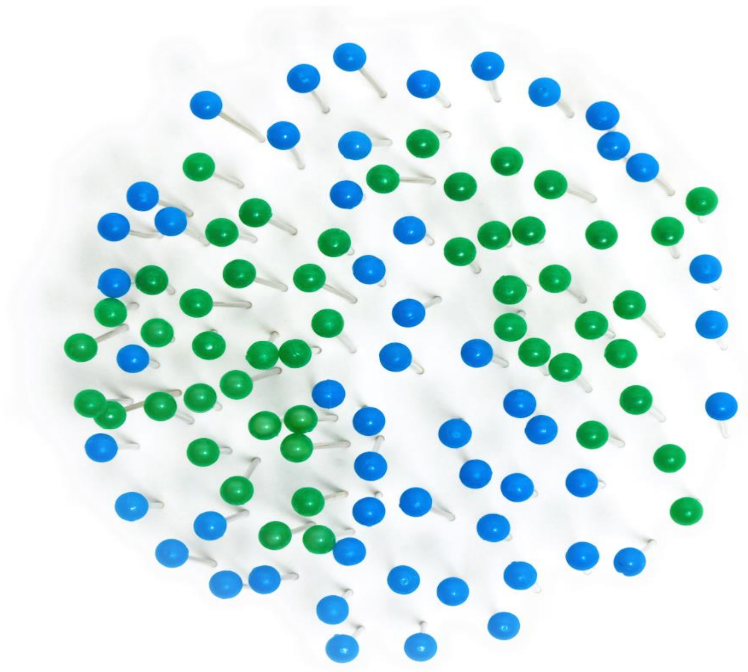
Taxation of Regional Economic Blocks

An Overview of the East African Community

09 August 2019

Objective

To create awareness of the pertinent taxation issues in the East African Community



Presenter

Kakembo Denis Yekoyasi

Denis is Managing Partner at Cristal Advocates where he also leads the firm's energy, corporate and tax practice.

He is qualified both as a Lawyer and Chartered Accountant and is a UK trained energy, tax and investment professional with vast experience serving various industries. Prior to co-founding Cristal Advocates, Denis had worked for close to 10 years with Deloitte, an international audit and professional services firm where he started his career and rose to senior managerial positions. At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's Chief of Staff for the Energy and Resources Industry practice seeing him play a lead advisory role on several projects in Uganda, Kenya, Tanzania, Mozambique, Rwanda, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various conferences regarding general taxation, M&A as well as the protection of large capital projects within the framework of international investment law.

Education

- Masters of Laws in Petroleum Taxation and Finance with distinction - University of Dundee, UK
- Certified Public Accountant (Uganda) - ICPAU
- Certified Chartered Accountant ("ACCA") - ACCA
- Post Graduate Diploma in Legal Practice - Law Development Centre, Uganda
- Bachelor of Laws Degree - Makerere University, Uganda

Professional bodies

- Association of Certified Chartered Accountants
- Institute of Certified Public Accountants of Uganda
- Uganda Law Society
- East African Law Society

About the East African Community (EAC)

- Whenever regional integration is spoken about, the European Union (EU) comes to the minds of many. The EAC had progress faster than the EU though.
- The EAC traces its origins to the construction of the railway between Kenya and Uganda from 1897 to 1901.
- Its formation was gradual starting with a customs collection centre in 1900, an East African Currency Board in 1905, a Postal Union in 1905, a Court of Appeal for Eastern Africa in 1909, a Customs Union in 1919, an East African Income Tax Board and the Joint Economic Council in 1940
- Treaty for the East African Cooperation in 1967 between Uganda, Kenya and Tanzania providing for the East African High Commission, the East African Common Services Organisation and the East African Community.
- Dissolved in 1977 because failed political will, subdued private sector and civil society organisations participation and perceived disproportionate sharing of benefits
- EAC Treaty ratified 1999 coming into force in 2000, Rwanda and Burundi admission in 2007 and South Sudan admission in 2016
- Customs Union in 2005
- Common Market in 2010
- Monetary Union ??????
- Political federation ?????

EAC Snapshot

2018/2019	Uganda	Kenya	Tanzania	Rwanda
Ratio of public debt to GDP	42.2%	52%	43%	38%
GDP	30	99	61	10
Population (Millions)	40	49	52	12
Access of population to electricity % (USAID, 2017)	19	64.5	32.7	30
Ease of doing business ranking	127	61	144	29
Foreign Direct Investment in USD Millions (UNCTAD 2017)	700	672	1180	366
Projected budget expenditure in USD based on budget statement	10.7 Billion	28 Billion	14.3 Billion	3 Billion
Economic growth rate	6.3%	5.8%	4%	7.8%
Projected tax revenues for 2019/2020 in USD based on budget statement	5 Billion	18 Billion	10 Billion	19 Billion
Ratio of tax collections to GDP (2017)	13.7%	15.6%	11.5%	13.6%

EAC Treaty and tax harmonisation

- The EAC Treaty has a strong basis for tax coordination and harmonization. The treaty requires member states to:
- harmonize investment and tax incentives;
- take steps to eliminate double taxation;
- have fiscal policies to ensure monetary stability and harmonized macro economic policies to harmonize tax policies to remove tax distortions;
- The Common market protocol calls for the progressive harmonization of tax policies, laws and administration to remove distortions in order to facilitate the free movement of goods, trade taxes
- Tax harmonisation is key in tackling harmful tax competition. With this, there is an equalisation of tax rates, a common definition of national tax bases and a uniform application of agreed rules.
- EAC performed well with respect to customs duty matters but struggling in other areas

Achieving tax harmonisation

- Establish and regularly maintain online tax databases that provide comprehensive information about countries national tax structures;
- Collaborate on tax incentives that encourage investment, rather than those that reduce transparency or purely act as a vehicle for tax minimisation;
- Create a clear and transparent system of taxation that harmonises policies to prevent investment barriers and to avoid double taxation;
- Develop expertise of tax officials with support for training programmes and seminars on tax design, policy, and best practices;
- Discourage the spread of tax havens and harmful preferential tax regimes and encourage those countries which presently engage in harmful tax practices to review their existing measures
- Help countries move towards the “level playing field” which is so essential to the continued expansion of regional and continental economic growth, and;
- Develop regional tax guidelines/directives and commentaries which shape good and common tax designs and systems.

EAC Customs Union

- The Customs Union is the first regional integration milestone and a critical foundation of the EAC. It has been in force since 1st January 2005.
- Under the Customs Union, EAC Partner States removed import duty on intra country goods as well as agreeing on a common external tariff (CET) for imports from outside of East Africa to the respective partner
- Goods moving freely within the EAC must comply with the EAC Rules of
- 25% for final goods
- 10% for intermediate/ raw materials
- 0% for capital goods
- Sensitive list items
- Customs processing fees imposed by each country

Value Added Tax Regime

Issue	Uganda	Kenya	Tanzania
Inception	1996	1990	1997
Law applicable	VAT Act Cap 347	VAT Act ,2013	VAT Act, 2014
Standard VAT rate	18%	16%	18%
Registration threshold(USD)	41K	50K	43K
Reverse charge VAT	VAT cost	Neutral/no cost	Neutral/no cost
Export of services	Not controversial	Controversial	Controversial
Digital economy	Futile attempts		Futile attempt
Tax administration	Varied	Restricted	Varied
Dispute resolution	Tribunal	Tribunal	Tribunal
Withholding VAT	Yes but suspended	Yes	Not applicable
Refunds	Delay	Delay	Delay
VAT deferment	Yes	No	Yes
Filing	Online	Online	Online

Income Tax Regime

Issue	Uganda	Kenya	Tanzania
Law applicable	Income Tax Act Cap 340	Income Tax Act 340	Income Tax Act Cap 332
Tax rates	30%	30/37.5%	30%
Branch remittance tax	Yes	No	Yes
Thin Capitalisation rules	Yes	Yes	Yes
M&A transactions	Controversial	Not controversial	Controversial
Standalone CGT	No	Yes	No
Presumptive taxes	Yes	Yes	Yes
WHT at importation of goods	Yes	No	No
Filings	Yes	Yes	Yes
Dispute resolution	Tribunal	Tribunal	Tribunal
No. of DTAs	9	14	9
Withholding taxes	Yes	Yes	Yes
Bilateral Investment Treaties	Yes	Yes	Yes
Transfer Pricing	Yes	Yes	Yes

- East Africa Double Tax Treaty remains outstanding

Excise Duty Regime

- Differentiated excise regimes with major differences in aspects such as rates and bases in the region, have caused artificial price differences in EAC. This has led to smuggling and black market trade hence causing a loss of revenue to the government.
- Tax remissions and exemptions in some states while they do not exist in other states leads to a distortion of cross market prices.
- The partner states place too much reliance on increasing excise tax rates to increase tax collection as opposed to expanding the tax base hence causing resentment among the taxpayers.
- The lack of specific law on excise tax causes uncertainty for the business community in respect of the tax regime. The annual amendments to the excise law make the management of government revenue very difficult.
- Excise tax is currently aimed at revenue collection as opposed to its original purpose which was to influence consumer behaviour.

Stamp Duty Regime

- Stamp Duty Act Cap 480 for Kenya/ Stamp Duty Act 2014 for Uganda/ Stamp Duty Act Cap 189
- Numerous similarities

Other fiscal issues

Issue	Uganda	Kenya	Tanzania
Social security levies	Yes	Yes	Yes
Local government levies	Yes	Yes	Yes
Health insurance	No but in draft	Yes	Yes
Skills development levy	No	No	Yes

Conclusion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