CAT

Certified Accounting Technicians Examination

Stage: Level 2 L2.4

Subject Title: Taxation

Study Manual

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INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF RWANDA

Driving Sustainable Performance

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INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF RWANDA

Level 2

L2.4 TAXATION

First Edition 2012

This study manual has been fully revised and updated

in accordance with the current syllabus.

It has been developed in consultation with experienced lecturers.

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INTRODUCTION TO THE COURSE
Stage: Level 2
Subject Title: L2.4 Taxation

Aim

The aim of this subject is that students develop a knowledge and understanding of the workings of the tax system under the specified tax heads. This knowledge is applied in the calculation of tax liabilities and the identification of basic tax saving measures.

Taxation as an Integral Part of the Syllabus.

Taxation is an essential component for the later study of *Advanced Taxation*. Knowledge gained from this subject will also be relevant in the further study of *Auditing, Audit Practice and Assurance Services, Managerial Finance* and *Strategic Corporate Finance.*

Learning Outcomes and syllabus

On successful completion of this subject students should be able to:

- Classify and correctly assess income under the appropriate tax head and schedule
- Prepare income tax computations and returns
- Describe the operation of VAT and prepare Vat returns
- Describe customs taxes and excise taxes
- Describe and apply Capital Deductions

Syllabus:

1. Theory of Taxation

- Why governments levy taxes
- Principles of an optimal tax system
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- Role of taxation in achieving budgetary objectives
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- Trade licences, airport taxes, stamp duties, property rates, petroleum levy, sugar levy, betting and gaming tax
- New taxes, levies and charges

Study Unit 1
Theory of Taxation

Contents

A. DEFINITION OF TAX AND DISTINCTION FROM OTHER CONCEPTS

Definition of tax

Several authors have tried to define tax with limited degrees of success. But taking into account different concepts, tax has various definitions.

Basing on the definition given by Gaston Jeze and quoted by many scholars, tax can be defined as "a necessary pecuniary service by private individuals by way of authority, non-reimbursable and without counterpart, for the cover of public expenses ". [1] Tax is also seen as a mandatory contribution intended to finance the budgetary expenditure of the State and certain public organizations, local government, public institutions or a mode of public burden-sharing founded on the adaptation to contributive faculties of the citizens. Tax has also been defined by French lexicographers as being the "contribution taken on incomes, transactions, products, etc., to ensure the function of the budget of the State or local government ".

Based on this definition, one can see tax as a financial resource for the State in order to provide the materials and human resources that will enable public institutions to meet the needs of the public interest. It should be understood as a mandatory contribution of citizens to the services provided by the State in the collective and national interest.

In summary, tax can be defined as a pecuniary contribution, of an obligatory and legal nature, carried out under the prerogatives of public power, which is non-reimbursable, without supporting documentation, in order to ensure the financing of public expenses.

Some of the elements have to be further explained as they constitute the key characteristics of tax.

Distinction between tax and other contributions of an obligatory nature

Two distinctions have to be made here. Tax has to be distinguished on the one hand from “administrative fees” (also known as “user fees”), and on the other from other kinds of charges in the way of more general taxation. The essential criteria of this double distinction are twofold: they reside in the idea of the counterpart and, at least for general taxation, in the nature of the profit organization.

Notion of “administrative” fees

Administrative fees can be defined as the sum required for using services offered by a public service or possibility of using a public work. It is a charge for the use of a product or service. There is a direct link between the charge paid and a public service rendered (e.g. driving license fees). A user fee does not necessarily cover the cost of the service received (though it may be based on this, it is not always the case in practice). Taxes differ from user fees in that paying them is not a matter of choice and what you pay is not directly linked to services you receive in return.

[1] François Gore and Bernard Jadaud, *Droit fiscal des Entreprises*, Paris, Dalloz, 1980, p. l,

Underpinning the concept of administrative fees of the idea of a "rendered" service, of a "counterpart". This element differentiates it from the tax. It results in several direct consequences Firstly, the administrative fees must be paid by the beneficiary of the service. Moreover, there is not an automatic financial equivalence between the amount of the administrative fees and the value of the rendered service. It is allowable (depending on the governing legislation) to have a tariff that can be fixed independently from the real cost of the services. It is not ultimately though the cost factor that differentiates administrative fees from taxes; it is the fact that the user of the service pays directly for the service that they receive.

The concept of *para-fiscal* fees

One definition of *para-fisca*l fees can be found in article 4 of the Ordinance n° 59-2 of 2 January 1959 of the organic law relating to finance law in France[2]. This defines *para-fiscal* fees "as being perceived in an economic or social interest to the legal entity of public law or private law other than the State, the local authorities and their public institutions". P*ara-fiscal* fees are the same as taxes, except that they are extra budgetary and not paid to the State itself[3]. In one example, the French Constitutional court held that the television fee imposed by the French Radio-Television (RTF) organisation was in the nature of a *para-fiscal* fee within the meaning of the budget law of 1959. Since the organic law required any *para-fiscal* fee to be approved annually by Parliament, the Constitutional Court found that this procedure must be followed by RTF, i.e. that it was illegal for this fee to be imposed administratively without parliamentary approval.

Even if we cannot find a definition of *para-fiscal* fees in Rwandan tax law, it does exist in practice. To illustrate that, we can take the example of the mandatory amount deduced on employment income in favour of the FARG (Funds for Assistance to Genocide Survivors).
The *para-fiscal* fee does not comprise any direct and immediate counterpart for the debtor, or even sometimes any indirect counterpart. This element is fundamental: it makes it possible to locate the *para-fiscal* fees more closely to tax than royalties and even administrative fees. The subjugated person to the payment of the fee is at least in the position of virtual user of the service. The concept of a *para-fiscal* fee is independent of the idea of an equivalent service being rendered, which accentuates its obligatory character.

However, even if the *para-fiscal* fee is distinguished from tax in its legal nature, the *para-fiscal* fee, in contrast to tax, is assigned to a specific service.
Moreover, the tax is necessarily levied on the profit of persons in public law (e.g. the State, a local authority, an administrative publicly-owned establishment).

B. PRINCIPAL CHARACTERS OF TAXATION

A pecuniary contribution

The concept "pecuniary" comes from the Latin word "*pecunia*" which means "money". Pecuniary character can be examined from three points of view: the tax base, the payment procedure and the perspective of tax collection.

[2]Cours de droit fiscal, *notes de cours*, on http://www.u-paris2.fr/html/cours_et_td_en_ligne/cours/DR0006.pdf
[3] B. Michel, *Introduction au droit fiscal et à la théorie de l'impôt*, cited by Victor Thurony, op. cit., p. 48.

1. The tax base is generally constituted by monetary elements. The tax is then taken on a certain sum of money or a value converted into monetary terms (when, for example, it is necessary to evaluate benefits in kind). Examples of this would be pay as you earn tax, corporate income tax, value-added tax (VAT), etc.
2. With regard to the calculation of tax, the tax rate generally consists of a legally fixed arithmetic percentage applied to for example of the total amount of income, the value of benefits or added value (VAT).
3. It is especially at the stage of tax recovery that the pecuniary character of tax assumes significance. The tax is normally paid in monetary terms (e.g. in the form of money, cheques, or a bank transfer).

A mandatory contribution given by way of authority

Whatever its mode of payment, the tax levy basically has the character of an obligatory contribution because it is carried out by way of authority by the tax administration on the basis of the prerogatives given to it in terms of public powers. Consequently, the taxpayer has neither the right to claim to withdraw him/herself from his/her liability of tax, nor can they fix freely or negotiate the amount of his/her contribution. His/her consent does not come into play in any form as far as the payment of the tax is concerned. If they try to resist the payment of tax due, the tax administration has the right to resort to constraint procedures to force them to satisfy their obligations. Tax is a unilaterally imposed contribution, or an obligation on the taxpayer.

The legal bond by which the taxpayer can be constrained by the State to pay the debt of tax rises directly from the law which regards them as a debtor. The consent of the taxpayer to make the payment is not required: the amount due is unilaterally determined and they are required to pay it.

A contribution under the terms of the prerogatives of public power

Tax is established and due under the terms of specific prerogatives given to the Government administration which have no equivalent in a private individual's relations. The formula requires the delivery of a tax return, which is checked, the imposition of the tax is based on the actual profits involved. The tax authorities have the authority to check the returns and to evaluate itself the taxable amounts due in the event of any deficiency on the part of the taxpayer.

The powers that are given to the tax administration do not have an equivalent in private relations: they include the right to communicate with the taxpayer, the checking of accountancy, the close examination of personal tax situations combined with procedures such as the requesting of justifications regarding the origin of credits contained within bank accounts, the right to search professional buildings or even the residences of taxpayers along with the inspection of bank accounts, procedures of imposition without notice, powers of sanction, etc.

A non reimbursable contribution

Tax cannot be the subject of restitution on behalf of the public person who benefits from it. It will be noted especially that the tax is a non reimbursable contribution only if it was legally established. In the contrary case, the taxpayer can ask for, within a defined time period, the discharge or reduction of the tax claimed. The administration itself has the ability to agree a reduction, to confirm the tax due or even an increase the tax assessed.

A contribution without a determined counterpart

The absence of a given counterpart is one of the essential elements of tax. Thus, the payment of the tax is not a condition of access to public services. Tax is not the price directly paid by each taxpayer for the services which are rendered to them by various public bodies. Whether paying taxes or not, all citizens have access to public services. The absence of a given counterpart has another consequence, namely in that the conditions under which the tax proceeds are used cannot be disputed in a court of law in front of the tax judge.

Lastly, it is the case that tax, because it is taken without a determined counterpart, constitutes revenue without a special assignment. Instead the taxes collected are intended to provide sufficient resources to the general budget of the State rather than be used for specific purposes.

A contribution intended to finance the Government budget

The main objective of taxation is to generate sufficient revenue to finance public sector activities. It is important to note the fact that taxes are necessary both to finance desired levels of public spending and also to ensure that the burden of paying for such spending is fairly distributed.

This second criterion of tax has two elements:

1. Tax is perceived exclusively as applying to the profit of moral persons of public law. Therefore, a moral person of private law cannot, in theory, be recipients of taxes. However in some cases certain types of activity may be carried out by institutions or companies of private law such as when in some countries Public Private Partnerships are entered into and in these circumstances there is an interface between persons of private law and the tax system.
2. Tax always has as an aim the provision to the public administration (the State, publicly-owned institutions and local government) the financial resources which it needs to cover its public expenditure. It can also though have other aims of an economic or social nature.

Two other situations must however be distinguished according to whether the taxation rule is seen as assigning a goal of dissuasion or one of incentive. This distinction is not always easy to make.

Dissuasion is intended to divert taxpayers and encourage them not to intervene in a given field or not to continue an activity under certain conditions. It is possible to impose taxes to dissuade taxpayers from acting in a certain way. It therefore becomes a question of choice for the taxpayer: if they avoid the situation, then they will not have to pay taxes but if they carry on with their activities, then they will have to pay extra tax. Such situations often have a social element involved. In some countries for example, high taxes are imposed on cigarettes. It is not illegal to smoke but if the taxpayer carries on doing so, then they will be liable to pay extra tax. We can also find examples in France where legislation exists to impose extra taxes on films of a violent or sexually explicit nature.

Incentives measures on the other hand aim to encourage the taxpayer to take a part in a particular projector to adopt what is generally regarded as a ‘desirable’ form of behaviour.

They tend in all cases to encourage what is a positive attitude from the taxpayer. Again, the aim of this is often social, for example in some countries it is the case that annual taxes are imposed for owning cars, and in some cases the charge will be lower for smaller, environmentally-friendly cars than they are for less fuel-efficient models.

However, they can also have an economic motive. For example, in Rwanda among incentive measures which result effectively in a tax saving for the taxpayer, one can quote as one example the Article 18 of the Income Tax Law (ITL) which exempts from tax any revenues coming from agricultural and breeding activities that do not exceed 12.000.000 Rwf per fiscal year.

C. WHY DOES THE RWANDAN CONSTITUTION ALLOW THE GOVERNMENT TO LEVY TAXES?

Governments provide a variety of services to the people they serve. In order to pay for these services, the government levies taxes on the citizens and companies who benefit from these services. The government must also make payments on any loans received in previous years to finance past operations. Government also levies taxes to alter the behaviours of its citizens, and companies that do business in the country.

Tax supports common defence

One of the primary functions of national governments is to provide for the national defence of the country. To do this, countries normally have a standing army and other military services; this involves expenses for salaries, supplies, training and housing. This also includes expenses incurred on the research and development of new technologies and weapons. Reference to the Rwandan Budget Law demonstrates that national security, including the military and police, involves significant levels of expenditure in Rwanda.

Tax is intended to fund Government Programs

Governments provide a number of services to their citizens that are paid for with taxes. The exact composition of specific services will vary from government to government depending on the scope of the government, such as whether it is a local government or a national government, and its reach, by which we mean how much power the citizens believe their government should have. Typically however public expenditure in most countries will include spending on security forces, education services and health services. The government also has a role to protect corporations and their products through trade regulations and copyright laws. In order to uphold copyrights, the government must set up a court to hear the cases and determine damages. For this reason, tax will assist in paying judges and funding court expenditures. Such services also cover judicial activities in criminal as well as civil law cases.

Debt Payments

Most governments carry significant debt which they are required to pay interest on. This is a contemporary reality in most low income countries like Rwanda, though for higher income economies too debt repayment and associated interest payments is becoming increasingly problematic. Unexpected expenses such as wars or a recession will limit the tax revenue but not the need for services, so the government needs to borrow money to pay for them and the amount of that debt will increase significantly during times of economic downturn in most circumstances.

Tax and its effect on individuals

Taxation is an indirect way for governments to affect the behaviours of its citizens as well as bringing in money from them. Citizens must choose what to spend their limited supply of money on so by offering tax breaks or imposing tax increases on certain products the government can affect what people buy. For example, if the government wants to reduce the number of alcoholic drinks that are sold, it can impose extra taxes on these products. Or if it wants to increase the sale of milk products it offers a tax incentive for farmers for them to increase their productive capacity at cheap price.

Tax and its effect on Companies

Taxation policy can play a very important role in business creation and development policy. Through taxes, Government can affect the choices that individuals make but taxes can also be developed with the aim of affecting the way that corporations do business. For example, if the government wants to encourage employers to create more employment opportunities to those who are unemployed, it can propose a law that provides a tax break to companies encouraging the employment of more people. Similarly, if the government wanted to increase the production of food and livestock produced within its borders, it could pass a higher tax, or tariff, on any imported food to make it easier for food and animal products produced in the country to compete.

D. MAJOR PRINCIPLES OF TAX LAW

It is important not just to understand the details of tax law. It is crucial too to understand the principles on which it is based which in turn underpin the rules relating to the tax.
The principles underpinning the tax law take root directly or indirectly from the general principles of the law. Thus, the tax law is integrated, allowing for its specific nature, into the overall legal system and many particular branches of the law. In addition to this, it is recourse to the fundamental principles of the law which makes it possible to avoid possible excesses in the implementation of the rules of taxation.
There are many guiding principles of the tax law, which do not always forming a coherent unit; however distinctions can be made between the principles that have a constitutional basis and those which have the value of the general principles of law.

Principles with constitutional range

The principles with a constitutional basis arise from several provisions that appear in the text of the Constitution of the Republic of Rwanda, dated June 04, 2003, with later modifications.

1. The Principle of Legality

The principle of legality in tax matters provides the basis for the safeguarding of taxpayer’s rights because it means that the public authorities cannot act in an arbitrary fashion. This principle is enshrined in the constitutions of many countries. In the specific case of Rwanda, the Constitution, (in Article 81), makes the following explicit statement:

"No taxation can be imposed, modified or removed except by law ". In a similar way the second subparagraph states that:

"No exemption from or reduction of tax may be granted unless authorized by law ".

This means in effect that there should be taxation without an underpinning law on which to base it: upon this legal basis further details will be developed (such as bases, rates, sanctions) which also authorizes its collection. As one example, with regard to the taxes that are levied in Rwanda on behalf of the Treasury, several relevant laws exist such as Law n°16/2005 (18/08/2005) regarding Direct Income Tax and another which specifies the tax procedures (law n°25/2005,4/12/2005).

However the executive power (Government) also has a particular role to play in tax matters. Indeed, the principle of the legality of tax implies the intervention of the legislative power which has responsibility for the establishment of the operations which are essential to determine the tax base, its liquidation, its recovery, etc. Under the terms of its legal base, the executive arm also has power to intervene in tax matters. It is the role of the Government to determine the details of the tax application of any specific legal text. In exceptional cases, certain laws envisage simply fixing the key principles of taxation while giving the executive power the role to establish the necessary bylaws to govern the implementation of the Parliamentary law. In such cases, one might say that the legislative branch has delegated its tax powers to the executive organ (see the law on the Code of VAT and the Ministerial order on its recovery as an example).

2. The Principle of Equality

Article 16 of the Constitution of the Republic of Rwanda says: "All human beings are equal before the law. They shall enjoy, without any discrimination, equal protection of the law".

The principle of equality as far as tax is concerned has a role to play in the essential characteristics of the law and, in particular, defines that taxation must be applied impersonally to all individuals regardless of their status or background.

This principle results from that of the equality in all matters which is applied in determining how one can assume a public office. This principle of equality is seen as a fundamental principle of public law. Applied to tax law, it means that the same tax system must be applied without discrimination to all taxpayers who are in the same situation.

Admittedly in its principles and its basis, the principle of tax equality cannot be applied absolutely. In a theoretical sense, absolute equality would suggest that all taxpayers are subjected to the same tax, which condemns the particular taxes. However, one single tax level does not normally exist in practice, for reasons that are to do with well-known principles of tax justice. Common levels of contribution are set aside for other principles.

The idea of absolute equality is in practice normally replaced by reference to the ability to pay of individuals. Tax justice, which in this case forms the basis of equality, looks at the aggregate of the fiscal burdens (including social elements) of the taxpayer for a given period. Equality must look to integrate the range of taxes in play and the range in wealth distribution as well as the development over time of the ability of individuals to contribute. This leads to what is known as the progressive systems of taxation which looks not at absolute equality but more with an equality based on tax justice.

A **progressive tax** is a tax by which the tax rate increases as the taxable base amount increases. Progressive taxation is an illustration of the social considerations that are applied to tax policy as well as how it can be used to have a social impact. "Progressive" describes a distribution effect on income or expenditure, referring to the way the rate progresses from low to high, with the tax burden higher on those who have more wealth to pay the taxes. It can be applied to individual taxes or to a tax system as a whole. Progressive taxes attempt to reduce the tax incidence of people with a lower ability-to-pay, as they shift the incidence increasingly to those with a higher ability-to-pay. They can therefore be seen as an example of a particular type of 'tax justice'.

The term is frequently applied with reference to personal income taxes. Those with higher sources of income should be better able to pay taxes than those with lower levels. However it can also be used in sales taxes. For example, a sales tax on luxury goods or the exemption of basic necessities may be described as having progressive effects as it increases the tax burden for those purchasing luxury items whilst it reduces it on basic goods and services.

The opposite of a progressive tax is a regressive tax, where the relative tax rate or burden increases as an individual's ability to pay it decreases. Sales taxes are often criticized because low income households must pay a greater share of their disposable income to a sales tax than wealthier households (everyone pays the same charge on a unit of goods regardless of their ability to pay. A 'proportional tax' lies somewhere in between, and exists where the tax rate is fixed as the amount subject to taxation increases.

3. The Principle of Freedom

The principle of tax freedom relates not only to personal freedom but also to the freedom of trade and industry. The essential principle of freedom is at the heart of a number of the procedures of tax law, even though in some cases it appears to go against personal or corporate freedom.

Indeed, the variety of the taxes that exist means that the taxpayer, individual or corporate, often has a choice as to the actual taxation that they pay dependent on the particular course of action that they adopt. The question is consequently sometimes asked as to up to what point the taxpayer can by his personal choices and decisions choose a particular course of action that has an impact on the tax that they are required to pay.

The answer to this question revolves around the principle of the freedom of management and not-interference in management decision-making. This principle prevents the tax administration from affecting the decision taken by the manager. The taxpayer can choose to carry out the provision of goods or services that are taxable, or they may not, as they decide. Alongside the right to create or otherwise the taxable product, the freedom of management also gives the right to adopt the tax efficient solution to a given situation.

However, in tax law as in other branches of law, justice implies that personal freedom is limited when it constitutes itself a limitation of the freedom of others. As in other branches of law, the principle of freedom is recognized only insofar as it is used only in accordance with a legal objective. The general theory of the abuse of rights therefore has a significant place in tax law. It is not possible for example to prevent the access of the administration to the legal documents which give important evidence on the nature of a contract, or to make out that certain fictitious acts have been undertaken, nor indeed to undertake ac act the purpose of which is to fraudulently avoid a legitimate tax liability.

Principles with a non-constitutional basis

1. The Principle of Non-Retrospective Application

The principle of the non-retrospective application of the law is outlined in the constitutions of many countries and is also commonly found in the civil code of many jurisdictions (see for example article 2 of the Preliminary Title of the civil code[4]). According to this principle, it is forbidden to defer the effects of a law before the entry into force of the said law.

In general, a law comes into enforceable existence by its publication, which in Rwanda results from the insertion of the law into the Official Gazette. However, the legislator in theory has the ability to set itself the date of the entry into force of the provisions which it enacts. Therefore the entry into force of a law can be accelerated to precede his publication or, on the contrary, be delayed beyond its publication date.

For tax law as well as many other forms of law, the entry into force also utilises these various methods. However, once its entry into force is defined, the tax law applies immediately not only to future situations but also to those which currently exist. Therefore the tax law can affect the tax consequences of a former period and modify *a posteriori* the conditions of taxation. It is the consequence of the objective situation in which the taxpayer is, therefore modifiable at any moment by the law, and the permanence of the capacities of plate and liquidation of the tax department, as long as its competences are not struck of forfeiture.

Alongside the immediate application of the tax law which can regularly affect existing situations, the legislator also occasionally decides that a law will produce effects on activities that have taken place in the past. Jurisprudence and legal doctrines sometimes recognize the validity of certain exceptions to the rule of non- retrospective application, even though no decisions have been taken expressly by the legislator in this direction such may be the case for example when the law is interpretative, or when it moderates penalties.

2. Right To Defence

The right of a taxpayer to defend themselves applies in tax law as for all other categories of the law. Apart from jurisdictional activities, the principle is also applied regarding the administrative procedures of tax control, and constitutes a significant guarantee for the checked taxpayer. Any failures in processes on behalf of the administration are likely to result in the failure of any attempts to enforce tax rectification or imposition procedures. Any taxpayer whose returns are checked must have the opportunity to defend themselves whilst being assisted if they so wish with a counsel of their choice.

[4] Ministry for Justice, Codes and Laws of Rwanda, on http://www.MOategeko.net/display_rubrique.php?Information_ID=20&Parent_ID=455&type=public&Langue_ID=Fr#458.

3. The Principle of Territoriality of Tax

The principle of territoriality of tax defines the geographical application of the tax law. In general, the geographical tax space and the sphere of competence reserved for the political bodies are the same and constitute the boundaries of tax sovereignty. However the power to tax can, in certain cases, be extended beyond the national borders or, conversely, not cover the whole territory or be limited by a supranational tax law. Such is the case under the terms of certain international tax conventions; in these instances, sovereignty can be affected by standards higher than the national law because they arise from a ratified treaty which has been approved by Parliament. Such is the case in particular treaties which set up ‘free zones’, which enjoy certain tax immunities because of wider economic considerations.

Certain difficulties can be created by this principle of the territoriality of tax. One is the challenges that can result from the impact of double taxation agreements whilst, on the other, that of tax avoidance can be a problem.

Double taxation exists when a taxable activity can give rise to two (or more) taxable events in different countries during the same fiscal year. If various states decide to subject the same taxpayer, for the same taxable event, to similar impositions this will create a situation where the taxpayer is charged twice for the same event – ‘double taxation’. Indeed as each state has control of taxation matters only within the geographical limits of its sovereignty, there is no international law in existence that prohibits double taxation. So when two national tax laws in different states are concurrent, they cannot be regarded as being in conflict and one state has no right to intervene in the tax affairs of another. It is only possible for each state to decide on the tax position only inside its own boundaries of sovereignty and the application of national laws on their own territory.

The only solution to the problem of double taxation in international law is the agreement of International Conventions, bilateral or multilateral. When these conventions are regularly ratified, they prevail above the national laws under the terms of the general principles of the law.

The problem of tax avoidance can be solved also in the same manner: by International Convention. But, in practice, tax avoidance is even more difficult to avoid that double taxation. It can be present at two different times in tax operations: either at the moment of the establishment of the tax base, or at the moment of tax recovery.

At the time of the establishment of the tax base, the taxpayer can try to locate his taxable income in a country where the tax charge is less heavy or may in some cases be zero. As for the moment of recovery, tax avoidance can be carried out when the taxpayer attempts to hide their income from the tax authority.

To combat this attempted evasion of tax, the country that is a potential victim of this act can endeavour to locate the provision of the taxable event in the taxpayer’s home country or can oblige the taxpayer to make a statement of the assets that they hold abroad. But, even if these efforts make it possible to reduce tax avoidance at the national level, it would nevertheless be more beneficial to implement an international regulation on the basis of administrative assistance between different states.

As for tax avoidance at the time of recovery, the best remedy would involve an administrative arrangement and/or legal intervention in the ‘country of refuge’ to which the tax creditor has, for tax purposes, effectively re-located. But in addition to the legal difficulties of techniques which could result from s these measures, such a solidarity would suppose a community of interest which, as regards tax avoidance, is often absent because very often the country of refuge profits rather from this tax evasion and its interests often diverge from those of the country which, in tax terms, loses out from the actions of the taxpayer.

Other principles applied in tax matters

1. Principles of a good tax system

a) The principles of a good, fair and efficient tax system are described by ‘Adam Smith's canons of taxation’. **A good tax is efficient**

An efficient tax system raises the revenue needed at the lowest possible cost to the tax-payer.

Efficient taxes systems raise revenue without negative distortions such as reducing work-incentives for individuals and investment incentives for companies. Some examples are given below.

- Indirect taxes can create a ‘deadweight loss’ or a loss in terms of economic efficiency. For example, taxes on restaurant meals and personal computers cause a deadweight loss of consumer surplus and discourage the purchasing of such items;

- Lump-sum taxes tend to be most efficient. Once they have been paid, there is no disincentive to earn extra income or achieve a higher profit since the tax liability does not increase with extra surpluses. Unfortunately lump-sum taxes do not discriminate between rich and poor tax-payers. A lump -sum tax would hit a low-income earner much more heavily than a high-income household.

b) A good tax system promotes Equity and the Benefit Principle

Taxes should be fair and based on people's ability to pay (the principle of progressive taxation already discussed).

The benefits principle requires that people should pay taxes according to the benefit (utility) they derive from consuming government goods and services.

In many instances there is a trade-off to be made between equity and efficiency**.** For example a reduction in the marginal rate of tax for wealthy people can have some justification on the grounds that it stimulates greater work effort and higher labour productivity. However reducing taxes for higher income people creates a less progressive tax system and can increase the scale of inequality between rich and poor. Governments must be careful not to set higher tax rates at such a level that disincentive effects occur.

Equally the tax system can also create disincentives at the lower end of the income scale.

c) Good tax is certain

The certainty principle is very important in tax affairs. Tax-payers should be able to anticipate the possible amount of their tax obligations and plan for payment of them in due course. For this reason, tax rates should be relatively stable from year to year and should not be subject to sudden fluctuations. This allows people to undertake their own financial planning knowing the basic tax liabilities they are likely face in the coming year.

d) Adequacy

Taxes should be just enough to generate the revenue required for provision of essential public services.

e) Broad Based

Taxes should be spread over as wide a section of the population as possible, or over a wide section of sectors of the economy, in order to minimize the individual tax burden.

f) Compatibility

Taxes should be coordinated to ensure tax neutrality and the overall objectives of good governance.

g) Convenience

Taxes should be enforced in a manner that facilitates voluntary compliance to the maximum extent possible.

h) Neutrality

Taxes should not favour any one group or sector over another, and should not be designed to unfairly interfere with or influence individual decision-making (unless this is for social reasons as previously discussed).

i) Predictability

The method of collection of taxes should facilitate the certainty and regularity of recovery.

j) Restricted exemptions

Tax exemptions must only be for specific purposes (such as to encourage investment) and for a limited period.

k) Simplicity

Tax assessment and determination should be easy to understand by an average taxpayer.

2. The principle of an optimal tax

Optimal tax theory, also known as “optimal taxation”, is the study and implementation of how best to design a tax system by minimizing its distortion and inefficiency with the aim of increasing set revenues. A tax system is termed ‘neutral’ if it avoids distortion and inefficiency completely. All other things being equal, if a tax-payer must choose between two mutually exclusive economic projects that have the same pre-tax risk and returns, the one with the lower tax or with a tax exemption would be chosen by a rational investor or business person. To this extent economists argue that taxes generally distort behaviour.

E. CLASSIFICATION OF TAXES

The classification of taxes is not always an easy operation, but three criteria can be taken into account. The first criterion is based on the nature of the taxable product and/or the individual situation of the taxpayer. It is the choice between real tax and personal tax.

The second criterion is based on the economic option. Indeed, if the tax is always a contribution operated on measures of wealth, this wealth is always likely to have several economic forms. A choice must be made between income tax, capital tax and taxes on expenditure or consumption.

The last criterion is that based on the choice of the legal technique of imposition which is made by the tax authorities. This equates to a choice between direct tax and indirect tax.

Real tax and personal tax

This is one of the oldest distinctions in taxation. ‘Real tax’ can be defined as that which strikes an operation, a good or an amount of money based only in its nature, its money value or its quantity, without focusing on the person of the taxpayer.

Taxes based on goods can be contrasted with taxes formerly imposed on people, ‘capitation taxes’, established on a per capita basis which falls on the taxpayer directly.

This type of tax has practically disappeared in many modern tax systems. One of the last to be practised in France is the so-called *"tax on idlers"*, created by a law of June 16, 1948, which was a true poll-tax. This tax, with an amount of 50.000 old francs, was to apply to any adult person of the male sex who was less than 50 years old, who could not demonstrate in 1947 an occupation likely to provide for their existence. Various exemptions were envisaged, in particular with regard to students, on the condition that they were less than 30 years on December 31, 1947 and that they could justify a regular place at university. This French legislation even provided that the non-payment of the tax when due could result in imprisonment. However, this tax was much criticized and was ultimately withdrawn.

The person of the taxpayer is not now as a "taxable product", although income tax can be regarded as an imposition on the person, insofar as it is based on income earned from work. However, rather than being based on the person, taxes are now only applied to incomes, activities, operations and goods.

The distinction of the real tax from personal tax always has great importance. One can even speak of significant developments in the field of personal tax in modern tax systems. However, personality of tax has a completely different significance.

The determination of 'taxable product' operates in several ways. When the taxable product is looked at without the person of the taxpayer being taken into account, it is known as reality: this is the case, for example, for the corporation tax or the VAT.
The tax is known as personal when it is arranged in order to ensure an adaptation of the fiscal burden to the individual situation of the taxpayer, especially as regards their marital status. That is much more explicit in France where the 'personality' of the tax answers the concern to carry out more justice. The system has logically results in retaining the whole of "capacities" of the taxpayer. The personal tax is thus generally a tax of total nature, in opposition to real taxes, which are particular. The taxes which lend themselves best to the application of the system of the personality are wealth tax and the general tax on the income. Various processes can be used to carry out the personality of income tax, either at the stage of the plate itself, in particular by the mechanisms of the exemption of certain incomes or the tax exemption of the vital minimum, or at the stage of the liquidation of the tax, in particular by the systems of the family quotient and progressive increase in taxation.

Taxes on capital income, income and expenditure

This classification is founded on the economic concepts of capital, income and expenditure. It is today the preferred approach for many academics, because it is the tax that makes it possible to best determine its effects with regard to, on the one hand, various interventions of the State as regards social, economic or financial matters and, on the other hand, the incidence of the tax, in particular from the point of view of tax justice.

The tax charged is assessed on wealth. Wealth, looked at in the broadest possible terms, can in tax terms be looked at from three perspectives.

1. Tax on capital income

Capital is wealth acquired or accumulated over a certain period, and is treated in tax terms as a source of income. This would include the inheritance of an individual for example in the form of a legacy left to them. A levy on the capital may be established as a tax on the whole of the amount, or, alternatively, in the form of a tax on certain elements of the capital only.

2. Income tax

Income, as described in an etymological analysis of the term, is the wealth which arrives from a source likely to recur over a period of time. Such incomes either from the existence of productive capital (land incomes, incomes of productive movable goods, etc.), or from the exercise of an activity (such as wages remunerating work, non-commercial benefit of the liberal professions, etc.). They can also represent a mixed character that is they can result from an activity carried on by means of a capital activity (industrial and commercial benefits, agricultural benefices, etc.). As far as am assessment of income is concerned, the tax department can use either the total amount of the incomes or merely the profits of a taxpayer.

3. Tax on expenditure

The existence of the wealth of an individual, instead of being based directly on their capital or income, can be revealed indirectly by the use that they make of their resources. Taxation on consumer expenditure can be imposed in two ways: firstly, by a tax on the total

expenditure of the taxpayer by one that is based on particular items of expenditure. In one way, a system of taxes based on expenditure is much simpler than that of a tax based on income.
What are known as 'turnover taxes' currently constitute the typical example of taxes on expenditure. They can be divided into two categories:

1. Cumulative taxes which are so named owing to the fact that they are applied to the price of the products each time that they change hands;
2. Taxes on added value are designed to ensure that the same product is not the subject of multiple impositions of tax each time successive transactions involving a good or service are involved. Tax is only chargeable on the added value of the product arising from each stage in the production or selling process.

From the point of view of the analytical taxes or called indirect taxation represent one to the category of taxes on the expenditure. They relate, like the taxes on turnover, to the goods and the services which are the subject of exchanges. But whereas the VAT is a general tax which strikes the whole of the expenditure indistinctly, they are taxes known as "analytical", because they burden with the products or the given service. (One makes a distinction between the expenditure of first need, the expenditure of luxury and the current consumer expenditure, like alcohol, tobacco…).

Direct taxes and indirect taxes

1. Basis of the distinction

Direct taxes are those which are placed on the goods or the incomes of a person. As their name indicates, indirect taxes are only linked to the taxpayer indirectly, and become payable at the time of the use of their resources or the expenditure which they makes. Indirect taxes are therefore based on acts of production, exchange or consumption.
But to make the distinction clearer, three criteria may be considered: the administrative criterion, the economic criterion and the tax criterion.

2. The administrative criterion

As far as the administrative criterion is concerned, a distinction may be noted on the mode of recovery. Direct taxes are recovered in a personal fashion, such as under the terms of a writ of execution established beforehand by the tax administration. Indirect taxes fall due at the time where the taxable operations are carried out, without the preliminary issue of a writ of execution; the tax debt is immediately created, and, in the majority of the cases, must be discharged at once, without the intervention of the tax administration.

3. The economic criterion

From an economic point of view, the direct taxes, which are recovered from the taxpayer (the real contributor) in theory, are supported definitively by the person who pays them. In contrast, the debtor of indirect taxes is generally only a legal debtor; he transfers the effective tax burden from a transaction on to other people, raising the amount from their selling prices.

4. The tax criterion

In order to distinguish direct and indirect taxes, the stability of the tax base can be considered. Direct taxes are those which impact on the elements of wealth in a durable or stable matter: they are defined by the stability of the tax base. Indirect taxes on the contrary are those which are more erratic and unpredictable in nature; they are identified by the non permanent character attached to their tax base.

F. TAX INCIDENCE

To determine the fairness of a tax regime, it is necessary to consider the economic incidence of taxation. It is important to make a difference between those who have the liability to pay a particular tax and those who suffer the economic incidence or burden of the tax.

Determining tax incidence depends on a good understanding of how various markets operate in a given economy, particularly the ability of different kinds of taxpayers to shift the cost of the tax to other economic actors. The person who bears taxes depends on the relative supply and demand elasticity of consumers and suppliers.

In many cases, the tax burdens falls on individuals in their role as consumers, producers and factor suppliers, not on companies or other institutions. For example, although the VAT law require firms to pay VAT to the government, in practice the real economic incidence of VAT falls on the consumer. Companies will be required by law to add on VAT to their selling prices.

In the same way, although computer equipment taxes are almost always collected at some point in the economic distribution chain (for example, at the point of import), the burden of the tax is ultimately borne by consumers. The tax is again included in the selling price.
However in certain cases, it is not clear who actually bears the economic costs of taxation. For example, the economic incidence of property taxes may be borne either by the landlords or owners of capital (who also bear the legal incidence) or by the users or renters of the property, depending upon market conditions.

G. TAXABLE CAPACITY

Meaning

Taxable capacity shall be understood as that level of tax revenue which can be collected from the community by the Government without any undue constraint or use of excessive power by the latter. The amount of tax burden that the citizens of a country are able to bear is not rigidly fixed. It can increase or decrease with changes in the distribution of wealth, the size of the population, the method of taxation, etc. In other words, we can say that the limit of taxable capacity is a relative and not an absolute measure.

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Study Unit 2
Taxation of the Income of Persons

Contents

A. WHO IS LIABLE TO PERSONAL INCOME TAX?

One important concept to consider is that of residence. Residence can be defined as the place where someone lives. However, it has a very specific meaning as far as taxation is concerned. For tax purposes, residence varies considerably from state to state. For individuals, physical presence in a state is an important factor. Some states also determine residence of an individual by reference to a variety of other factors, such as the ownership of a home or availability of accommodation, family, and financial interests.

An individual is taxable in Rwanda only if he/she has a tax residence there. According to article 3 of Law Nº 16/2005 of 18/08/2005. On Direct Taxes on Income (DTI) the following have tax residence in Rwanda:

- Taxpayers with a permanent residence in Rwanda or;
- Taxpayers who have a principal residence in Rwanda or;
- Diplomatic agents or consular Rwandans accredited abroad.

An individual who stays in Rwanda for more than 183 days in any 12-month period, either continuously or intermittently, is resident in Rwanda for the tax period in which the 12 month period ends.

If during a tax period, a resident in Rwanda generates income derived from taxable activities performed abroad; the income tax payable by that resident in respect of that income is reduced by the amount of foreign tax payable on such income in accordance with articles 3° and 4° of the Law Nº 16/2005 on Direct Taxes on Income. The amount of foreign tax payable shall be substantiated by appropriate evidence such as a tax declaration, a withholding tax certificate or any other similar acceptable document.

The reduction of the income tax provided for by the Rwandan legislation shall not exceed the tax payable in Rwanda on income from abroad[5].

A resident taxpayer is liable to income tax per the tax period from all domestic and foreign sources in accordance with articles 3 and 4 of the said law.

A non-resident taxpayer is only liable to income tax which has a source in Rwanda[6].

The incomes which are regarded as Rwandan source are enumerated in article 4 of Law Nº 16/2005 as follows:

- Income generated from services performed in Rwanda, including income generated from employment;
- Income generated by a craftsperson, musician or a player from his or her performances in Rwanda;
- Income generated from activities carried on by a non-resident through a permanent establishment in Rwanda;

[5] Article 6: of Tax Law nº16/2005 of 18/08/2005; related on Foreign tax credit
[6] Article 6: of Tax Law nº16/2005 of 18/08/2005; related on obligations

- o Income generated from sale of movable assets owned by a permanent establishment in Rwanda;
- o Income generated from the following assets in Rwanda:
  - immovable assets and accessories thereto;
  - livestock and inventory generated from agriculture and forestry;
  - usufruct (the right of one individual to use and enjoy the assets of another) and other rights derived from an immovable asset if such an asset is in Rwanda;
  - income generated from the sale of assets including immovable assets and accessories, livestock and inventory from agriculture and forestry, and all usufructs and rights in relation with an immovable asset or its accessory.
  - dividends distributed by a resident company;
  - profit shares distributed by a resident partnership;
  - interest paid by the Central Government, District, a resident of Rwanda or by a permanent establishment that a non-resident maintains in Rwanda;
  - license fees including lease payments and royalties or artistic fees paid by a resident, or paid by a permanent establishment owned by a non-resident in Rwanda;
  - income generated from any other activities carried on in Rwanda.

According to article 6 of the DTI, if during the fiscal year, a resident receives an income from taxable activities carried on abroad, (as defined by the provisions of articles 3 and 4 of the DTI) the tax payable by this resident under this income is reduced by the tax paid on his/her foreign income in the other country. However, the tax due cannot be higher than the tax which would have been taken in Rwanda from this income with a foreign source. In other words, the foreign tax credit will be allowed only up to the amount of the correspondingly due in Rwanda.
However, there is a residual problem remains: if the taxpayer systematically chooses to pay the tax in order abroad against the tax credit in Rwanda, there will always be a resultant loss of earnings in Rwanda. The only solution to this problem is the negotiation of preventive conventions of double taxation to deal with the situation.

B. INCOME SUBJECT TO PERSONAL INCOME TAX

Taxable income is composed of the following:

- Employment income,
- Business profits and
- Investment income

Income tax on employment

Tax base
According to article 13 DTI, incomes' of employment covered by the Professional Tax on Remunerations or pay as you earn (PAYE) are payments in cash (including any advances on wages) and benefits in kind received by an individual by way of remuneration.

1. Payments in cash

Article 13 lists the payments aimed in cash by income tax of work:

- wages, salaries, vacation allowances (for civil servants), allowances for cancellation of paid leave (if a legal leave was not allotted to the worker), sickness benefits (above those of the RSSB), attendance fees, commissions, premiums and allowances;
- allowances, including cost of living allowances, subsistence allowances, rent allowances, any expenses of representation or displacement;
- payments covering the reimbursement of expenses for an employee or their associate/s. These covers any refunds by the employer of any expenses non-related to the profession of the worker (e.g. school fees, repairs of the residence belonging to the worker, etc.);
- allowances covering certain working conditions (night-work, work in an environment that is dangerous, etc.);
- payments on dismissal, such as when a contract of employment is cancelled;
- Retirement pensions (other than those allocated by the RSSB);
- Other payments carried out under a current, former or future employment.

It can therefore be seen that assessed income is not only the basic wage paid as a result of a contract of employment. Any cash payment related to income tax on employment will lead to the necessity of tax deduction by the company which makes these payments. In other words, it is required not only to look at the basic wage but also all other payments listed in article 13 of the DTI.

2. Benefits in kind

According to the law, payments in cash are not the only type of transaction to be taxed. Benefits in kind are also liable to income tax on employment. In this case the chargeable income will be the market value of the benefit in king that has been granted (art.15 DTI).
In the case of benefits in kind that consist of the free use of a motorized vehicle or the provision of housing by way of providing a residence to the worker, the assessed income is the flat-rate amount as defined by the law (Article 15.1 and 15.3 DTI) which is as follows:

- Ten per cent (10%) of remuneration for the use of a company car. The calculation is based on income excluding benefit in kind.
- Twenty per cent (20%) of remuneration for the provision of a dwelling. Again this based on employment income excluding benefits in kind.

Lastly, benefits provided to a person related to the employee are treated as if provided to the employee (Article 15.4 DTI). In particular, see Article 2, al.2, 4, A. DTI in which a relation is a spouse or direct ascendant or direct descendant.

3. Advances on salaries

If the employer grants an employee an advance on salary that is higher than three (3) months the gross salary, the difference between the interest which the worker should have paid if it had negotiated a loan at the rate used by the National Bank of Rwanda (BNR) and the interest actually paid by the worker is regarded as a chargeable benefit (article 15.2 DTI).

4. Exempted incomes

The law has changed in this area in recent times. The old tax law (Law nº8/97, dated June 26, 1997) exempted tax on 20% of the income of the worker. However, these provisions were repealed and the new tax law makes the total income of worker remuneration liable to tax. However, there are several categories of income which are exempted from tax (Article 14 DTI). These are:

- Payment or reimbursement of expenses engaged by the employee;
- Retirement contributions (pensions) paid by the Social security fund of Rwanda;
- Pension contributions paid by the employer on behalf of the employee to RSSB. Before calculating and deducting income tax for employment (EIT), the employer must first of all deduct any pension contributions due to the RSSB. At the end, it should be recalled that the contributions for the occupational hazards are not aimed since they are supported entirely by the employer;
- Pension contributions paid by the employer on behalf of the worker into the funds of qualifying pensions. However, these contributions will be exempted only if they do not exceed ten per cent (10%) of the income of employment (including any benefits in kind) or an amount of 1,200,000Rwf per annum. If one of these two limits is exceeded, the surplus of the contributions compared to the limit will be treated as taxable remuneration. By "qualifying pension funds ", the law means pension funds developed in accordance with Rwandan law, with the principal function of the provision of pensions to residents and whose effective place of management is located in Rwanda during the fiscal year (article 2, parag.2, 8º DTI);
- Income earned by a foreigner as remuneration of employment relating to a foreign government or of an nongovernmental organization controlled by a convention signed by the Rwandan Government, when this income is perceived to be for the services of people in Rwanda;
- Income received as employment remuneration with an employer that is non-resident in Rwanda by individuals who are non-resident as far as their services in Rwanda are concerned, unless those services are connected to a permanent establishment of the employer in Rwanda;
- Incomes received by a foreign diplomat or a consular representative; incomes received by any person employed and undertaking official functions in an embassy, a delegation, a consulate or a mission of a foreign State, which has the nationality of that State and has a diplomatic passport; or incomes received by any person who, not being of Rwandan nationality, is employed by an international organization having signed an agreement relating to it in accordance with Rwandan legislation.

Tax Rate

Annual Taxable Income (RWF)				**Tax Rate**
From	0	**To**	360,000	0%
From	360,001	**To**	1,200,000	20%
From	1,200,001		and greater	30%

For the calculation of tax, assessed income is rounded to the nearest thousand. The rate of the tax is applied at a progressive rate with an applicable scale as outlined above (these rates are according to article 11 of the DTI):

Owners of small or medium enterprises shall pay a tax of 4% on annual turnover where this does not exceeding 20 million Rwandan francs (20.000.000 RWF) in a year.

Filing and payment period

An individual who receives taxable income prepares an annual tax declaration and presents this to the Tax Administration (Large Taxpayer's Office, Small and Medium Taxpayers Office or in Rwanda Revenue Authority (RRA) offices in Provinces as appropriate) not later than 31 March of the following tax period.

Pay as you earn

Tax law requires that when an employer pays employment income to an employee the employer must withhold, declare, and pay the PAYE tax to the Rwanda Revenue Authority within 15 days following the end of the month for which the tax was due.

In the case of engaging a casual labourer for less than 30 days during a particular tax year, the employer shall withhold 15% of the taxable employment income of the casual labourer.

The first 30,000 (thousand) RWF of monthly income earned is taxed at 0%.

With effect from January 2006 employers/employees shall calculate the tax on employees' taxable income based on the following tax bands and/or using the formulae provided in the table below as applicable. Employers/individuals that declare their own PAYE can build these formulae into their systems in order to compute the tax due.

Monthly Deductions

TAX BANDS	TAX RATE
Rwf 0-30,000	0%
Rwf 30,001-100,000	20%
Rwf >100,000	30%

Annual Deductions

TAX BANDS	TAX RATE
Rwf 0-360,000	0%
Rwf 360,001-1,200,000	20%
Rwf >1,200,000	30%

The employer is personally responsible for the correct withholding, declaration of and timely payment to the Rwanda Revenue Authority.

The employer is personally responsible for keeping proper books of account to prove that the tax has been correctly withheld, paid, and accounted for. In circumstances, where the employer is not required to withhold and pay any tax, the employee is responsible for registering, declaring, accounting for, and paying the tax.

An employer who is not the first employer of an employee in the tax year must withhold PAYE at the marginal top tax rate of 30%. An individual who receives employment income from more than one employer or who receives incidental employment income such as end of year bonus may file an annual declaration if they wish to claim a tax refund. Only amounts in excess of RWF 5,000 are refunded.

An employee who works for more than one employer is obliged to inform their employers specifying which one is their first employer in the tax year. The employer is obliged to ask the employee and confirm that they are the first employer

A. Penalties and Interest

a) Interest

A taxpayer who fails to pay tax within the due date is required to pay interest on the amount of tax due. Interest is calculated on a monthly basis at the inter-bank offered rate of the National Bank of Rwanda plus 2 (two) percentage points. For example, if the inter-bank rate is 9%, interest is imposed at 11% annually.

b) Penalties

With regard to PAYE tax, a taxpayer is subject to a penalty and fine when failing to:

a) file a tax declaration on time;
b) file a withholding declaration on time;
c) Withhold tax;
d) Reply to an information request of the Tax Administration;
e) Cooperate with a tax audit;
f) Communicate their capacity or appointment as described by Article 7 §2 of the Law on Tax Procedures;
g) Register as described by Article 10 of the Law on Tax Procedures; or
h) Comply with Articles 12, or 13 of the Law on Tax Procedures.

The Income Tax Of Businesses

Taxpayers concerned

Taxable taxpayers required to pay income tax on business benefits are physical people who carry on activities involving financial remuneration on a purely personal basis. In other words, such taxpayers should not have formed a commercial company, nor to be under a bond of subordination with their contracting parties. If these latter situations existed, the corresponding tax due would be corporate or employment income tax.

Examples of such taxpayers would often include generally tradesmen or ‘liberal professions’ such as lawyers, doctors and consultants.

Tax base

1. The Concept Of Benefit

According to article 16 of the DTI, business benefits are measured as the amount of the receipts drawn from all the transactions of businesses of a company, decreased by any appropriate expenditure. These benefits also include the profit generated on any sale of an asset (i.e. the difference between the price at acquisition and the selling price), the products of liquidation received during the fiscal year, the reduction in any liability, the undervaluation of an asset or the over-estimate of an element of a liability and any gain on debts contracted in currencies if this currency has lost value compared to the Rwandan franc (art.19 DTI).

Moreover, the tax law states that commercial stocks are evaluated at the lower of cost price or the value on the last day of the fiscal year. In effect, any gain on commercial stocks in this period is also taken into account (art.23 DTI).

Any benefits will be calculated on the basis of operating statement (profit and loss account) prepared in accordance with the National Accounting Plan (Article 7 Para 2 DTI).

2. Deductible items

a. General

It is the taxpayer, and not the tax authority, who evaluates the requirement to incur expenditure on behalf of the business.
However, not all business expenses are deductible against tax. Any expenditures may be offset against taxable income when they comply with the general conditions of deductibility outlined by article 21 of the DTI:

- Such expenditure must be committed for the direct need and the normal requirements of the company;
- They must be supported by appropriate documentation to confirm that they have been incurred;
- They must involve a reduction of the net assets of the company;
- They must be included for tax purposes in the expenditure of the period during which they are committed.

Parallel to these general conditions of deductibility (which apply to all expenditure), the law takes into account some expenses which are excluded from the expenditure deductible from taxable profit. These include in particular (art 22 DTI):

- Premiums, percentages, attendance fees and other similar payments allocated to the members of the Board of directors;

- Declared dividends and participations in profits;
- The surplus of interest paid on loans made out in a foreign currency, compared to the interbank rate offered in London or "*London Inter-Bank Offered Rate* " (LIBOR) at the beginning of the fiscal year increased by one percent (1%);
- Contributions to reserves, provisions and other funds with specific purposes, others that those envisaged by the tax law.
- Those reserves, provisions and funds which are mentioned by the tax law, and which consequently are accepted as deductible, include in particular qualifying pension funds (art.14 4º DTI) and investment provisions (Article 26 DTI);
- Fines and other penalties;
- The proportion of any gift (donations in cash or the equivalent value of gifts in kind) which exceeds one percent (1%) of sales turnover. However if these gifts are granted by persons or entities carrying on a gainful employment, the gifts will not be entirely non-deductible;
- Income tax of businesses that is paid abroad and value-added tax (VAT);

Indeed, tax paid abroad is not deductible from the tax base under consideration - it instead constitutes a foreign tax credit. Also the VAT cannot be deductible expenditure since it is offset against output VAT. However, all other taxes are deductible from the tax base, as the law only specifically prohibits the deduction of the two taxes discussed above;

- Personal consumer expenditure and any entertainment expenditure provided that this expenditure was not already included on income tax of employment (EIT).

b. Depreciation

Depreciation is an annual charge against the profits of a company to take account of the theoretical reduction in value resulting from the use of fixed assets belonging to the organisation. It therefore forms deductible expenditure for the fiscal year under consideration. However, some assets that are not subject to physical deterioration and associated depreciation in the same way are not allowable. These include in particular land, the works of art and heritage assets (art 24 paragraph 2 DTI).

The law outlines four (4) categories of acceptable charge relating to depreciation (article 24 para. 3, 4 and 5 DTI) which have their own specific allowable rates as follows:

- Construction of, or the costs of acquisition of, costs of improvement, restoration or rebuilding of tangible assets, The annual allowable rate of depreciation is 10% of the cost price. Examples: of such assets include industrial buildings, machines and tools etc.;
- Development or costs of acquisition, costs of improvement, restoration or rebuilding of the intangible assets, which includes goodwill acquired from a third party. Annual rate of depreciation is 10% of the cost price. The assets thus will be entirely depreciated in ten (10) years. Example: Goodwill, concessions, patents, licences, etc.;
- Computers and their accessories, information systems and communication. Annual rate of depreciation: 50% of the carried forward balance of the asset net of depreciation
- Other assets of the company: 25% of the carried forward balance of the asset net of depreciation. Examples: motor vehicles, furniture, etc. That is the assets are depreciated on a reducing balance basis

However, depreciation is calculated in two different ways according to whether one is in the first two, or the last two, categories described above:

- For the first two categories (depreciation of 5% and 10% of the cost price), depreciation is calculated individually, asset by asset, whereas for the last two (50% and 25% of the base of depreciation) depreciation is not calculated by individual asset, but by total category (article 24 of DTI);
- For the first two categories, the rate of depreciation applies to the cost price at the time of acquisition (which does not change over time) whereas in the last two categories, the rate of depreciation applies to the carried forward depreciated value (which decreases annually with each application of depreciation).

However, for the four (4) categories of allowable assets, when a used and depreciated asset (therefore either completely or partially depreciated) forms part of the business acquired by a taxpayer, then annual instalments of depreciation are calculated on the price at acquisition (if in the first two categories) or on the depreciated value ('net book value') of the asset if in the last two categories.

- For the first two categories, the depreciable life of the assets is known in advance (10 or 20 years) whereas for the two last the depreciable life cannot be agreed in advance – as they are depreciated on a reducing balance basis.

As far at the depreciation base is concerned, it is necessary to examine the book value of all the credits of the same category as they appear in the assessment at the opening of the fiscal year (article 25 DTI). However, it is necessary to add and deduct, to/from the taxable amount, the following amounts:

- The book value must be increased by the cost of any assets acquired or created, or by any costs of improvement, renewal and rebuilding affecting assets in the category during the fiscal year;
- Book value must be decreased by the selling price of the yielded credits and the allowances received for the loss of credits resulting from natural disasters or other involuntary transformations during the fiscal year.

It should be noted that if the depreciate value does not exceed 500.000 Rwf, the full amount constitutes a deductible running cost (art.25 of the DTI).

Finally, if the net book value is negative (as would be the case for example if the selling price of certain assets of the category are higher than the cost price of all the assets in the category of costs), this net amount is treated as a gain and the depreciated amount becomes nil (art 25 al.2 DTI).

c. Investment allowance

According to paragraph 26 of the DTI, an investment allowance of forty percent (40%) of the amount invested in new or used assets may be depreciated excluding motor vehicles that carry less than eight (8) persons, except those exclusively used in a tourist business. This amount is deductible for a registered investor in the first tax period following the purchase and/or of use of such assets if:

1 - the amount of business assets invested is equal to thirty million (30,000,000)

Rwandan francs; and,

2 - the business assets are retained for at least three (3) tax periods after the tax period in which the investment allowance was taken into consideration.

The investment allowance becomes fifty (50%) if the registered business is located outside Kigali or falls within the priority sectors as described by the Investment Code of Rwanda.

The investment allowance reduces the acquisition or construction cost, as well as the basic depreciation value of pooled business assets.

If the business asset that is granted an investment allowance is disposed of before the end of the period mentioned in the above point 2°, the reduction of income tax stemming from the investment allowance, increased by any interest and penalties applicable to taxpayers who do not pay their tax on time, covering the period from when that investment allowance was granted to the time of disposal, must be paid back to the Tax Administration unless such an asset is destroyed by natural calamities or other involuntary conversion.

However this deduction is not allowable unless the following conditions are fulfilled:

- It is necessary to be a recognised and registered investor;
- The acquired asset cannot be a vehicle capable of transporting less than eight (8) passengers unless it is used solely for tourist business;
- The amount invested must be at least 30 million francs;
- The assets must be held for at least three (3) fiscal years from the time that the provision for investment was taken into account;

d. Expenses for training and research

Art. 27 DTI prescribes that expenses of training and research during a fiscal year are fiscally deductible expenses.

The law specifies that such expenditure does not relate to any costs of acquisition including the improvement, restoration and/or rebuilding of land, buildings, and installations and other buildings, has as well as the expenditure for the research of the goods and other acquisitions / inheritances. However, whereas the concept of expenses of training does not cause any problem of comprehension, that of the expenses of research still does not appear clearly.

To understand this concept more clearly, it is necessary to refer to relevant "*International Accounting Standards"* (IAS). In IAS 9 regarding "activities of research and development" (August 1991), the IAS established a distinction between:

- *Research*: this relates to original research undertaken in order to acquire original scientific and technical training;
- *Development*: this relates to the translation of the results of research into a plan of production of materials, apparatus, products, processes, systems and services new or substantially new before the commencement of production or commercial exploitation.

In our opinion, by expenses of research, the law wanted to also include the expenses of development because the two expenditures take part of the same intention. See IAS on R%D and the way these costs are treated in the books of accounts

e. Bad debts

The deduction of bad debts is allowed for tax purposes but a bad debt is regarded as irrecoverable only if the loss has acquired a final and irreversible nature during the taxable period. The loss of the debt should not be simply probable. Just when a bad debt becomes irrecoverable becomes an issue of fact on the part of the tax department.

Moreover, the irrecoverable bad debt must meet certain conditions in order to be fiscally deductible (article 28DTI).

- This bad debt has been previously included before in the income of the taxpayer;
- The bad debt has then been cancelled for accountancy purposes;
- The taxpayer has taken all reasonable steps to recover the debt and has conclusive evidence confirming the insolvency of their debtor.

f. Recoverable losses

As its name indicates, income tax s relates to profits earned by a taxpayer. However a taxpayer does not generate such profits during a fiscal year; they can also incur losses. In this case, not only does the taxpayer avoid a tax liability during the fiscal year, they also have the right to deduct such losses from previous or future profits.

Rwandan tax law allows for the principle of a “carry *forward* ". Under the terms of this, losses in one taxable period can be deducted from the profit earned in the future periods. One could argue that this ability to carry forward losses in one year to be deductible from profits earned in future years can offer a business a boost. Losses can be carried forward for five years. Losses cannot be set against profits of earlier years – which would be asking the RRA to repay some of the tax already paid. As said earlier tax cannot be reclaimed unless an error was made and agreed.

However: per Article 20 of Law 16/2005 (DTI) “A loss in tax period in which a long-term contract is completed may be carried back and offset against previously taxed business profit from that contract to the extent it cannot be absorbed by business profit in the tax period of completion.

Article 29: Loss Carried Forward

If the determination of business profit results in a loss in a tax period, the loss may be deducted from the business profit in the next five (5) tax periods, earlier losses being deducted before later losses.

The previous Article 20 refers only to the specific long-term contracts.

In Rwanda, the taxpayer can offset losses for specific long-term contracts from the current fiscal year against the profits of the previous five (5) fiscal years (art.29 of the DTI).

However, losses incurred overseas cannot be offset against any profits of Rwandan origin during the same fiscal year, or against any future or previous profits of Rwandan origin.
Article 29 Para 3 (DTI) If during a tax period, the direct and indirect ownership of the share capital or the voting rights of a company, which [whose] shares are not traded on a recognized stock exchange changes more than twenty five per cent (25%) by value or by number, paragraph one of this Article ceases to apply to losses incurred by that company in the tax period and previous tax periods.

Article 20: Long-term contract
The timing of inclusion in and deduction from business profit relating to a long-term contract is accounted for on the basis of the percentage of the contract completed during any tax period.

The percentage of completion is determined by comparing the total expenses allocated to the contract and incurred before the end of the tax period with the estimated total contract expenses including any variations of fluctuations.

Specific cases

a. Long-term contracts

Within the meaning of the law, a long-term contract is a contract for manufacture, installation or construction, or the provision of services relating to these activities, which is not completed during the fiscal year in which it begins. This excludes any contracts whose completion is envisaged within twelve (12) months of their commencement (art.20 DTI).

For these contracts, the following rules apply:

- Business profit relating to a long-term contract is accounted for on the basis of the percentage of the contract completed during any tax period. As per ISA standard IAS 11, the percentage of profit is calculated from the percentage of completion and takes into account estimation future costs. Para 3 allows that where a long term contract subsequently makes a loss where previously a profit was anticipated and duly assessed, the realised loss can be offset against the previously taxed profits when calculation the tax due in the fiscal year of the completion of the long term contract. The percentage of completion is determined by comparison of the expenditure related to the contract and incurred before the end of the fiscal year as a proportion of the estimated total of the expenditure over the duration of the contract as a whole, including allowance for possible variations and fluctuations; Also do the same for revenue and the profit or loss is the difference earned for the contract so far..

- If a loss is incurred during the fiscal year when the long-term contract is completed, this loss will be offset against the profits of former fiscal years. In other words, the taxpayer will be given a tax credit (or refund of tax) in line with the system of *carry back* (as discussed above).

b. Transfer pricing

It is possible that certain commercial operators are ‘related persons’. The tax law specifies what specifically is understood by this term. They include the following categories (Article para. 2 4ºDTI):

- An individual and his/ her spouse, his/her direct ascendants and descendants
- A company and any person who holds directly or indirectly fifty per cent (50%) or above, in value or by number, of the shares or voting rights in the companies.

In this case, if such parties apply transaction terms other than those which would be employed between independent parties, the Commissioner General of Rwanda Revenue can order, in conformance with the directives of the Minister of Finance, may direct that the income of one or more of those related persons is to include profits which he/she or they would have made if he/she or they operated as independent persons.

To allow the just and effective application of this measurement, the Commissioner General may agree in advance with individuals involved in commercial and financial activities, that in certain conditions the situation governing the relations between dependent persons do not differ from relations between independent parties (art.30 DTI).

This particular rule is of course an anti-tax-avoidance measure designed to ensure that certain interconnected economic operators do not fix abnormally low prices in their business transactions, as this would result in a reduction in assessed incomes and, consequently the tax collected as a result.

c. Agricultural and breeding activities

The tax law exempts from tax the income arising from agricultural and breeding activities if annual turnover does not exceed twelve million (12.000.000 Rwf) Rwandan francs during a fiscal year (Article 18 DTI).

This measure is intended to take into account the significance of these activities in the Rwandan economy reality where more than 90% of the population relies on subsistence agriculture with the sale to local markets of any surplus from their harvests. However, when the value of such sales exceeds the amount indicated, the law takes the view that the related agricultural activity is no longer one at subsistence levels. Therefore, the income of these activities will be taxed.

Payment of tax

The type of taxation on the incomes on the profits of businesses depends on the sales turnover realized by the taxpayer.

1. Contractual mode of imposition

This mode automatically applies to the small businesses classified as those whose annual sales turnover is lower than 20 million RwF per fiscal year (Article 2,6º DTI). It also applies to other taxpayers who may have elected to adopt this mode of taxation. Here, tax will not be levied on the actual profits of the taxpayer but on their sales turnover, with a contractual tax rate equal to four percent (4%) of annual sales turnover (Article 11.2 DTI).

However, these small businesses can choose to be taxed on their actual profits according to a simplified accounting method determined by Ministerial decree (Article 17 DTI).

2. Tax on actual profits

This type of taxation automatically applies to taxpayers whose annual sales turnover is equal to, or higher than, 20 million Rwandan francs per fiscal year. The taxable amount is not in this instance the sales turnover but the profit earned. The applicable rate is applied on a progressive scale which is identical to that applicable to income tax on employment (see above).
As is the case for income tax on employment, the assessed income is rounded to the nearest thousand RwF (Article 11 DTI).

Declaration and payment of tax

1. Filing of intermediate returns and payments dates
The taxpayer who receives the taxable benefit of a business must prepare and file their tax declaration by, at the latest, the 30th day of the sixth month of the fiscal year following the period in which the taxable profits were earned (Article 12 para. 1 DTI). At the same time, they have to calculate and pay the amount of the tax due to the tax authorities in the relevant instalments.

Indeed, the taxpayer must submit to the tax authorities quarterly instalments of 25% of the amount of the tax due in accordance with the tax declaration of the previous fiscal year, This amount is reduced by the tax withheld in that tax period in accordance with Articles 51 and 52 of this law. These articles (51 and 52) relate to withholding taxes imposed on Royalties, Interest, service fees etc. and on imports.

(Article 31 DTI). They must pay these instalments at the latest by June 30th, September 30th and December 31st of the year of the taxable activities involved. On March 31st of the year when the taxes must be settled for the previous fiscal year. .

If the taxpayer uses fiscal years which do not coincide with the calendar year, the quarterly instalments must be paid by the last day of the ninth and twelfth month of this fiscal year and the third month of the following fiscal year.

If the taxpayer began his activities during the preceding fiscal year, the quarterly instalment is equal to twenty five percent (25%) of the amount of the tax due arising in the preceding fiscal year, adjusted by dividing by the number of months during which the taxpayer undertook his activities during this preceding period and multiplying by twelve (12).

2. Importation and markets

In addition to the above, certain operations are the subject of a deduction at source – withholding tax. These are imports and payments by public institutions in relation to public tender/service contracts. (Article 52 para. 1 and 2 DTI):

- An advance calculated as five percent (5%) of the cost of the imported goods, including Cost Insurance and Freight (known as CIF) when regular commercial practices are applied to transactions involving these goods. In contrast to other deductions at source, this reserve is not assigned by the party that receives incomes; it is carried out by the taxpayer himself, i.e. the importer and is paid to Customs

A withholding tax of three percent (3%) on the sum of invoice, excluding the value added tax, is retained on payments by public institutions to the winner of public tenders.

However such deductions at source do not apply to the taxpayers who are in one of the two (2) following categories (article 52 para. 3 DTI):

- Taxpayers whose business profits are exempt from taxation;
- The taxpayers who have a tax clearance certificate and this is granted annually by the Commissioner General of the RRA. This final tax scheme applies only to "good taxpayers" i.e. those with a good tax track record such as timely submission of tax declarations, prompt payments of tax liabilities and those who do not have tax arrears.

Tax on investment incomes

Tax base

As far as investment income is concerned, the tax law aims to tax any payment received in cash or in kind by an individual in the form of interest, dividends, royalties or rent and which was not taxed as a business profit (art.32 DTI – *Income from Investments*). In other words, any income from investments received by commercial companies will not be subject to withholding tax if the quarterly tax calculations include this income. (Section 3 Article 31 DTI).

Income in the form of interest includes any income arising from loans, deposits, guarantees and current accounts. It also includes income from government securities, income from bonds, and negotiable securities issued by public and private companies and income from cash bonds

Income in the form of dividends includes income arising from shares and participation in the profits in any type of company as well as similar incomes distributed by any entity enumerated by article 38 of the law. Withholding tax is 15%

The term "**royalty income’** includes all payments of any kind received as a payment for the use of, or the right to use, any copyright of literary, craftsmanship or scientific work including cinematograph films, films, or tapes used for radio or television broadcasting. The term also includes any payment received from using a trademark, design or model, computer application secret formula or process. It also includes the price of using, or of the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific knowledge. Royalty income also includes payments for natural resource payments. Again tax is 15% flat rate

Rental income: All revenues derived from rent of machinery and other equipment and land including livestock in Rwanda, are included in taxable income, reduced by:
1° ten per cent (10%) of gross revenue as deemed expense;
2° interest paid on loans;
3° depreciation expenses as determined according to Article 24, paragraph 3 of this law. Income derived from the rent of buildings or houses incorporated as assets mentioned in Article 38 of this law is subject to corporate income tax and is exempted from rental income tax.

Rental incomes arising from houses and buildings incorporate as assets of qualifying entities (Art 38) are subject to corporation income tax and are exempted from rental income tax. (Article 36 DTI).

Finally, it should be noted that some incomes can be compared to investment income as they are deducted at source using a rate identical to that used on investment income. These incomes include any profits from the lottery or any another games of chance (art. 51 DTI).
And yet more finally, lottery and gambling winnings are also subject to withholding tax at 15% and this deducted at source.
All withholding tax agents must complete returns and payments within 15 days of the period end,.

Payment of tax

The rate of income tax applied to investments is not applied on a progressive basis as is the case for the majority of income tax payments described above. They are instead applied using a proportional rate which is fixed at fifteen percent (15%) of the assessed incomes (Article 33 parag.1 DTI).

“A withholding tax of fifteen percent (15%) is levied on the following payments made by resident individuals or resident entities including tax-exempt entities:

These incomes are any dividends, except those paid between companies, any interest paid on deposits, royalties, payments for performance by musicians, artist sportsperson and the profits of lotteries and other games of chance which have a monetary value (Article 51 DTI). The payments are subject to tax even when paid by or through an entity not resident in Rwanda
For other investment incomes (interest other than that paid on money deposits, or rental incomes, other than those on houses and buildings and received by physical persons) the recipient will have to submit an annual declaration and to pay tax at a proportional rate of 15% by, at the latest, the 30th day of the sixth month of the following fiscal year (Article 12 DTI).

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Study Unit 3
Income Tax on Companies

Contents

A. GENERAL PRINCIPLES

In tax law, the taxation of incomes earned by companies is based on some general principles. These include the following:

- The company is a subject of tax law distinct from its shareholders;
- The company is taxable on the whole of its income, all of which are regarded as belonging to the company and therefore taxable. Indeed, the distinction between capital and labour incomes do not make any sense as regards company taxes. The same applies to expenses. All expenditure made by a company is always regarded as applying to business activities. However, for an expenditure to be deductible, it is necessary that it meets the conditions of deductibility (see above);
- Pre-tax profit does not necessarily correspond to taxable profit. Indeed, certain types of expenditure incurred by companies are not always regarded as deductible for tax purposes.

B. TAXPAYERS CONCERNED

The tax law indicates entities which are taxable in the form of income tax on companies (Article 38 DTI):
According to this article, the following entities shall be subject to corporate income tax:

1. Companies established in accordance with Rwandan or foreign law;
2. Cooperative societies and their branches;
3. Public business enterprises;
4. Partnerships;
5. Entities established by Districts and the City of Kigali, to the extent that these entities are involved in business activities;
6. De facto companies or associations and any other entities that perform business activities, and are established for the purpose of making profits.

Entities mentioned in 1, 2 and 3 are deemed to conduct business in all their activities. This means that all their revenues are deemed to be received from their business activities.

Exempted taxpayers

Although the law has, in a restrictive way, listed those taxable entities liable to income tax on companies, it also outlines entities which are exempted from such taxation. These include the following entities (Article 39. 3º DTI):

- The Government of Rwanda, Provinces, the City of Kigali, and Districts;
- The National Bank of Rwanda;
- Entities which solely carry on activities of a religious nature, or for humanitarian, charitable, scientific or educational purposes, unless the revenue received during a tax period exceeds the corresponding expenses, or to the extent that those entities in reality conduct a business;
- International organizations and agencies of technical cooperation and their representatives if such exemption is provided for by international agreements;

- Qualifying pension funds ;
- The Rwanda Social Security Fund ;
- The Rwandan Development Bank.

In addition, any micro-finances institutions recognised by the authorities are also exempted from income tax on companies but only for one five (5) years period which runs starting from the date of their approval. This period may be renewed by order of the Minister of Finance (Article 42 *in fine* DTI).

Tax residence

Unless specifically stated otherwise (see above), a commercial company is taxable in Rwanda only if it has a tax residence here. Such an entity is regarded as resident in Rwanda if, during a fiscal year (Article 3 para. 3 DTI):

- If it is established in accordance with Rwandan legislation even if the company does not have its effective management in Rwanda;
- The entity is effectively directed from Rwanda at any time during the fiscal year even if it is established in accordance with foreign legislation;
- The entity is a state-owned Rwandan company.

However, commercial companies which do not meet these conditions will be liable to tax only on their profits arising from a permanent establishment in Rwanda (Article 40 para. 2 DTI). A double taxation situation is avoided by a system of tax credits and double taxation relief agreements (see above).

C. TAX BASE

Principles

According to article 44 of the DTI, the principles of determination of the benefit of the individuals, including allowable and deductible expenditure, apply *mutatis-mutandis* (“those things having changed which need to be changed”) for the determination of the taxable profits of companies. The principle of permanent establishment also applies in these cases.

However, interest payable on loans and advances are deductible only up to a limit where the total amount of these loans and/or advances does not exceed, during the fiscal year, four (4) times the amount of the company’s resources (net assets). To determine what is meant by “own resources”, the reserves and provisions according to the balance sheet are not included. The law wanted to aim not only at authorized capital. It should be noted that this last rule applies neither to physical persons nor to banks or insurance companies (Article 22 *in fine* DTI).

In addition, resident companies resident are taxable on all their profits, whether of Rwandan or foreign origin, while non-resident companies are taxable only on any profits arising from a permanent establishment in Rwanda (Article 40 DTI). Finally, any products of liquidation are regarded as a distribution of dividends of the latest fiscal year (Article 47 DTI). Therefore, they will be also taxable.

Exempted benefits

Dividends paid between companies

Art. 45 DTI exempts taxable profits, any dividends or participations in the received profits of a resident company. The reason for this measure is that, as far as the company making the distribution is concerned, dividends have already been taxed in the form of income tax collected from the entity as they are not deductible expenses. **Gains arising on the reorganizations of companies**

As far as a reorganization is concerned, the law aims to address several situations (Article 46 DTI):

- The amalgamation of at least two resident companies;
- The acquisition of at least fifty percent (50%) of the shares or voting rights, by number or value, of a resident company, in exchange for shares in the acquiring company;
- The division ("scission") of a resident company into at least two resident companies.

In the event of the reorganization of companies, the company which is being acquired is exempted of capital gains tax that notionally arises at the time of this reorganization. However, it will not be able to deduct any expenditure relating to the depreciation that is theoretically chargeable following this operation.

From the opposite point of view, the acquiring company evaluates the book value of the assets in the books of the company as at the date of the reorganization. Moreover, the acquiring company depreciates the assets according to rules' which would have been applied to the transferring company if the reorganization had not taken place.

D. PAYMENT OF TAX

1. Principle

Once that taxable profit is established by the taxpayer, it must be rounded down to the nearest thousand RwF (Article 11 DTI).

The rate of the tax is, as is the case with investment income, a proportional one. For commercial companies, this rate is fixed at thirty percent (30%) of taxable profit.

2. Reduction of the rate of the tax

a) Companies with large numbers of employees

In order to promote investment and to encourage the companies to engage employees, the tax law has outlined tax incentives but only for approved investors. In practice, this takes the form of a reduction in the rate of tax applied as the number of employees increases (Article 41 para. 3 DTI).

- If the company employs between one hundred (100) and two hundred (200) Rwandans, the rate of tax will be reduced by two percent (2%);
- If the company employs between two hundred and one (201) and four hundred (400) Rwandans, the rate of tax will be reduced by five percent (5%);

- If the company employs between four hundred and one (401) and nine hundred (900) Rwandans, the rate of tax will be reduced by six percent (6%);
- If the company employs beyond nine hundred (900) Rwandans, the rate of tax will be reduced by seven percent (7%).

However, the employees to be taken into account are those which are not in tax-free income brackets , currently the income bracket of lower than 360.000 RwF per annum. Also, they must be employed for a period of at least six (6) months during the fiscal year (art. 41 *in fine* DTI). This provision obviously aims at encouraging companies to hire better-paid Rwandan employees.

b) Exporting companies

A reduction of the rate of the tax is also in place for companies which operate in export fields in order to encourage them to continue to play a positive role for the growth and development of the Rwandan economy. This exemption is based on sales turnover generated by export activities (art.42 para. 1 and 2 DTI):

- If export activities generate between three million dollars (3 000 000 $) and five million dollars (5 000 000 $) for Rwanda, the rate of the tax will be at the rate of three percent (3%);
- If export activities generate more than five million dollars (5 000 000 $) for Rwanda, the rate of tax will be five percent (5%).

It should be noted that the reductions in the rate of tax for exports cumulate with the reductions of the rate of tax for occupation of workers.

c) Declaration and payment of the tax

Art. 43 DTI which regulates the tax declaration and the modes of payment of the tax on the profits of companies are almost identical to article 12DTI, its counterpart for income tax.
Therefore, the applicable rules for the declaration and the payment of the income tax apply *mutatis-mutandis* for the declaration and the payment of the income tax of companies.

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Study Unit 4
Value Added Tax

Contents

A. INTRODUCTION

The Concept of VAT and its History in Rwanda

In contrast to income tax, value-added tax (VAT) is a tax on consumption. This means that the taxpayer is not taxed on the moment when their wealth increases but at the time when wealth decreases. The tax due is not dependent on the size or nature of the incomes of the taxpayer but instead on their expenditure.

The nature of VAT therefore has two distinguishing characteristics in contrast to many other kinds of taxation:

- It is a tax which affects consumption It is a tax that is imposed at the same rate and has the same absolute impact on all taxpayers without taking into consideration their respective incomes.

However VAT is the tax which generates the most revenues from taxes as far as the Rwandan state budget is concerned, and indeed is very important in the tax landscape of many countries.

VAT was introduced in Rwanda in 2001. It has replaced another tax on consumption which existed before this date, which was called "Tax on turnover" (ICHA). This last tax had been introduced into the Rwandan tax system by Law nº 29/91 of June 28, 1991 which levied tax on turnover. This tax on turnover was drawn up as a single tax on production and was calculated on the selling price of products imported or manufactured locally as well as the provision of services and the production of spectacles, plays, entertainment and attractions. The rate of the tax rose to ten percent (10%) except for goods that meet basic needs (" staples") which were taxed at five percent (5%). The taxpayer had the right to include this tax in their selling price, but the tax was due even if the taxpayer had not done so.

Characteristics of VAT

The characteristics of VAT are as follows:

- VAT is a tax on turnover which constitutes a tax on the expenditure paid by the ultimate consumer since it concerns a general tax on products and services. In spite of its name, VAT is not calculated based on added value but on the price or the total value of the goods or services in question;
- VAT is *a tax collected by split payments* which is received each time a chargeable commercial transaction is made. It is not a tax on production which would be due from just one intermediary in the chain;
- VAT is *a neutral tax*. Except in some rare cases, a person who is not the ultimate consumer recovers the whole of the VAT which has been invoiced to him by suppliers. The tax is consequently not an element of the cost price and the length of the chain of production does not impact on the amount of the tax due. This tax is supported entirely by the ultimate consumer;
- VAT is *a transparent tax.* It is possible, at each stage of the marketing of a product, to determine the amount excluding VAT and the amount of the VAT

included. Indeed, if one knows the price excluding VAT of a good or of a service (PEVAT) one can calculate the amount of the VAT included as well as the VAT inclusive price (PVATI) by the following formula: PVATI = PEVAT + (PEVAT x VAT rate).

Mechanisms of VAT

The taxable person, unless exempted (for this concept, see above), effectively plays the role of *tax collector*, i.e. they invoice the tax to their customer and they pay it to the tax administration after deduction of the VAT which is paid by them to their own suppliers.

Example: Working hypothesis: single rate of VAT with 10%.

Operations	**PHTVA**	**VAT**	**VAT paid to the RRA**
A producer sells sugar to a wholesaler	100	100x10% = 10	**10**
The wholesaler resells them with a local wholesale dealer.	200	200 X 10% = 20	20-10 = **10**
The local wholesale dealer resells sugar with a retailer	300	300 X 10% = 30	30-20=10
The retailer sells to a consumer	400 plus VAT	400X10%=40	40-30=10
TOTAL VAT PAID			40

Let us take again an example with the same producer price (100) and the same price to the end consumer (400 plus VAT) but with fewer intermediaries:

Operations	**PHTVA**	**VAT**	**VAT paid to RRA**
A producer sells sugar to a wholesaler	100	100x10% = 10	**10**
The wholesaler resells them with a retailer	300	300 X 10% = 30	30-10=20
The retailer sells to a consumer	400 plus VAT	400 X 10% = 40	40-30=10
TOTAL VAT PAID			40

It will be noted that the number of transactions has no impact on the amount of tax finally paid to the Tax Administration since in the two examples, the VAT to be paid to RRA (40) corresponds exactly to the rate of the VAT (10%) applied on the price paid by the ultimate consumer (400), even though the number of intermediaries is different in each case.

B. CONSTRAINT

Concepts

Art 12. 1 of Law Number 06/2001 (dated 20th January 2001) relating to the introduction of VAT states that supplies of goods and provisions of services carried out subject to payment by a taxable person acting in that capacity are regarded as being chargeable.

This article was supplemented by the provisions of article 10 of the Ministerial Order Number 001 (dated 13th January 2003), relating to procedures concerning the imposition of VAT. These specify that a taxable person is: "anybody who carries on a chargeable activity in Rwanda (…)".

However, it is necessary to distinguish two (2) categories of taxable people (art.10 of Law Number 25/2005 (dated 4th December 2005) which deals with the creation of tax procedures, namely;

- Any person who undertook a chargeable activity in the preceding fiscal year exceeding twenty Rwandan franc million (20.000.000 RwF) or five million Rwandan francs (5.000.000 RwF) in the previous quarter is required to register and submit a VAT return to the Tax authorities within seven (7) days of the end of the period;

Any person who is not mandatorily required to register for VAT can do so voluntarily. The law here aims at any supplier who does not meet any of the two conditions mentioned above. §2. Consequences of the constraint

Any taxable person who carries out deliveries of goods or provisions of services that are covered by the VAT Law must invoice the price with the VAT added. And insofar as its operations are subjected to VAT, the taxable person can deduct from the payment to the RRA the VAT for which they have been invoiced. Moreover, it is required to pay the tax charged to the public treasury.

In addition the taxable person also has a series of obligations concerning accounting for VAT: these include rules on bookkeeping, retention of invoices etc. (Article 65 LVAT and art. 14 LTP).

LVAT refers to Law 06/2001 of 20/01/2001 on the code of Value Added tax
And LTP is Law 25/2005 of 4/12/2005 on Tax Procedures

Taxable operations

A number of operations are subject to Rwandan VAT when the taxable event takes place in Rwanda (Article 2 LVAT). These include supplies of goods, provisions of services, and imports.

1. Supply of goods

"Consideration" in relation to a supply or import, means the total amount in money or its equivalent paid or payable for the supply or import by any person, directly or indirectly. It includes any duties, levies, fees, or charges paid or payable on, or by reason of, the supply or import, other than value added tax, reduced by any price discounts or rebates for prompt payment, allowed and accounted for at the time of supply or import (Article 85.6 LVAT).

The supply of goods is therefore a transfer of property (*usus*, *fructus, abusus*- these concepts date back to Roman Law: usus is the right to enjoy the fruits of something, abusus is the ability to destroy something and fructus is the ability to harvest those fruits) even if the effective delivery of the goods involved may only come into effect only at a later stage (for example, a contract of lease back by which an owner sells a good and then hires it back) or although the payment to the counterpart is not carried out at once (for example a hire-purchase transaction).

"Goods" means tangible movable property, buildings and other real property developments, and items treated as goods under this Law, but does not include money; (art 85.8 LVAT). For purposes of the application of the VAT, intangible goods such as a service, gas or electricity are treated in the same way as tangible or movable property.

2. Provision of services

Provisions of services may be defined as all the operations which do not require a transfer of property but which are made with a counterpart including leases, hire or the transfer of a right or interest. It should nevertheless be specified that the provisions of services made by an employed person or a government official are not taxable operations as far as VAT is concerned.

3. Imports

Imports can be either a supply of goods or a provision of services. The import of goods refers to goods coming into Rwanda from a foreign country. It relates to a provision of services if it is carried out under one of the following two (2) conditions (Article 85.10 of the LVAT):

- The service provider is a non-resident;
- The person receiving benefits of the services is a resident in the ordinary sense of a business carried on outside Rwanda but the services are supplied for use or consumption in Rwanda.

Exemption and operations imposed on a zero rate basis

VAT Exemption

Art. 86 of the LVAT describes a series of operations which are exempted from VAT. These operations give place neither to VAT invoicing, nor VAT declaration or recording for the taxable people who carry them out. However, by the same token they do not have the right to deduct any VAT that they pay on the goods and services that they purchase.

As modified and completed by article one of Law Number 29/2010 (dated 30th June 2010), "Notwithstanding the powers vested in the Minister by the provisions of Article 15 of this Law, the following goods and services are exempted from Value Added Tax":

1 Water supply services:
   a) the main supply of clean water;
   b) sewerage treatment services to protect the environment for non-profit motives.

2 Goods and services for health purposes:
   a) the supply of health and medical services;
   b) articles designed for persons with disabilities;
   c) the supply of equipment and drugs to hospitals and health centres;
   d) the supply or importation of drugs and medical equipment made by authorized persons for medical use, to patients and persons with disabilities

Bodies eligible for exemption under point 2 (b) shall be those recognised by the laws of Rwanda as public institutions, social organisations and any other form of voluntary or charitable institution.

3 Educational materials and services:
   a) educational services provided to pre-primary, primary and secondary students;
   b) educational services provided by social organizations to students and other youths, with the aim of promoting the social, intellectual and spiritual development of the members for non-profit purposes;
   c) educational services provided to vocational and other higher learning institutions;
   d) educational materials supplied directly to learning institutions.

Eligible bodies for the purposes of this exemption shall be those recognised by the laws as public institutions, not for profit social organisations and any other form of voluntary or charitable institutions.

4 Books, newspapers, journals and other electronic equipment used as educational materials.

5 Transport services:
   a) transportation of persons by road in busses and coaches licensed under the law governing the transport vehicles with a seating capacity for fourteen (14) persons or more;
   b) transportation of persons by air;
   c) transportation of persons by railway;
   d) transportation of persons or goods by boat;
   e) transport of goods by road**.**

6 Lending, lease and sale :
   a) the sale or lease of an interest in land;

b) the sale of a building or part of a building, flat or tenement meant for residential purposes;

c) the renting of, or other grant of the right to use, accommodation in a building used-predominantly as a place of residence of any person and his family, if the period of accommodation for a continuous term exceeds 90 days, unless the building is meant for accommodation.

7 Financial and Insurance Services:

a) the premiums charged on the provision of life and medical insurance services;

b) fees charged on the operation of current accounts;

c) transfer of shares;

d) capital market transactions for listed securities.

8 Precious metals

a) The supply of gold to a Bank in bullion form.

9 Funeral services:

a) The supply of any goods or services in the course of a person's burial or cremation, including the provision of any connected licence or certificate.

10 Energy supplies:

a) energy saving lamps;

b) solar water-heaters;

c) wind energy systems;

d) liquefied petroleum gas, cylinders and invertors;

e) equipment used in the supply of biogas energy;

f) kerosene intended for domestic use, premium and gasoil.

11 Trade Union subscriptions.

12 Leasing of exempted goods.

13 All Agricultural and Livestock products, except for those which are subsequently processed, are exempted from VAT. However, milk which is processed by local industries is exempted from this tax.

14 Agricultural inputs and equipment.

15 The following goods and services imported by persons with the appropriate investment certificates are exempted from Value Added Tax:

a) machinery for industries;

b) raw materials for industries;

c) building and finishing materials imported by an investor fulfilling the requirements determined by an order of the Minister in charge of finance;

d) refrigerating vehicles, tourist vehicles, ambulances, fire-extinguishing vehicles, hearses;

e) vehicles and movable property and equipment for foreign and Rwandan diaspora investors and their expatriate staff;

f) equipment for tourism and the hotel industry and relaxation sites defined on the list determined by the Minister in charge of finance;

g) goods and services meant for free economic zones;

h) medical equipment, medicinal products, agricultural, livestock, fishing equipment and agricultural inputs;

i) equipment in education field;

j) tourist chartered aeroplanes.

The exemptions referred to under points a), h) and i) concern all investors, even those not possessing the investment certificate.

16 Equipment for information, communication and technology as they appear on the annex to this law are exempted from the value added tax.

17 Mobile handsets and the subscriber identification module (SIM card) connected to them.

The Minister of Finance has prepared a list of the exempted products which was annexed to the LVAT.

Operations imposed at a zero rate

In contrast to VAT-exempt transactions, those which are imposed at a zero rate maintain the right for deduction of associated expenditure for the taxable people who carry out them. Therefore, the taxable person must be record, invoice and declare VAT. The chargeable operations which are treated as zero rate are exports and certain operations undertaken by various categories of people (Article 87 of the LVAT). They include in particular the following situations:

- Goods imported by a diplomatic mission accredited in Rwanda for uses inherent to the mission but subject to reciprocity in the country concerned in the country concerned;
- Goods or services provided under a convention between the Rwandan Government and of financial backers within the framework of finances projects.

A Ministerial order determines the conditions and the procedures concerning taxation at zero rate for these categories.

Deductions and restitutions

1. Notions of the deduction

The mechanism of deductions plays an essential role in the adoption of VAT, because it is this that allows the system to be “neutral and transparent”.

In VAT, the deduction is made “tax from tax”: the taxable person deducts the tax it can deduct from expenditure that it has made from the tax that it owes to the Treasury. The mechanism is significantly different from direct taxation where the deduction is made "base to base"; i.e. where deductible expenditure is offset against the taxable amount.

2. Characteristics of the deduction

As regards VAT, the deduction has the following characteristics:

- The deduction is **immediate** in the sense that the taxable person is not required to immediately make payments of the price of his supplies to his supplier or sell or use all the stock;
- The deduction is **total**, i.e. the tax paid to a supplier is deductible for the taxpayer's total amount due and also the fact that the tax on a supply is deducted at once, whatever its value or its lifespan;
- The deduction is **inclusive**, in the sense that all the deductions relating to one declaration period (usually annual) is added together in the declaration.

3. Conditions of deduction

Basic conditions

The principles of deduction are defined in art. 41 of the LVAT.
Three (3) conditions must be necessarily met in order to be able to profit from the right of deduction:

- It is necessary to be *a registered taxable person*. The right of deduction is not available either to consumers nor to taxpayers carrying out exempted operations;
- The operations must be *chargeable*, whether it is at the normal rate of the VAT or the zero rate;
- The tax must be *due*. VAT is due at the moment that the goods are delivered or at the moment when the supply of the services is made (Article 20 of the LVAT). The issue of when payments are actually made to the supplier therefore does not impact on the right to deduction. The tax nevertheless must be legally due. Just because tax is mentioned on the invoice, it does not necessarily mean that this is the case. This is particularly important as far as tax evasion is concerned.

2. Formal requirements

It is not enough, to meet the right to deduction, just to meet the above conditions. It is necessary in addition to meet the formal requirements whose non-observance would prevent the deduction. These conditions are on the one hand, the existence and retention of a regular invoice and the deposit by the taxable person of regular declarations in compliance with the timetable defined by the law.

a. Regular invoices

Art. 67 of the LVAT provides that VAT is not deducted, credited or claimed if the taxable person, as recorded at the time of the declaration, is not in possession of a valid VAT invoice or any other document required as satisfactory proof for the Commissioner General of the RRA that a taxable transaction has taken place.

Art. 65 of the LVAT obliges taxable persons to deliver a valid invoice with each transaction. This invoice must carry a number of details (Article 14 LTP): these include the name of the taxpayer and the customer, the taxpayers tax identification and the identification of the purchaser if it is necessary, the number and the date of the VAT registration certificate, the description of the goods or services provided, the value of the chargeable transaction, the amount of the VAT due on the chargeable transaction, the date of raising the VAT invoice and the invoice number.

b. Periodical declarations

In order to be able to profit from the deduction, the taxable person must deposit a declaration in the office of the RRA (Article 37 LVAT). This Declaration must be deposited within fifteen (15) days following the accounting period concerned. If the declaration is not made within this time, the taxpayer may be required to pay interest.

According to art. 38 LVAT, the first accounting period corresponds to the month which follows that of registration. From then on, the accountable period will equate to one month except when amended by the Commissioner General of the RRA who can determine another accounting period (generally three months) in its place.

c. Repayments

When the periodic declaration of the taxable person reveals a balance in his favour, the Commissioner General may repay to the taxpayer the amount that remains in credit due to the surplus. This should be repaid within thirty (30) day from either the end of the period relating to the declaration or from the receipt of the last declaration of tax due.

Localization of operations

It is important to locate the chargeable operations involved because, under the terms of the principle of the territoriality VAT, they are taxable in Rwanda only if they took place in Rwanda. But in theory, the place of delivery of goods is regarded as the place where the goods involved are placed at the disposal of the purchaser. If this location is in Rwanda, then the delivery of the goods is presumed to take place in Rwanda.

With regard to the character of the provision of services, the criteria used to locate them will be, by necessity, more abstract than for the deliveries of the goods. The system outlines a series of presumptions, which gives guidance as to where the service is deemed to have taken place.

According to article 9 LVAT, services shall be regarded as supplied in Rwanda if the supplier of the services:

a) has a place of business in Rwanda and no place of business elsewhere;
b) has no place of business in Rwanda or elsewhere but his usual place of residence is in Rwanda,
c) has places of business in Rwanda and elsewhere but the place of business most directly concerned with the supply of the services in question is the one in Rwanda; or
d)has no place of business in Rwanda and has place of business elsewhere but the recipient of the services uses or obtains the benefit of the services in Rwanda

Determination of VAT

1. Base of the VAT

In theory, the tax due is based on payments received or those paid to obtain goods or services (Article 16 LVAT). This may be in monetary or non-monetary terms. When the payment is in a monetary form, the taxable amount is the price paid for the transaction. In this case, any discounts and the rebates are taken into account unless the payment is carried out in instalments (art.19 LVAT).

However, in cases where part of the payment is in non-monetary terms or when the price is below what would normally be expected for the goods and services concerned, the open market value is taken into account. This measure is introduced to guard against tax evasion or tax avoidance which would occur if the taxable amount below that normally obtainable on the open market, or by fixing part of the silver price and the other in delivered well or service rendered. What would be not easily appraisable for the tax department?

The open market value is defined as the price for which the goods and the services concerned could be delivered or rendered in the ordinary course of businesses to a person independent of the supplier or the person receiving the benefits (Article 17 LVAT).

2. Rate of VAT

The rate of the VAT is applied at a proportional rate currently fixed at eighteen percent (18%) of the taxable amount (Article 34 LVAT). Rwanda does not have reduced rates on some items as exists in some other countries. However, Rwandan legislation provides that certain supplies of goods or provisions of services either are exempt from VAT or taxed at a zero rate, as discussed above.

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Study Unit 5
Other Government Taxes

Contents

A. PROPERTY TAX (4TH BASE): BOATS

History

In earlier times, property tax was based on 6 bases of which the 5th and 3rd bases were abolished, while the 1st, 2nd and the 6th were decentralized to collection at district level. The property tax which is now collected by Government is based on one base only, namely the 4th base which is boats.

The property tax on boats is governed by the law decree dated 28th December 1973, related to property tax, which was published in the *Official Gazette*, Number 7/73.

This tax is due from individuals or entities who own boats in Rwanda. Boats owned by persons who do not have a domicile, residence or permanent establishment in Rwanda, are exempt[7].

Registration fees for imported and already registered vehicles

Motor vehicle registration fees have replaced property tax, the fifth tax base and provisional number plate fees[8].

Registration fees on imported motor vehicles are **paid to the customs office**, during the tax clearing process. Upon payment of the fees, a registration certificate and a number plate is issued[9].

Registration fees for cars registered in Rwanda, from the time when Law n° 14/2009 came into force, are payable only once[10].

Rates

1 - Registration fees for imported motor vehicles are determined on the basis of engine capacity as follows[11]:

Engine power (cc)		Fees
Between	And	
0	1000	75,000 Rwf
1001	1500	160,000 Rwf
1501	3.000	250,000 Rwf
3.001	4.500	420,000 Rwf
4.501	and above	560,000 Rwf
Special vehicle	-	640,000 Rwf

2 - Registration fees for a motor vehicle **already registered in Rwanda** are equivalent to the amount paid on property tax and rent on number plates as introduced in 2009. This amount is

[7] Art. 20 of law decree of 28/12/1973.
[8] Art. 1 of law n° 14/2009 of 30/06/2009 determining motor vehicle registration fees.
[9] Art. 2 (paragraph 1and 3) of law n° 14/2009.
[10] Art. 2 (paragraph 1and 4) of law n° 14/2009.
[11] Art.2 of Ministerial Order n° 008/2009 of 01/12/2009 determining the amount of registration fees for imported and already registered vehicles.

multiplied by a coefficient based on the date that a motor vehicle entered into Rwanda. For motor vehicles imported before and during the tax year 2006, the amount is multiplied by 1. For motor vehicles imported from 2007 to 2008, the amount is multiplied by 2. For motor vehicles imported in 2009 and later, the amount is multiplied by 3[12].

3- For motor vehicles with **personalised number plates**, the registration fees are fixed at 2,000,000 Rwf[13].

B. CONSUMPTION TAXES

Taxable goods and services

Consumption tax is levied on the following locally manufactured products: beers, lemonades, cigarettes, wines, spirits and mineral water made in Rwanda, as well as telephone communications supplied by telephone communication providers operating in Rwanda. These are all liable to Consumption Tax (Excise Duty).

Consumption tax is levied on the following products at the corresponding rates:

Product	**Tax rate**
Juice from fruits	**5%**
Soda and Lemonade	**39%**
Mineral Water	**10%**
Beer	**60%**
Wine	**70%**
Brandies, liquors and whisky	**70%**
Cigarettes	**150%**
Telephone Communications	**5%**
Fuel (excluding benzene), gas oil, fuel and lubricants	**76%**
Powdered milk	**10%**
Vehicles with an engine capacity of above 2500 cc	**15%**
Vehicles with an engine capacity of between 1500 and 2500 cc	**10%**
Vehicles with an engine capacity of less than 1500cc	**5%**

The taxable value on locally manufactured products is calculated according to the selling price exclusive of taxes. The tax shall be payable when the taxable products are cleared out of the factory for consumer use in the case of locally manufactured products and when the taxable service provided is telecommunication services.

Declaration and payment

Factories making beers, lemonades, cigarettes, wines, spirits, juices and mineral water shall file, for each period of ten days, a statement concerning excisable goods cleared out of the

[12] Art. 3 of Ministerial Order n° 008/2009 of 01/12/2009.
[13] Art. 4 of Ministerial Order n° 008/2009 of 01/12/2009.

factory for consumer use. For the purposes of implementing the Excise Duty Law, a month is divided into the following three periods:

1 - from the 1st to 10th of every month;
2 -from 11th to 20th of every month and;
3 -from 21st towards the end of the month.

The Declaration, which the taxpayer is required by law to make, shall be accompanied by proof of Payment of the taxes due to the collector of the tax or his representative within five days following the declaration period.

Law Number 26/2006, dated 27th May 2006 for determining and establishing consumption tax on some imported and locally manufactured products provides for penalties to be served on taxpayers who fail to observe the required provisions.

Obligations, penalties and Interest

Any manufacturer of a product subject to consumption tax is required to keep a register of daily inventory of the products manufactured and a sales register. The sales register shall indicate the price and quantity offered to every customer, along with their names and addresses.

A taxpayer who fails to comply with the provisions of the law determining and establishing consumption tax on certain imported and locally manufactured products shall be liable to a fine.

Any taxpayer who fails to remit the tax due within the prescribed period is liable to a fine of five hundred (500) penalty units together with a late payment penalty of ten percent (10%).

Any late declaration of zero rate (0%) tariffs shall cause the taxpayer to be liable to a fine not exceeding five hundred (500) penalty units.

Penalty unit", as defined by Law 26/2006, means four hundred Rwandan francs (RWF 400) or any such value prescribed by the Minister, through an order;

Without prejudice to the existing laws, any person who makes fraudulent declarations, furnishes fraudulent documents or provides misinformation, or makes a fraudulent written report or commits any other offence shall be liable to a fine not exceeding five thousand (5000) penalty units.

There are other penalties related to specific goods such as Oil and specific activities such as paying or declaring out of time. The student is recommended to read the Law on Consumption tax and subsequent orders issued by the Minister.

C. IMPORT DUTIES

Import duties are determined by the East African Community Customs Management Act of 2004[14], the Protocol on the Establishment of the East African Customs Union[15]and the East African Community Rules of Origin as specified in Annex III to the Protocol[16].

Tariffs applicable to all goods which can be imported from outside the East African Community, are not part of this course. But it is worthwhile mentioning that the Partner States established a three band common external tariff with a minimum rate of 0%, a middle rate of 10% and a maximum rate of 25% in respect of all products imported into the Community[17].

D. THE FISCAL REGIME UNDER THE EAC LAW

Tax and EAC

Under EAC Law, business people will continue to pay VAT, Consumption Tax and Withholding Tax on goods originating from EAC Partner States. East African Community (EAC) Member states have begun implementing the Common Market Protocol. This means that Rwanda, Uganda, Kenya, Tanzania and Burundi have entered into a single market with free movement of factors of production based on the principles of non-discrimination, most favoured nation status and transparency.

These rights include the free movement of goods, persons and labour.

EAC citizens also have rights of establishment and residence as well as the free movement of services and capital.

There has been some misconception among the public that under the Common Market regulations, all goods imported into Rwanda or other member states are exempted from taxes. This is not the case however, as taxes on international trade will remain safe from import duty which remains at 0% on all goods from the community that comply with the rules of origin criteria.

If a trader for example imports iron sheets or soap that are manufactured in Kenya (an EAC member state) and has a valid certificate of origin, the RRA will not collect import duty (a tax levied on goods imported into the country) on such goods as long as it is proved the goods are originating from that region.

In Rwanda, the issuance of certificates of origin has been decentralized to the RRA Gikondo Customs department and all border posts including those at Gatuna (on the Rwanda-Uganda border) and Rusumo (on the Rwanda-Tanzania border). While import duty is abolished for qualifying goods, traders will continue to pay other domestic taxes due on goods including

[14] Section 11 of the act.
[15] Art. 12 of the protocol.
[16] Art. 14 of the protocol.
[17] Art. 12 of the protocol.

Value Added Tax (VAT) of 18 percent, consumption tax (excise duty) as well as a withholding tax of 5 percent.

However, the withholding tax mentioned above is exempt for those who have a tax clearance certificate (“Quitus Fiscale” – this is a certificate widely used within the French legal system which has now been incorporated into Rwandan law).

Free movement of goods under the Common Market rules

The Common Market Protocol stipulates that “The free movement of goods between the Partner States shall be governed by the Customs Law of the Community as specified in Article 39 of the Protocol on the Establishment of the East African Community Customs Union”.

On 1st July, 2009, Rwanda commenced the implementation of the EAC Customs Union rules and began levying zero percent import duty tariffs on goods originating from the Partner States, applying the Common External Tariff and the East African Customs Management Act and Regulations. This was part of a progressive implementation process. Internal tariff elimination on intra-regional trade was introduced progressively between 1st January 2005 and 31st December 2009.

The removal of VAT, Consumption tax (excise duty) and Withholding tax will be effected upon realization of a fully fledged customs union which is yet to materialize. If such a union were to come about, the following might be envisaged; The shifting of borders between Partner States to the periphery of the EAC;

- The collection of duties and taxes at the point of entry into the Customs Union Territory;
- Agreements on the revenue sharing mechanisms to be adopted;
- Establishment of a regional authority to administer the Customs Union
- The elimination of rules of origin on intra-regional trade. In a fully-fledged Customs Union, goods shipped from Nairobi to Kigali for example will not attract any duties and taxes will be considered in the same way as if the goods were between Huye, Southern Province and Musanze, Northern Province for example.

Harmonization of tax policies and laws

The EAC Common Market Protocol provides that "The Partner States undertake to progressively harmonize their tax policies and laws to remove tax distortions in order to facilitate the free movement of goods, services and capital and to promote investment within the Community".

Harmonization of domestic taxes is being handled under the EAC Framework by the Fiscal Affairs Committee (in particular the Technical Committee on tax harmonization) and the Fiscal Affairs Committee has established Technical Working Groups on Value Added Tax, Excise Tax and Income Tax with the aim of developing a harmonized legal framework on tax laws and a roadmap for the harmonization process.

It should also be noted that double taxation agreements and the prevention of fiscal evasion with respect to taxes on income (DTA) was agreed upon by the Partner States and is awaiting legal input from the Attorney Generals before approval by the (The Customs Co-operation Council).

RRA emphasizes that the implementation of the EAC Common Market has not changed the existing fiscal regime and the anticipated changes will progressively be realised as partner states enter into a fully-fledged Customs Union and the harmonisation of tax policies and laws is finalised.

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Study Unit 6
Decentralized Taxes

Contents

A. TAX ON IMMOVABLES

Houses and buildings

Tax base

Taxable elements

Within the framework of the tax on houses and buildings, the taxable product will not be the income generated by the houses and buildings but the value of these goods. This value is the updated cost price. It concerns the intrinsic value of these goods at the beginning of the fiscal year. This value is generally derived from expert valuers who provide a value for this building by taking into account of relevant improvements and deteriorations, and any cost of living variations relevant since the date of its construction.

Exemptions

According to the Law on the Finance of Districts (LFD), theoretically taxable houses and buildings for which the owner does not have a title document and which are not recorded with the Land Service are exempted. This is done in order to ensure that small rural dwellings are not subject to the tax.

Moreover, the following houses and buildings/ parts of buildings are exempt from tax (Article 13 LFD):

- Houses and buildings assigned for a medical use;
- Houses and buildings assigned for a social use and for school assistance when they are used for activities with a non profit-making motivation;
- Houses and buildings assigned exclusively to a scientific or professional activity and used for the activities with a non profit-making goal;
- Houses and buildings belonging to the State, publicly-owned establishments and local authorities when they are not intended for a regular commercial practice;
- Houses and buildings used exclusively for worship by approved religious organisations, except for those used for activities with a profit-making motive;
- Houses and buildings occupied by diplomatic missions and consulates of foreign countries, where conditions of reciprocity exist.

Payment of tax

The fixing of the rate of tax deals is the responsibility of District Councils. However, this rate must lie between 0.1% and 0.2% of the taxable Amount (Article 14 LFD). The tax must be paid, at the latest, by March 31st of each year, on the same dates as that applying to rental income (art.61 *in fine* LFD).

Undeveloped sites

Tax base

Principle

Tax on undeveloped sites is a specific tax, i.e. a tax charge based on a material unit. This unit is surface area (m² or hectare). The grounds concerned are all undeveloped sites, whether they are recorded or not, that relate to an emphyteutic lease (this is defined as a real estate contract specifying that the lessee must improve the property by construction), hire or a document of title (art.16 LFD).

Exemptions

For all undeveloped sites, the five first (5) hectares are exempt from tax (Article 17 LFD). Moreover, several other categories of site are exempted of tax (art.18 LFD):

- Grounds with services related to education, health, research, or sport activities, if it is established that they are not being used for a private commercial purpose;
- Grounds on which are installed, or on which will be installed, infrastructures of the State and those of local government;
- Grounds on which diplomatic missions of the foreign countries accredited in Rwanda are established, provided that reciprocal agreements with these countries exist;

Grounds assigned for a philanthropic purpose. Qualifying activities are determined by a decree of the Minister in charge of Social Affairs.

Payment of tax

Taxes on undeveloped sites are fixed by District Councils but must be within the limits determined by the law (art 17 LFD):

- In the town of Kigali, the tax must be between 20 and 50 RwF per m²;
- In other urban districts, the tax must be between 10 and 20 RwF per m²;
- In trade centres, the tax must be between 1 and 10 RwF per m²;
- In rural areas, the tax on undeveloped sites must not be more than 1000 RwF per hectare. When the area is more than twenty hectares (20ha), the tax on the area above the first 20 hectares must be between one thousand and one (1001) RwF and two thousand (2000) RwF per hectare.

If the sites without construction are touristic locations, the tax is increased by ten percent (10%) of the ordinary annual tax. For the purposes of calculating the tax, fractions of square metres (m²) and fractions of hectares are ignored.

In conclusion, art 28 LFD, as modified by the law of 1st October 2003, provides that the tax due must, at the latest, be declared and paid to the receiver of the taxes of the district by March 31st of the following fiscal year.

B. TRADING LICENCE TAX

Trading licence tax is paid by any person who commences a profit-oriented activity in Rwanda[18].
Government entities are however exempted from trading license tax[19].

[18] Art. 39 of law n° 59/2011.
[19] Art. 39 of law n° 59/2011

Tax rate

Trading licence tax shall be calculated on the basis of the figures included in the following tables[20]: The trading licence is paid for each year and for seasonal activities a part year counts as a whole year See Law 59/2011… the sources of revenue.. of decentralised entities..
The exception is where an activity commences after 1 January; in this case, the Licence fee is proportionate.

a) All value added tax registered profit-oriented activities (Table I)

Turnover	Tax due
1 – 40,000,000 RwF	60,000 RwF
40,000,001 – 60,000,000 RwF	90,000 RwF
60,000,001 -150,000,000 RwF	150,000 RwF
Above 150,000,000 RwF	250,000 RwF

b) Other profit-oriented activities (Table II)

Type of activity	Rural area	Towns	Kigali city
Vendors without shops, and small scale technicians who do not use machines	4,000 Rwf	6,000 Rwf	8,000 Rwf
Transport of goods and people on motorcycles	4,000 Rwf	6,000 Rwf	8,000 Rwf
Traders and technicians who use machines	20,000 Rwf	30,000 Rwf	40,000 Rwf
All other vehicles beside bicycles	40,000 Rwf each vehicle	40,000 Rwf each vehicle	40,000rwf each vehicle
Transport activities by boat	20,000 Rwf each boat	20,000 Rwf each boat	20,000 Rwf each boat
Other profit oriented activities	20,000 Rwf	30,000 Rwf	40,000 Rwf

The District Councils shall determine each year which areas are considered as urban or rural.

Tax declaration

By not later than 31st March of the tax year (1st January – 31st December), every taxpayer must file an official tax declaration to the decentralized entity where activities are undertaken. If a taxpayer operates branch offices, tax declarations shall be required for the head office as well as for each branch[21].

C. RENTAL INCOME TAX

[20] Art. 43 of law n° 59/2011
[21] Art. 42 of law n° 59/2011.

Rental income tax is charged on income generated by individuals from rented fixed assets located in Rwanda. The income taxable year for calculating the tax starts on January 1st and ends on December 31st of the previous year which shall be the income taxable year[22].

Tax base
Rental income tax shall be charged on the following[23]:

a) income from rented buildings in total or in part;
b) income from rented improvements in total or in part;
c) any other activity by which rental income may be earned.

Tax computation[24]
Taxable income is calculated by deducting from the gross rental income 50 %, in recognition of the expenses incurred by the taxpayer on maintenance and upkeep of the rented property.
When the taxpayer can produce proof of bank interest payments on a loan for the construction or purchase of a rented property, taxable income shall be determined by deducting from gross rental income 30 % in recognition of the expenses incurred plus actual bank interest paid from the beginning of the rental period.

Tax rate
Rental income tax is calculated as follows[25]:

a) That part of annual income generated through rental of a building between 1 RwF and 180,000 RwF is taxed at 0 %;
b) That part of annual income generated through rental of a building between 180,001 and 1,000,000 RwF is taxed at 20 %;
c) That part of annual income generated through rental of a building above 1,000,000 RwF is taxed at thirty percent 30 %.

Tax declaration
Any person who earns rental income must, on or before March 31st each year, declare tax, and pay it not later than March 31st of the following income taxable year[26].

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[22] Art. 48 of law n° 59/2011.
[23] Art. 49 of law n° 59/2011.
[24] Art. 50 of law n° 59/2011.
[25] Art. 53 of law n° 59/2011.
[26] Arts 54 and 55 of law n° 59/2011.

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Study Unit 7
Tax Procedure

Contents

In this chapter, we will look at tax procedures as outlined in Law Number 25/2005 of 4th December 2005 on tax procedures[27] modified and completed by law n° 74/2008 of 31st December 2008[28].

A. REGISTRATION

1) Business or other taxable activities

Any person who sets up a business or other activities that may be taxable is obliged to register with the Tax Administration within a period of seven (7) days from the beginning of the business or activity or the establishment of the company[29].

2) VAT

i) compulsory registration

A taxpayer whose turnover in the preceding tax period or last calendar quarter has reached at least 20, 000,000 (twenty million) or 5,000,000 (five million) RWF respectively, is required to register for VAT[30].

ii) Voluntarily registration

Any person who is not required to register for VAT may voluntarily register with the tax administration for VAT[31].

3) Business changes

Any changes, whether related to the taxpayer or taxable activities must be notified in writing to the tax administration within seven (7) days from the day that the change comes into effect[32].

4) Taxpayer identification number (TIN)

The tax administration assigns a taxpayer identification number to registered taxpayers, which will be used for all taxes. All taxpayers are obliged to record this taxpayer identification number on tax declaration documents and on other correspondence mentioned by this law and on other commercial documents and other documents relevant to the tax administration[33].

5) Cancellation of registration

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[27] Law n° 25/2005 of 04/12/2005 on tax procedures, O.G. n° 1 of 1st January 2006.
[28] Law n° 74/2008 of 31/12/2008 modifying and completing law n° 25/2005 of 04/12/2005 on tax procedures, O.G. n° 19 of 11th may 2009.
[29] Art. 10 (paragraph 1) of law n° 25/2005.
[30] Art.10 (paragraph 2) of law n° 25/2005; Art. 12 (paragraph 2) of Ministerial Order n° 001 of 13/01/2003 providing for value added tax rules and tax procedure; Art. 15 of Commissioner General Rules n° 002/2007 of 15/06/2007 implementing the law n° 25/2005 of 04/12/2005 on tax procedures.
[31] Art. 10 (paragraph 3) of law n° 25/2005.
[32] Art.10 (paragraph 4) of law n° 25/2005.
[33] Art. 11 of law n° 25/2005.

Any registered taxpayer ceasing to be liable for tax should notify the Tax Administration using a modified registration form within a period of seven days (7) from the date the taxpayer is no longer required to be registered. When the Tax Administration is satisfied that a person is no longer liable to be registered, their registration is cancelled. The granting of a cancellation of registration does not remove the right of the Tax Administration to carry out audits as provided for by the law[34].

B. TAX DECLARATION (TAX RETURN)

1) Filing a declaration

The taxpayer makes a declaration to the tax authorities which lays out how much tax is payable for a particular period (self assessment). The taxpayer files a declaration even when no profit was made (e.g. in the case of loss, overpayment or a VAT refund position). Only persons who are specifically exempted by tax laws are not required to file declarations.
A declaration is made by completing a form prepared by the tax administration. The period and form of declaration vary according to the type of tax.

The tax administration verifies the declaration when necessary (by audit or assessment by the tax administration).

2) Filing extensions

A taxpayer who can provide sufficient evidence of valid reasons relating to difficulties faced in filing the tax declaration on time, may address a request to tax authorities before the original filing date expires for an extension of the deadline for filing their tax declaration. The administration may consequently grant an extension of the deadline for filing the tax declaration. This extension neither affects the deadline for the tax payment nor suspends the accrual of interest payments[35].

C. BOOKS AND RECORD KEEPING

Any person who is required by the law to keep books and records is obliged to prepare, establish and retain them, for any period they may be required by the tax administration and at least for a period of 10 years, this period starting from January 1st, following the tax year in which the taxable transactions were carried out. Books and records are required to be kept in the premises of the taxpayer or any other place located within Rwanda[36].

D. AUDIT AND INVESTIGATION

The Tax Administration shall audit a taxpayer only once in respect of a certain tax or in a certain taxable period. A new audit may be necessary under one of the following circumstances[37]:

i) If the tax administration discovers new evidence not revealed during the first audit;

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[34] Art. 12and 13 of Commissioner General Rules n° 002/2007.
[35] Art. 16 of law n° 25/2005.
[36] Art. 12, 13 and 15 of law n° 25/2005.
[37] Art. 21 of the commissioner general rules n° 002/2007 of 15/06/2007.

ii) If there is evidence that the taxpayer and a tax auditor colluded to underestimate the tax;
iii) If the previous audit was based on forged documents;
iv) If the previous audit was a partial audit on a given issue and the tax administration now wishes to undertake a comprehensive audit.

Audit notice
In the case of audit, the tax Administration is required to inform the taxpayer in writing with the following information[38]:

i) Of the fact that the audit is to take place at least 7 days before it is due to be conducted. If the taxpayer is not ready in 7 days, they may then write to the tax administration requesting an extension. This extension should not exceed 15 days and cannot be extended further;
ii) the place where the audit is to be conducted and the possible duration of the audit;
iii) any specific document the tax administration wants to see or any specific information it requires.

In case of a **refund audit or an issue oriented audit**, the Tax Administration shall be required to inform the taxpayer in writing with the following information[39]:

1 Of the fact that the audit is to take place at least three (3) days before it is conducted;

2 Of the place where the audit is to be conducted and the possible duration of the audit;

3 Of any specific document the tax administration wants to see or any specific information it requires".

Place of audit and taxpayer's cooperation
In the case of an audit being undertaken, the taxpayer is required to cooperate with the tax audit team and provide the following[40]:

i) To provide the team with suitable premises;
ii) Too provide the audit team with the books and records referred to in Articles 12, 13 and 15 of law n° 25/2005 (dated 31st December 2008) on tax procedures.

Access to books and records
Upon the request of an authorized officer, the taxpayer is obliged to give access to books and records kept according to this Law, as well as all other related documents[41].

[38] Art. 20 (paragraph 1), of law n° 25/2005, as modified by art. 1 of law n° 74/2008 of 31/12/2008, in O. G nº 19 of
11/05/2009.
[39] Art. 2 of the law n°74/2008.
[40] Art. 20 (paragraph 2), of law n° 25/2005, as modified by art. 1 of law n° 74/2008.
[41] Art. 22 of law n° 25/2005.

Information given by the taxpayer
Information demanded in writing by the Tax Administration shall be provided to them within a period of 7 working days, beginning from the time that the taxpayer was informed, unless the taxpayer gives sufficient proof of the difficulties faced in preparing and delivering the requested information[42].

Information from third parties
On the written request of the Tax Administration, all public institutions are obliged to provide the tax officer with all the information required and to show all the original registers and other documents of certification of such institutions in their possession without transferring them outside their premises[43].

The Tax Administration has the right to obtain information from other persons in case there is a need to understand the structure and use of the property on the part of the taxpayer. In such cases, it shall send written questions which must be answered within a period of 15 days[44].

Entrance to premises[45]

i) Public premises

An authorized officer can visit and enter the public premises of the taxpayer or of any other person between 7:00 am and 6:00 pm, **without issuing any written notification**.

ii) Private premises

An authorized officer can also request to enter private buildings which are assumed to be business related. If the authorized officer desires access to private buildings or premises and permission is not given, a **search warrant** may be issued to the Tax Administration by the relevant Court authorities.

Corrective procedures
When the Tax Administration discovers a miscalculation, an omission, a misrepresentation, an understatement of income or any other error in a tax declaration or assessment, it has the right to issue an adjusted assessment.

i) Rectification note
In the case of the tax declaration form being rectified, the Tax Administration sends a rectification note to the taxpayer. The note contains a draft of the adjusted assessment and all the elements leading to the adjustment. The rectification note includes details of fines determined by the Tax Administration in the case of non-compliance with the relevant tax laws[46].

ii) Reaction of the taxpayer

[42] Art. 23 (paragraph 1) of law n° 25/2005.
[43] Art. 24 (paragraph 1) of law n° 25/2005.
[44] Art . 24 (paragraph 2) of law n° 25/2005.
[45] Art. 25 of law n° 25/2005.
[46] Art. 27 (paragraph 1) of law n° 25/2005 as modified and completed by article 3 of the law n°74/2008.

The taxpayer has the right to their written observations on the rectification note within 30 days. In their reply, the taxpayer may make a request for a hearing[47].
In the case of a **refund audit or an issue oriented audit** the taxpayer has the right to give their written opinion on the rectification note within 5 days[48].

iii) Burden of proof
In the case of any procedure bringing into question the validity of the taxpayer's submission, the burden of proof rests with the tax administration[49].

iv) Time limitations[50]
The rectification note may be issued within a period of 3 years, this time starting from the day of the filing of the tax declaration. A rectification note has to be issued by at the latest the last day of the 3 years period.

v) Non applicability of the time limitations
The time limitations on rectification notes do not apply if:

A) the taxpayer has been informed that they are to be audited by the Tax Administration within the time period and receive an appropriate **audit notice**;
B) there has been an a**ffidavit concerning a tax offence**.

Assessment procedure without notice
The Tax Administration starts an assessment procedure using estimates when[51]:

1 - no tax declaration has been made;
2 - a tax declaration was filed after the day mentioned in the Law on Taxes and there was no proof given of "force majeure" justifying the delay in filing;
3 - the tax declaration was not signed by a competent person;
4 - the tax declaration was not accompanied by all necessary documents;
5 - the taxpayer was unwilling to cooperate with a tax audit officer or did not provide the information requested;
6 - books and records were not kept as provided by law;
7 - there are serious indications of tax fraud".

i) Note of assessment without notice
In the event of an assessment being made without notice, the Tax Administration sends a note of assessment without notice to the taxpayer. The note contains all the reasons why the assessment without notice was conducted. It can also contain fines in instances of non-compliance with the tax law. All the evidence available to the Tax Administration can be used to carry out an assessment procedure without notice[52].

ii) Reaction of the taxpayer
The taxpayer has the right to give written observations and remarks to the note of an

[47] Art. 27 (paragraph 2) of law n° 25/2005 as modified and completed by article 3 of the law n°74/2008.
[48] Art. 4 of the law n°74/2008.
[49] Art. 44 of law n° 25/2005.
[50] Art. 27 (paragraph 3) of law n° 25/2005 as modified and completed by art. 3 of the law n°74/2008.
[51] Art. 28 of law n° 25/2005 as modified and completed by art. 5 of law n° 74/2008.
[52] Art. 29 (paragraph 1) of law n° 25/2005 as modified and completed by art. 6 of law n° 74/2008.

assessment without notice within a period of 30 days. In the reply, the taxpayer can make a request for a hearing[53].

iii) Burden of proof

In the case of an assessment procedure without notice, the burden of proof is with the taxpayer[54].

iv) Time limitations

An assessment without notice can be conducted within a period of 5 years, starting from January 1st following the tax period in question. A notice of assessment without notice has to be issued by at the latest the last day of 5 years period[55].

Immediate assessment without notice

If there are serious indications of tax fraud, the Tax Administration can issue an immediate assessment without notice[56].

Audit wind-up

An audit is concluded by a statement of audit signed by both the taxpayer and the auditor. The statement of audit describes the audit process, any errors discovered, and the books and documents which were not provided by the taxpayer during audit[57].

E. NOTICE OF ASSESSMENT[58]

A notice of assessment is issued when:

i) the taxpayer files the tax declaration and pays the tax due on time;
ii) the taxpayer files the tax declaration on time but has not paid the tax on time;
iii) the Tax Administration applies to the taxpayer after investigations and audit;
iv) there are serious indications that the possibilities for effective tax collection are in jeopardy, due to the financial position of the taxpayer or due to the taxpayer's intention of evading taxation.

The Tax Administration sends a copy of the notice of assessment to the taxpayer. The taxpayer pays the tax due within 7 days from the receipt of notice of assessment, unless the tax has already been paid.

The notice of assessment constitutes the full legal basis for the recovery of tax, interest, penalties and all costs incurred for collection.

F. INTEREST

1) Interest paid by the taxpayer

In the event the taxpayer fails to pay tax within the period set forth by the law, the taxpayer

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53 Art. 29 (paragraph 2) of law n° 25/2005 as modified and completed by art. 6 of law n° 74/2008.
54 Art. 45 of law n° 25/2005.
55 Art. 29 (paragraph 4) of law n° 25/2005 as modified and completed by art. 6 of law n° 74/2008.
56 Art. 29 (paragraph 5) of law n° 25/2005 as modified and completed by art. 6 of law n° 74/2008.
57 Art. 20 (paragraph 2) of law n° 25/2005 as modified and completed by art. 1 of law n° 74/2008.
58 Art. 18 of law n° 25/2005.

must pay interest on the amount of tax due. The interest rate is fixed at the interbank offered rate of the National Bank of Rwanda. Interest is calculated on a monthly basis. Every part-month involved will count as a complete month[59].

2) Interest paid by the tax administration[60]

In the event of the taxpayer being discharged from tax, interest and penalties by an administrative or Judicial decision, or when a refund of excess taxes paid is performed in the time prescribed by the law, the Tax Administration is required to pay interest on the refund due. The interest rate is calculated in accordance with the interbank offered rate of the National Bank of Rwanda and will be set for each current fiscal year with effect from January 1st. Interest is calculated on a daily basis.

G. FINES AND PENALTIES

1) Fixed amount fines

A taxpayer or any person is subject to a fine in case of failure to[61]:

- i) file a tax declaration on time;
- ii) file a withholding declaration on time;
- iii) withhold tax;
- iv) provide proofs required by the Tax Administration;
- v) cooperate with a tax audit;
- vi) communicate regarding their capacity or appointment within the time limits prescribed by the law;
- vii) register as prescribed by the law;
- viii) Keep books and records as provided by the law;
- ix) pay within the time limits any profit tax advance payments;
- x) comply with any requirements provided for in the tax laws governing:
  - A) personal income tax;
  - B) corporate income tax;
  - C) withholding taxes;
  - D) value added tax;
  - E) property tax on vehicles and boats.

The following table shows the fines that apply to any of the Violations outlined above[62].

Fine	Taxpayer's annual turnover
100,000 Rwf	≤ 20,000,000 Rwf
300,000 Rwf	> 20,000,000 Rwf
500,000 Rwf	"large taxpayer"[63]

[59] Art. 59 of law n° 25/2005.
[60] Art. 39 of law n° 25/2005.
[61] Art. 60 (paragraph 1) of law n° 25/2005 as modified and completed by art. 9 of law n° 74/2008.
[62] Art. 60 (paragraph 2) of law n° 25/2005 as modified and completed by art. 9 of law n° 74/2008.
[63] According to art. 2 (paragraph 2 (8°) of law n° 25/2005, **"Large taxpayer"** means any taxpayer who has been notified by Rwanda Revenue Authority that he or she is registered among large taxpayers following the directives of the Commissioner General.

If the same violation is committed twice within 5 years, the fine is double the original. If the same violation is committed again within this 5 year period, the fine is four times the original[64].

2) Late payment fine

If the amount of tax shown on a tax declaration or the amount of tax which is the result of an adjusted assessment by the Tax Administration is not paid on time, the taxpayer is subject to a fine that is 10% of the tax payable. The taxpayer is not subject to this fine if an extension for filing the tax declaration has been granted. The late payment penalty applies to the principal tax payment only (it does not apply to any administrative fines and interest payments)[65].

3) Understatement fines

The following table summarizes understatement fines[66].

Fine	**Understatement %**
5% of the understated amount	understatement ≥ 5% but < 10 % of the tax liability
10% of the understated amount	understatement ≥ 10% but < 20 % of the tax liability
20% of the understated amount	understatement ≥ 20% but < 50 % of the tax liability
50% of the understated amount	understatement = 50% or more

A taxpayer who rectifies the tax declaration before being given notice of an imminent control procedure, is not subject to the understatement fines.

4) Value added tax violations

The following administrative fines are imposed on persons who do not comply with the legal provisions regarding Value Added Tax[67]:

Fine	**Violation**
50% of the amount of VAT payable for the entire period of operation	operation without VAT registration
100% of the amount of VAT for the invoice or on the transaction involved	i) incorrect issuance of a VAT invoice resulting in: A) a decrease in the amount of VAT payable; B) an increase of the VAT input. ii) failure to issue a VAT invoice
i) pay the VAT as indicated on invoice; ii) 100% of VAT indicated on the invoice	issuing a VAT invoice by a person who is not registered for VAT

[64] Art. 60 (paragraph 3) of law n° 25/2005 as modified and completed by art. 9 of law n° 74/2008.
[65] Art. 61 of law n° 25/2005.
[66] Art. 62 of law n° 25/2005 as modified and completed by art. 10 of law n° 74/2008.
[67] Art. 63 of law n° 25/2005 as modified and completed by art. 11 of law n° 74/2008.

5) Tax fraud[68]

i) Administrative fine

A taxpayer who commits fraud is subject to an administrative fine of 100% of the evaded tax.

ii) Imprisonment (imposed by a competent court)

If the taxpayer voluntarily evades tax, using false accounts, falsified documents or any other act punishable by law an investigation will be undertaken. The Tax Administration will refer the case to the Prosecution service. In the case of a subsequent conviction, the taxpayer can be imprisoned for a period of between 6 months and 2 years.

6) Withholding taxes violations

i) Failure to withhold a tax

A withholding agent, who fails to withhold a tax, is personally liable to pay the amount of tax which has not been withheld including penalties and interests on arrears.
However, the agent is entitled to recover this amount from the payee, though this amount excludes any associated fines and any interests on arrears[69].

ii) Failure to pay tax withheld[70]

Administrative fine

A person, who intentionally fails to deliver the tax withheld to the Tax Administration, is subject to a fine of 100% of the unpaid tax.

Imprisonment (imposed by a competent court)

In addition to the administrative fine, the Tax Administration may refer the case to the Prosecution service. In the case of a subsequent conviction, the taxpayer can be imprisoned for a period of between 3 months and 2 years.

7) Additional penalties

Any person who commits the above mentioned tax offences may be subject to the following additional sanctions[71]:

Additional penalties pronounced by the Commissioner General:

A) The closure of business activities for a period of 30 days;
B) The sentence may be published in national newspapers.

[68] Art. 64 of law n° 25/2005 as modified and completed by art. 12 of law n° 74/2008.
[69] Art. 53 (paragraph 1) of law n° 16/2005.
[70] Art. 65 of law n° 25/2005 as modified and completed by art. 13 of law n° 74/2008.
[71] Art. 67 of law n° 25/2005.

Additional penalties pronounced by a competent court (in accordance with the gravity of the offence):

A) The guilty party may be barred from bidding for public tenders;
B) The individual may be withdrawn from the business register.

8) Tax fraud[72]

iii) Administrative fine

A taxpayer who commits fraud is subject to an administrative fine of 100% of the evaded tax.

iv) Imprisonment (imposed by a competent court)

If the taxpayer voluntarily evades tax, using false accounts, falsified documents or any other act punishable by law an investigation will be undertaken. The Tax Administration will refer the case to the Prosecution service. In the case of a subsequent conviction, the taxpayer can be imprisoned for a period of between 6 months and 2 years.

9) Withholding taxes violations

iii) Failure to withhold a tax

A withholding agent, who fails to withhold a tax, is personally liable to pay the amount of tax which has not been withheld including penalties and interests on arrears. However, the agent is entitled to recover this amount from the payee, though this amount excludes any associated fines and any interests on arrears[73].

iv) Failure to pay tax withheld[74]

Administrative fine
A person, who intentionally fails to deliver the tax withheld to the Tax Administration, is subject to a fine of 100% of the unpaid tax.

Imprisonment (imposed by a competent court)
In addition to the administrative fine, the Tax Administration may refer the case to the Prosecution service. In the case of a subsequent conviction, the taxpayer can be imprisoned for a period of between 3 months and 2 years.

10) Additional penalties

Any person who commits the above mentioned tax offences may be subject to the following additional sanctions[75]:

[72] Art. 64 of law n° 25/2005 as modified and completed by art. 12 of law n° 74/2008.
[73] Art. 53 (paragraph 1) of law n° 16/2005.
[74] Art. 65 of law n° 25/2005 as modified and completed by art. 13 of law n° 74/2008.
[75] Art. 67 of law n° 25/2005.

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A) The closure of business activities for a period of 30 days;
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Additional penalties pronounced by a competent court (in accordance with the gravity of the offence):

A) The guilty party may be barred from bidding for public tenders;
B) The individual may be withdrawn from the business register.

H. TAX RECOVERY

1) Warning

If the taxpayer does not pay the tax due within 7 days after receiving the notice of assessment, the Tax Administration sends a warning letter, indicating the amount of tax, interest and penalties to be paid and the legal action that will follow if the tax, interest and penalties are not paid within 15 days from the delivery of the warning letter. The 15-day period may be ignored in the case that there is a risk of being unable to collect tax.[76].

2) Seizure and public auction

When tax is not paid within 15 days, the Tax Administration can seize any movable or immovable property of the taxpayer, whether this is held by the taxpayer or any other person. The property seized is sold by public auction within 8 days of the taxpayer being notified by the affidavit[77].

3) Third parties

If a tax is not paid within fifteen (15) days, the Tax Administration may require any debtors, bankers and other persons in possession of a taxpayer's funds to pay the amount due to the taxpayer. This payment will be offset against the taxpayer's tax liability[78].

4) Liability for subcontractors

A taxpayer who subcontracts with another person other than a regular employee in whatever capacity is required to inform the Tax Administration in writing within 7 days from the time that the subcontract is signed. Such information must be accompanied by a copy of the sub-contract made between the two parties. A taxpayer who fails to do so is liable to pay all taxes due from the sub-contractor[79].

5) Guarantees of the Public Treasury

i) Priority rights

[76] Art. 46 (paragraph 1) of law n° 25/2005.
[77] Art. 48 (paragraph 1) of law n° 25/2005.
+[78] Art. 49 (paragraph 1) of law n° 25/2005 as modified and completed by art. 8 of law n° 74/2008.
[79] Art. 55 of law n° 25/2005.

Tax debts have priority over other debts when a taxpayer has been declared insolvent[80].

ii) **Special lien**

The Tax Administration holds a lien on the income and all the movable property of the taxpayer, wherever it may be located, for the recovery of tax, interest, fines and other costs due as a result of the collection process[81].

iii) **Legal mortgage**

The Tax Administration holds a legal mortgage on the immovable property of the taxpayer, wherever it may be located, for the recovery of tax, interest, fines and costs due as a result of the collection process[82].

6) Payment in instalments

The taxpayer may apply to the Commissioner General to make payment in instalments in the period over which instalments are paid cannot exceed one year. The subsequent failure of the taxpayer to pay under the conditions of the instalment plan results in an immediate obligation to pay the remaining amount due[83].

7) Waive of tax liability

The taxpayer can apply in writing for a waiver of tax liability, interest on late payments and administrative fines in the case of substantial hardships facing the taxpayer that indicate an inability to clear the tax liability. However, a waiver cannot be granted to persons who are proved to have commit offences regarding the understatement or evasion of taxes[84].

The waiver is applied for in the note sent to the Commissioner General. If the tax administration finds that the request of the taxpayer is based on reasonable grounds, it makes a report to the Minister of Finance. This report is transmitted to the Cabinet so that a decision may be made[85].

8) Time limitations

When taxes are not paid within a period of 10 years starting from the time that it was due, the tax cannot be paid[86].

[80] Art. 50 of law n° 25/2005.
[81] Art. 51 of law n° 25/2005.
[82] Art. 52 of law n° 25/2005.
[83] Art. 47 of law n° 25/2005.
[84] Art. 69 (paragraph 1) of law n° 25/2005.
[85] Art. 69 (paragraph 2) of law n° 25/2005.
[86] Art. 46 (paragraph 1) of law n° 25/2005.

I. DISPUTES RESOLUTION

1) Administrative appeal[87]

A taxpayer who is not satisfied with the contents of their tax assessment notice may appeal in writing to the Commissioner General within 30 days of receipt of the assessment notice.

The Commissioner General makes a decision on the appeal within a period of 30 days. The Commissioner General may extend this period for another 30 days and inform the taxpayer accordingly. When no decision is taken within this period, the appeal is assumed to have a reasonable basis. The appeal does not suspend the obligation to pay tax, interest and penalties. Upon written request by the taxpayer, the Commissioner General can suspend payment of the disputed amount of tax for the duration of the appeal.

2) Judicial appeal

A taxpayer who is dissatisfied with the decision of the Commissioner General can make a judicial appeal before a competent court (commercial courts) within 30 days of the receipt of the Commissioner General's decision[88].

[87] Arts 30, 31 and 32 of law n° 25/2005.

[88] Art. 38 of law n° 25/2005 as modified and completed by art. 7 of law n° 74/2008.