

TAX ALERT

**Taxation of Independent Consultants - Implications of
Fixed and Ascertainable Fee Arrangements**



A Review of Infectious Diseases Institute v. Uganda Revenue Authority, High Court Civil Appeal No. 006 of 2022 in relation to the tax implications of paying fixed and ascertainable fees to Independent Consultants.

Introduction

On October 25, 2024, the Commercial Court of Uganda, presided over by Hon. Justice Ocaya Thomas O.R., delivered a landmark judgment in the case of *Infectious Diseases Institute v. Uganda Revenue Authority*, High Court Civil Appeal No. 006 of 2022.

This case addressed the interpretation of employment for tax purposes, specifically examining whether a person engaged under a fixed or ascertainable fee arrangement qualifies as an employee for tax purposes, regardless of classification under the Employment Act.

The ruling clarifies a critical tax issue surrounding whether independent consultants, retained on fixed fee terms, are considered employees for tax purposes.

Case Background

In 2012, the Uganda Revenue Authority (Respondent) conducted a tax compliance audit on the Infectious Diseases Institute (Appellant), resulting in a Pay As You Earn (PAYE) assessment of UGX 185,200,728. The Appellant contested this assessment, arguing that the individuals in question were independent consultants engaged on specific projects and therefore did not qualify as employees for tax purposes.

The Appellant subsequently challenged the PAYE assessment before the Tax Appeals Tribunal (TAT) Application No 15 of 2019, arguing that the assessed individuals did not meet the legal definition of employees.

The TAT, referencing section 2(z)(iii) of the Income Tax Act as amended, determined that individuals engaged on a fixed or ascertainable remuneration for two months and above are considered as employees for tax purposes and held that some of the Appellant Consultants were subject to PAYE.

Dissatisfied with the TAT's decision, the Appellant appealed to the High Court to seek guidance on the interpretation of section 2(z) of the Income Tax Act, specifically on whether receiving a fixed and ascertainable fee qualifies one as an employee for tax purposes

Main Grounds of Appeal

1. The TAT misapplied the principles in Section 2(z) of the Income Tax Act in relation to the consultants, thereby erring in law and reaching an incorrect conclusion.
2. The Tax Appeals Tribunal misapplied the principle/tests for determining the existence of the employment relationship, thereby erring in law and reaching the wrong conclusions.
3. The Tax Appeals Tribunal erred in law when it failed to evaluate all the evidence before it in the application thereby reaching the wrong conclusions

Ruling

- There are three factors that should be considered to determine whether an individual engaged on a fixed and ascertainable fee qualifies as an employee as detailed below;

- a) **Permanency of Position:** Does the individual occupy a role within the organization that implies a long-term employment relationship rather than a consultancy?
- b) **Fixed or Ascertainable Remuneration:** Is the individual entitled to a defined or predictable level of pay?
- c) **Degree of Permanency in Entitlement:** Is there a degree of permanency to the individual's entitlement to this remuneration?

The above factors should be considered in totality and not in isolation. For instance, an individual who receives a fixed income for one month and meets the other criteria may qualify as an employee, whereas someone with a five-year fixed payment lacking the other two criteria may not be considered an employee.

- In determining the existence of an employment relationship, consideration must be given to three tests: the control test, the business integration test, and the mixed method test. Other principles include the existence of an agreement to provide labor in exchange for wages, where the agreement subjects the employee to a sufficient degree of control and where other terms or conditions of the agreement are consistent with employment
- Based on the information on record, the court held that the relationship between the Appellant and its Consultants was consistent with the consultancy relationship and not an employment relationship.
- In conclusion, the Court held that the Appellant was not obliged to pay UGX 185,200,728 (and any penalties and interest thereon) as assessed by the Respondent.

Significance

- This ruling clarifies that the payment of a fixed and ascertainable fee to an independent consultant does not classify them as employees for tax purposes. It emphasizes that additional factors such as the permanency of the position and the degree of permanence of the remuneration must be considered during the assessment
- We note that URA has not filed a notice of appeal against the decision. However, the High court's decision represents the position of the law until otherwise altered by a higher court.

For more information, contact



Eva Kulabako Nalubowa

Corporate Finance & Tax Lawyer

enalubowa@jrkadvisory.com

JRK LEGAL AND FINANCIAL ADVISORY SERVICES

- Corporate finance
- Business structuring
- Banking and finance
- Project finance
- Employment
- Corporate Governance
- Tax
- Real estate advisory
- Company secretarial
- Dispute resolution
- ESG
- JRK Academy



Address

4th Floor, Padre Pio House
Plot 32 Lumumba Avenue, Nakasero
P.O Box 168076, Kampala

Contact us

For inquiries email or call us
(+256)766901630
info@jrkadvisory.com
<https://jrkadvisory.com/>