Understanding How Value Added Tax (VAT) is Applied in the Democratic Republic of Congo

Tshibola Aimee Murphie Lubeshi
student of Department of Legal Regulation of Economic Activities
Financial University
Onyxialokoto@gmail.com

Abstract. This article discusses the tax reform in the DRC with respect to value added tax, which has replaced the sales tax, otherwise known as turnover tax. The author highlights the advantages and disadvantages of VAT from the point of view of different opinions.
Keywords: value added tax; sales tax.

Вопросы применения НДС в Демократической Республике Конго

Тчибола Эйми Мурфи Лубеши
студентка Департамент правового регулирования экономической деятельности
Финансовый университет
Onyxialokoto@gmail.com

Аннотация. В статье представлены результаты налоговой реформы в Демократической Республике Конго с учетом введения НДС вместо налога с продаж. Автор рассмотрел выгоды и недостатки от введения НДС на фоне различных мнений по этому вопросу.
Ключевые слова: НДС; налог с продаж.

From a theoretical point of view, the main objective of the tax system through the introduction of taxes is to provide revenue to the State to finance public expenditure by avoiding the use of inflationary financing. It is therefore important that the tax system generate revenue growth without the need for frequent changes in tax rates or the creation of new taxes.

On the other hand, in a world undergoing rapid change and liberalization, most countries, including the Democratic Republic of the Congo, have embarked on actions to widen the various components of their fiscal space. Thus, with a view to increasing the level of their tax revenues and reducing tax distortions due inter alia to fraud, invasion and multiple exemptions, they have implemented tax reforms and modernized the tax administration, with the introduction of value added tax, of which the latter constitutes a major element of the reform.

VALUE ADDED TAX [VAT] IN THE DEMOCRATIC REPUBLIC OF CONGO [DRC]: DEVELOPMENT AND RATE

Almost unknown in 1960, the value added tax (VAT) is now found in more than 130 countries, raises around 20 percent of the world's tax revenue[1], and has been the centerpiece of tax reform in many developing countries including the Democratic Republic of Congo.

VAT (*Taxe sur la valeur ajoutée* — TVA) is a consumption tax paid on certain goods and services purchased in the Democratic Republic of Congo

[1] Michael Keen and Ben Lockwood, The Value Added Tax: Its Causes and Consequences, May, 2007.

(DRC) and is included in the sale price of these goods and services.

In August 2010, The President of the Republic signed a decree replacing the sales tax "Impôt sur le chiffre d'Affaires" (ICA) with a value-added tax (VAT), which was introduced on January 1, 2012[2].

The standard rate of value added tax in the DRC is 16 percent.

THE VAT POPULARITY VS UNPOPULARITY DISCOURSE IN THE DRC

In the DRC, the value added tax (VAT) is imposed on all types of general consumption. In other words, the VAT applies to all supplies of goods and services and importation of goods and services.

VAT is popular for some reasons as compared to sales tax.

In practice, VAT is likely to generate more revenue for government than sales tax since it is administered on various stages on the production — distribution chain. With sales tax, if final sales are not covered by the tax system e.g. due to difficulty of covering all the retailers, particular commodities may not yield any tax. However, with VAT some revenue would have been collected through taxation of earlier transactions, even if final retailers evade the tax net.

There is also in-built pressure for compliance and auditing under VAT since it will be in the interest of all who pay taxes to ensure that their eligibility for tax credits can be demonstrated. VAT is also a fairer tax than sales tax as it minimizes or eliminates the problem of tax cascading, which often occurs with sales tax. These are facilitated by the fact that VAT operates through a credit system so that tax is only applied on value added at each stage in the production-distribution chain.

At each intermediate stage, credit will be given for taxes paid on purchases to set against taxes due on sales. Only at consumption, stage where there are no further transactions will there be no tax credits.

Lack of input credit facility in sales tax often results in tax on inputs becoming a cost to businesses, which are often passed on to consumers. Sales tax is often applied again to the sales tax element of the cost, thus there is a problem of tax on tax. This is not the case with VAT, which makes it a neutral tax as it provides the least disturbance to patterns of production and the generation and use of income.

In addition, the audit trail that exists under the VAT system makes it a more effective tax in administration terms than sales tax as it helps with the verification of VAT amounts declared as due. This is made possible by the fact that one person's output is another's input. As with sales tax, imports are treated the same way as local goods while exports are zero-rated to avoid anti-export bias.

There is also another major advantage of value added tax is that under this system all traders are dealt equally. Well applied, it also involves minimum distortionary effects on economic activities. Could this be the case in the DRC?

Fears and unpopularity of VAT in the DRC

Notwithstanding the advantages mentioned above, it is worth noting that VAT is a considerably complex tax to administer compared with sales tax. With the size of the DRC and the lack of infrastructures, it may be difficult to apply to some companies and other informal businesses due to difficulties of record keeping and its coverage in some areas and services sector may be limited.

Since the application of the VAT in DRC dated 1st January 2012, the equity impact of the relatively high rates have been a cause for concern as it is possible that the poor spend relatively high proportions of their incomes on goods subject to VAT. In this regard, one could affirm that related to income VAT is therefore regressive.

This is true as when someone with an income of 100 buys a basket of goods on which a VAT of 16 is levied, 16% of his/her income goes to VAT. If someone with an income of 1000 buys, the same basket the percentage of income going to VAT is only 1.6%.

As demonstrated, a uniform VAT rate on all goods and services is regressive when related to income and there is need to think how to reduce rates in the DRC in order to decrease the regressive effect of VAT on income. To reduce this regressively we can suggest introducing the dual rate system in the DRC. With that, goods and services

[2] Ordonnance — loi n° 10/001 du 20 août 2010 portant institution de la taxe sur la valeur ajoutée.

that are relatively important for the lower income categories should be subjected to a reduced VAT rate. Therefore, there is a certain basket of goods and services subjected to a standard VAT rate and a basket subjected to a reduced rate.

THE VAT HIGHLIGHTS IN THE DRC

In fact, for the first time, VAT has been introduced to the DRC. Since the 1st January 2012, value added tax, has replaced the old sales tax, known as ICA.

Taxable transactions — VAT applies as from February 2012.

VAT is levied on the supply of goods and services and on the importation of goods and services into the DRC.

Rates — 16%

Registration — Registration for is compulsory for all persons (business or individual) that are liable to tax.

Registration must take place within 15 days following commencement of a business.

Filing and payment — VAT returns and related payments are due by the 15th day of the following month.

PROBLEM OF THE APPLICATION OF THE TAX ON THE VALUE ADDED

The implementation of the tax on added value, 1St January 2012, occurred in an indescribable cacophony and caused overheating of prices of goods and services markets. Kinshasa within the country, you are in the situation of an airplane falling apart: crew (Government) manipulates the controls to try to straighten it out, but no maneuver is effective until then.

On the theoretical level, the tax system through the introduction of taxes and fees main purpose is to raise revenue for the State to fund public spending, avoiding him to have recourse to inflationary financing. It is important that the tax system produce an expansion of revenues without having to frequently change the tax rates or create new taxes.

Moreover, in a world in perpetual change and strongly advanced liberalization, most countries, including the Democratic Republic of the Congo, engaged in actions to expand the different components of fiscal space. Thus, in order to enhance the level of their tax revenue and reduce tax distortions, among other things, fraud, invasion and multiple exemptions granted; they have implemented tax reforms and modernized the administration of the tax, with the introduction of the tax on the added value, the latter constitutes a major element of the reform.

The value added tax (VAT) is part of the tax reform that the country launched there a decade ago, either from 2002 to 2012. The value added tax is a tax that is based on the set of final domestic consumption and not on the intermediate consumption (this is to avoid the accumulation of tax at the various stages of production and distribution) or on exports, and it must also be independent of the origin of the products (foreign or domestic)[3].

In the Democratic Republic of Congo, faced the difficulty to mobilize direct taxes, and in the face of the pressure exerted by economic operators, the Congolese authorities were brought to abandon the tax on the turnover (ICA) to the benefit of the value added tax and excise duty. Taxes deemed economically more neutral than the tax on the turnover considered more prohibitive and whose negative impact on the investment and the economic development of the country remain proven.

In addition, given the low level of the staff with paid work nearly 5 million, according to the Government, a relatively easy direct taxation is possible, coupled with a limited number of undertakings on which income tax is concentrated, opposed to employers in the informal sector (yet some are largely above the thresholds of taxation and who manage to evade tax on profits and other largely which they owe).

The Congolese authorities, due to multiple constraints and difficulties of application of direct taxes, have been forced to use, on the one hand, direct taxation based on the introduction of the tax the tax on income of individuals and corporations. And on the other hand, indirect tax by the replacement of the tax on the turnover by the tax on the value added.

Indeed, according to the tax administration, the indirect tax reform aims, among others:

i. to substantially increase the level of tax revenues. However, it should be noted that this increase is possible only by making companies, persons or physical, to a real tax system. This scheme is based on the apprehension of the actual accounting stream. According to G. Chambras[4], it is a necessary

[3] Tayaye Fafay, Handbook of science and technology tax, CRIGED, Kinshasa, 2005.

[4] Chambas (G), Tax and development in sub-Saharan Africa, Economica, Paris, 1994.

condition for the VAT liability, liability which is for the State to entrust the collection of VAT subject taxpayers. It should be noted, however, that this does not mean that the State can get, by tax, unlimited resources. Because too great a tax burden harms the effectiveness of the system by encouraging fraud and evasion and distorting the structure of relative prices in the economy. Which is to say, to be efficient, a tax system or a tax it must have less impact on prices related and must therefore leave unchanged the allocation of resources. In practice, efficiency means you will be charged tax on a plate as wide as possible and quite low and uniform rates. Which will enhance the fairness, because in this case, the tax has been perceived in a manner fair and equitable;

ii. to attract investment and boost domestic production. This second objective is only possible if the total or even partial VAT application does not lead to taxing producers but rather, as is also its purpose, to tax only the final consumption; to drain the informal activities into the formal sector. Contrary to the tax authorities, the application of VAT does not lead automatically and necessarily to a drainage of informal activities into the sector structured. Where, it seems, for our part, that the taxation of the informal activities should not be done by the application of VAT but rather by the implementation of a synthetic patent index, which the amount would be determined on the basis of objective indicia of the level of activity, without reference to the turnover. The selected indexes should be simple, small and easy to locate. The simplicity of this patent would facilitate comprehension by taxpayers and should be considered as part of a tax provincial or local, as is also the constitution. In addition, the low economic result of informal activities, their number, their dispersion on the national territory as well as their inability to keep accounts would make it irrational to affect expensive administrative means to mobilize direct taxes from a low amount per unit. Moreover, through their purchases of inputs, equipment and various inputs, activities or small informal businesses productions or even marketing, can bear the VAT that strain their purchases permanently. The VAT, which would correspond to the added value of these micro-enterprises or activities, would not be collected but it would make little sense, we believe, to consider to involve the shortfall, because most of these informal activities are below the threshold of liability and cannot in any case constitute reliable tax collectors and especially that in the majority of cases These activities are those of subsistence. Moreover, as stipulated in the enforcement of law No. 10/001 of August 20, 2010, to be taxable to VAT, the person must realize an annual turnover of at least 80 million Congolese Francs, or more than 85 thousand dollars. Except, on the one hand, members of the liberal professions which are taxable, regardless of the height of the turnover achieved annual and to imports which are taxable to VAT, regardless of the value of the imported goods.

iii. This reform will facilitate the harmonization of indirect taxation in the context of the subregional groupings.

In addition, by its vocation, VAT is applied by any physical or legal person who performs, independently and as expensive, deliveries of goods and the provision of services by acting as such. According to the provisions of the legislative order No. 10/001 of 20 August 2010; shall act independently, any person who operates under his own responsibility and enjoys complete freedom in the Organization and execution of the operations which it carries out. The law adds: is made for valuable consideration, any operation that involves the existence of a consideration, only whatever the nature or the aims or for-profit, profit or loss.

Of all the above, and pursuant to the principle of territoriality of VAT, it applies, first, on the operation of delivery of goods or any other operation to transfer at a third of the power to use a property as owner when the property in question is located on the national territory at the time of the sale. Then, VAT applies also on the real estate work, when they are carried out in the country. And finally, it applies in terms of the provision of services, when it is rendered, the transferred right the rental object is used or operated in the country.

In summary, the VAT is a general tax on consumption which strikes[5]:

- the supply of goods,
- the provision of services of any kind,
- deliveries of goods and services for oneself,
- imports and,
- exports.

[5] Bifumanu Nsompi (D), The current DRC tax reforms, Luozi Academic Press, 2006.

PROCEDURE OF COLLECTION OF VAT

According to the procedure established by Parliament, the VAT is collected at every stage of the economic cycle (i.e., at the level of producer, wholesaler, the retailers, or the retailer) the taxable person physical or legal person who makes deliveries of goods or the provision of services for its customers and calculates, on this occasion, the VAT on the price of duty-free sales called output tax.

Moreover, if it is on the occasion of the purchases of the goods supplied or received benefits, suppliers demand the price, including VAT, called deductible VAT, at the end of the month, the taxable person total output tax and input tax and, if necessary, reverse the Net VAT.

At this stage, three situations can arise:

(i) the output tax is greater than input tax, the difference that emerges is the VAT to be paid to the State Treasury,

(ii) is, the output tax turns out to be lower than the deductible, in this case, it will be cleared a VAT credit. This VAT credit is charged to statements of the month or the following months until exhaustion or refund provided for by law. It should be noted a few exceptions related to the refund of VAT to a taxable person. The case of refund may be either on a company that loses its quality liable to pay, or cessation of activity or is still, to an exporter.

(iii) when the output tax is equal to the deductible VAT, no tax is payable. Although this tax is ideal for the DRC, its launch was chaotic.

LONG PREPARATION PROCESS BUT CHAOTIC LAUNCH

The process of implementation of the tax on added value, in the Democratic Republic of the Congo, has been long, ten years. Despite the duration that the process has taken, he is very curious and surprising if not sickening to see the chaotic implementation of this tax on January 1St of the current year.

Indeed, as indicated in the work of Professor Kola[6], it is since 2002, more exactly since May 2003 that the Congolese authorities have implemented, within the General Tax Directorate, a "Commission of reflection" called "Project-VAT group" for the reform of indirect taxes for the substitution of the tax on the turnover by value added tax. This Commission was responsible for the draft texts before giving birth to the tax on the value added to the Congo from January 2007.

At the end of the three years of intense work of reflection, or in 2006, the Commission presented a draft law on institution of the VAT in the Democratic Republic of the Congo.

In the same year, the Directorate General of taxes will transmit this draft, for possible critical and observations, at the University of Kinshasa, Lubumbashi, the higher Institute of commerce and the business world. A year later, a technical Committee of follow-up of the implementation of the VAT in the Democratic Republic of the Congo, under the direct authority of the Minister of finance will be. It was composed essentially of representatives of the Presidency of the Republic, the Prime Minister, the ministries and the world of business (represented by delegates from the FEC, ANEP and COPEMECO). The observations provided by the different delegates helped to significantly improve the draft. The year of 2009, a Bill will be tabled in Parliament.

At the end of the parliamentary review of the project, June 4, 2010, the Senate had conducted review and adoption at first reading. Two weeks later, is June 23, 2010, it was enacted the enabling Act of the Government to take the legislative order bearing institution of VAT. And a month after, on August 20, 2010, the president of the Republic had signed the order-law no 10/001 August 20, 2010, with imposition of VAT in the Democratic Republic of the Congo. At the end of the process, a draft ratification bill will be tabled in Parliament on January 14, 2011 and voted June 15, 2011 and finally consider the implementation of VAT on the 1St January 2012.

As we can all notice, it took a decade of reflection and procedures to finally launch the VAT. But alas, all this time did he to the extension or the awareness of public opinion to understand and be understood, what is VAT? And what is more beneficial than the tax on the turnover? The branch tax, in its communication plan and strategy awareness and launch joined only two axes. The first axis, the administrations and the ministries of finance, economy, services-oriented portfolio, etc. and the second turned to (indebted) economic operators through tax mornings and a few rare programs broadcast. Forgetting altogether, taxpayers are consumers (people) judged too "amnesia" to pronounce on crucial issues affecting their fate (sic). This strategy of the

[6] Kola Guy, Tax law, course 1era Licence, Faculty of law, UNIKIN, 2005–2006.

Directorate-General of taxes has produced, actually, the result at which it was to be expected.

In comparison, how do not understand that the Central Bank of the Congo to launch the Congolese Franc, she took a year to information, awareness and training of the public. She has, in fact, similarly to sensitize public opinion to respect and good held its national currency.

The chaos created by the launch of the VAT, as if this event was away from the actions of some of us, defies the imagination! Fortunately, the Government has learned quickly retrieve the situation by specifying that:

i. the application of VAT is allowed to persons meeting the criteria of coverage,

ii. ban on any increase of prices exclusive of VAT without a change of one or several elements of cost,

iii. the application of VAT to all the economic operators whose turnover is estimated at a minimum of 80 million francs previously registered to the Directorate-General of taxes and Congolese.

iv. The temporarily exempt products listing, (milk, bread, and food for children, etc.). Besides, according to the VAT Act, exemptions are restrictive, of strict application and are of three types:

- exemptions to social and cultural,
- pure technical tax exemptions and
- exemptions from sovereignty.

Thus, the liability of economic operators to the VAT assumed previously:

(i) the subscription of the declaration of liability to VAT,

(ii) the subscription to the monthly declaration of VAT, no later than the 15th of each month,

(iii) held a regular accounting, and

(iv) the issuance of invoices for all the operations performed, etc.

SOCIAL EFFECTS OF THE APPLICATION OF VAT

Although the objectives pursued by the Government in introducing the VAT are noble, that is, to increase tax revenues by more than 40% to fund programs of reconstruction, modernization and social such as improving income of public servants of the State and the budget in health spending, education of the order of 2–5%, etc.; this legitimate concern for maximizing revenue should not overshadow, on the one hand, the social effects that the chaotic implementation of the VAT has been able to impose on the daily lives of the population and on the other hand, the promise of the authority to make his second term, the social.

Note for example the behavior of certain economic operators who characterized by disobedience and misapplication in the legislative order No. 10/001 August 20, 2010, with imposition of VAT in the Democratic Republic of the Congo; behavior characterized by concomitant application of the case (now deleted) and VAT tax in the sale price, causing a double taxation which caused a surge in prices, supported unfortunately by the Congolese consumer.

This misinterpretation of the law, on the part of the operators can be explained, all things being equal, by the weakness of the repressive regime, considered too lax, and by the failure of price control structures, likely to encourage the diversion of revenue from the application of the VAT to the benefit of economic operators and some corrupt State officials.

In conclusion, for a tax reform to be effective and accepted by taxpayers, it should engage, not only of the authorities and public administration, but also that of the economic operators as well as taxpayers who are affected by the reform. This allows to eradicate any reaction of rejection of the reform on the part of taxpayers and a special care for the management of the reform on the part of the authorities of the tax administration. To its success from the outset a coherent strategy by setting a schedule to follow and a total and comprehensive awareness-extension.

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