CORPORATE TAXATION AND EMERGING GLOBAL TRENDS

Dr. Pie HABIMANA
(PhD, LLM, LLB, PGDLP, PGCLTHE, MCIArb)
Senior Lecturer & V/Dean School of Law, Univ. Rwanda
Partner, Amilex Chambers

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Preliminaries

1. Introduction
2. Theories of tax base
3. Income tax (PIT, CIT)
4. Corporate taxation
5. Emerging global trends in corporate taxation

Theories of tax base

- Tax base
  - Distinction btw tax base, taxable object, taxable value, taxpayer
- Types of tax base
  - income
  - consumption/expenditure
  - wealthy/property
- Theory of tax base mobility

- Income tax: PIT or CIT

Sources of taxable income (art. 6)

- Services and employment
- Activities of a crafts person, singer, artist and a player
- Sports, cultural and leisure activities
- Activities carried out by a non-resident in Rda thru permanent establishment
- Use, sale, lease and free transfer of business movable assets
- Sale, lease and free transfer of immovable assets allocated to the business
- Agricultural, fishing and forestry activities
- Usufruct and other rights attached to immovable assets and their sale if such rights are allocated to the business
- Investment in shares of companies
- Direct or indirect sale or transfer of shares or debentures
- Change of profits into shares that increases the capital of partners, except for financial institution with paid-up capital below the minimum requirement set by BNR
- Distribution of profits among partners
- Lending, deposits and other similar income-generating activities
- Transfer, sale and lease of IP
- Digital services
- Gaming activities
- Any other income generating activity

Note: all payments made by a resident of Rda on services performed abroad, other than those consumed abroad, constitute a taxable income.

PIT

- Tax base: individual income
  - Resident: on domestic and foreign source
  - Non-resident: source in Rda
- Tax rate
  - Flat for micro-enterprises (< 12M): 2-4M: 60K; 4-7M: 120K; 7-10M: 210K; 10-12M: 300K
  - Transport of persons/goods:
    - minibus of 8 places: 96K >>> bus of 40 places: 480K
    - Loading capacity 1 ton: 60K >>> 30 tons: 2,340K
    - Car (taxi): 88,2K; motorcycles: 72K; bulldozers: 780K; etc.
  - Lumpsum for small enterprise (12-20M): 3%
  - Real regime: progressive 0%, 10%, 20%, 30%
  - Liberal profession: real regime mandatory
- Declaration and payment
  - 31 March of the following year
  - Quarterly pre-payments
  - Required threshold: certification of financial statement
- Exemptions: agri-livestock < 12M
- Deductible expenses
  - Conditions: art. 24
  - Non-deductible: art. 25
- Depreciation: art. 27
- Bad debts
- Loss carried forward
  - Arrears or future obligations
  - Return upon request
- Foreign tax credit

Corporate Income Tax (CIT)

Tax base: income of companies; cooperatives; state-owned companies; trustee, enforcer or protector of a trust; foundation; protected cell company, non-resident with PE; association/entity making profit

Exemptions: GoR; CoK; district; NBR; humanitarian, charitable, scientific, educational except for their excess or if they conduct business; int'l organisations/agencies of technical cooperation with agreement; social security public institutions; BRD; Agaciro; BDF; SPV except for excess; etc.

Tax rate: standard rate (30%), zero rate (tax holiday for deposit-taking MFI), new listed companies (20% if they sell 40% of shares, 25% if 30%, 28% if 20%)

Deductions: deductible expenses; conditions of deductability, non deductible (fines, donations >1%, personal expenses, etc)

Declaration and payment: computed, deducting pre-payments; consideration of bad debts; loss carried forward, etc.

CIT Cont ……

Other CIT considerations

- Micro, small, transport companies: micro (flat), small (lump sum 3%), transport (lump sum)
- Gaming companies: 30% then 13% on dnce btw amount placed for betting and the winnings awarded
- Rent of assets: consolidated in the total taxable income
- Partnerships: taxed at the level of each partner as WHT (corporate partner - CIT; individual partner - PIT); failure engages both partnership & partners
- Restructured business: transferring business entity is exempt in respect of capital gains & losses realized in restructuring. Receiving entity values assets/ liabilities of the transferring entity; depreciates assets of the transferring entity; assumes rights & obligations of the transferring entity; etc.
- Liquidation of a business entity: the balance after paying liabilities and distribution of shares, is considered as dividends of the last tax period.

Value Added Tax (VAT)

VAT registration: compulsory v. voluntary

Taxable activities: supply of goods, supply of services, import of goods/ services

VAT mechanisms: Input VAT v. Output VAT

Nil balance, Payment, Refund

VAT rates: standard rate, zero rate, exemptions

Declaration and payment

Pay As You Earn (PAYE) tax

Tax base: payments (in cash/in kind [10% vehicle, 20% house]) to an employee for his/her performance

Exemptions: reimbursement of expenses, pension from a public social security institution, foreign countries representatives, etc.

Tax rate:

- progressive 0%, 10%, 20%, 30%
- Casual: 0%, 15%
- 2nd employment: 30%

Declaration and payment

Capital gain tax

Tax base: capital gain

Tax rate: 5%

Exemptions: listed shares, other securities on the securities exchange operating in Rwanda; sale/transfer of shares or units of the collective investment schemes

Declaration and payment

Other Taxes Affecting Companies

WHT on BoD allowances: 30%

WHT on imports: 5% CIF

WHT for public tenders: 3% (on total sum excluding VAT), 15% if recipient not registered or has no previous income tax declaration

WHT on other payments:

- 15% (on total amount excluding VAT) for payments by resident to non-registered or without recent income tax declaration on dividends, financial interests, royalties, service fee (mgt fee and technical service fee), crafts/musician/artist/player/sports/cultural etc, goods sold in Rda, retained earnings converted into shares (except FI with below required paid-up capital), etc.
- 5% for dividends and interest on securities listed on capital market if paid to a resident of Rda or EAC; interest from treasury bond with at least 3 years maturity

WHT on winnings on gaming activities: 15% once btw winnings and amount invested by the player

Declaration and payment

Consumption taxes/excise duties

Emerging Global Trends in Corporate Taxation

Double taxation

DT elements

Economic DT v. Juridical DT

DT Factors: sovereignty + mismatching connecting factors

DT avoidance measures/reliefs

Unilateral measures/reliefs: FTC, Exemption

Bilateral measures/reliefs: DTAA, DTA, DTC, TT

Tax treaties

- Overview of tax treaties
- Rwanda’s DTAA network: Belgium, Mauritius, SA, Jersey, China, DRC, Luxembourg, Morocco, Qatar, Singapore, Turkey, UAE, EAC MLT

Double non-taxation (see ATP)

Corporate (Aggressive) Tax Planning

Tax planning v. Aggressive tax planning

Double non-taxation, double deductions

Transfer (mis)pricing

TP mechanisms: over/under invoicing related parties transactions

TP antidotes: ALP, APAs, tax rulings (public v. private)

Treaty shopping

Treaty shopping mechanisms: third party benefits

Treaty shopping antidote: LoB clause

Thin capitalisation

Thin capitalisation mechanisms: equity v. debt financing btw related parties

Thin capitalisation antidote: reject deductibility of interest from loans btw related parties if exceeds a given % of equity

EU works on HTC

EU works on harmful tax competition

EU CoC on business taxation

EU criteria of HTC: advantages accorded to non-residents (1a) or in respect of transactions with non-residents (1b), advantages ring fenced from domestic market so they do not affect the national tax base, advantages are granted without any real economic activity or substantial economic presence, rules for profit determination in respect of activities within MNCs depart from internationally accepted principles, lack of transparency (provisions relaxed at administrative level in a non-transparent way)

EU COCG and its reports: listing & de-listing non-cooperative jurisdictions

Harmful tax competition in developing countries

State of play of HTC in developing countries

Regulation of HTC in developing countries

OECD works on Harmful Tax Competition (HTC)

Tax competition v. harmful tax competition

OECD works on harmful tax competition

- OECD 1998 Report on HTC

  HTC problems: distortion of financial & investment flows, undermining integrity & fairness of tax structures, discourage compliance, re-shape the desired level of tax v. public spending, undesired shift of tax burden to less mobile tax bases (like labour, property, consumption), increase administrative costs & compliance burden

- HTC components: tax havens & HPTR
- OECD factors of HTC

  Tax haven: key factors: no or only nominal taxes (in general or for non-residents), laws/rules/ practices preventing effective EoI, lack of transparency, no requirement for substantial activity.

  HPTR: key factors: low or zero effective tax rate on movable sources, ring-fencing from domestic economy, lack of transparency, no effective EoI.

  HPTR other factors: artificial definition of tax base, failure to adhere to TP principles, exemption of foreign-source income, negotiable rates/bases, existence of secrecy provisions, access to a wide network of tax treaties, promotion of the regime as tax minimization vehicle, encouragement of purely tax-driven arrangements.

OECD progress reports: 2000, 2001, 2004, 2006

OECD works on HTC, Cont….

BEPS

Genesis of BEPS

BEPS 15 Actions Plan:

1: Tax challenges arising from digitalization

2. Neutralising effects of hybrid mismatch

3. Controlled foreign company (CFC)

4. Limitation on interest deductions

5. Harmful tax practices

6. Prevention of treaty abuse

7. PE status (prevent artificial PE avoidance)

8-10. Transfer pricing

11. BEPS data analysis

12. Mandatory disclosure rules

13. Country-by-country reporting (cbc)

14. Mutual agreement procedure

15. Multilateral instrument (MLI)

BEPS 4 minimum standards: 5, 6, 13, and 14

Inclusive Framework (IF)

OECD works on HTC, Cont….

GloBE

Pillar I: allocation of taxing rights btw jurisdictions

Pillar II (GloBE): address remaining BEPS issues (MNCs profit shifting to low-tax jurisdictions)

Two interrelated rules: Inclusion rule & tax on base eroding payments

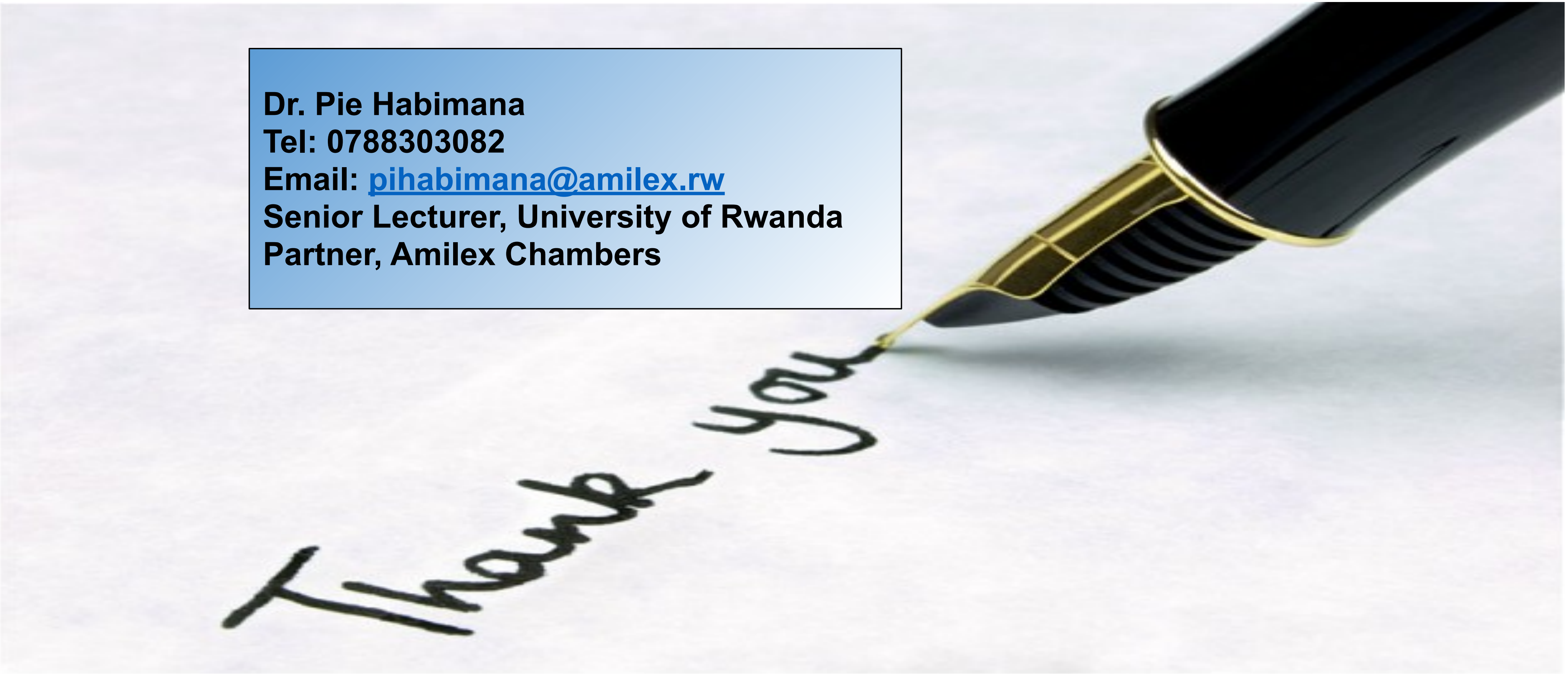
Rationale: target of an income or payment that is not taxed or is taxed below a minimum rate.

Global minimum tax rate of 15%

- Primary taxing rights v. Rights to tax back

GloBE and developing countries

Dr. Pie Habimana
Tel: 0788303082
Email: pihabimana@amilex.rw
Senior Lecturer, University of Rwanda
Partner, Amilex Chambers



Q&A .....