

Imposition of the Value Added Tax (VAT) on Agricultural Products under Rwandan Tax Law: Case of Rice

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Abstract

This paper discusses the imposition of the VAT on agricultural products under Rwandan law. The main issue is the exemption of unprocessed products vis-a-vis imposition of processed products. Throughout the time, the Rwandan VAT law has been explicit on that. However, from time to time, disputes arise between taxpayers and the tax administration, especially over the dimensions of “processed products”. This paper critically analyses the legal dimensions of processed agricultural products as compared to unprocessed agricultural products. The main issue addressed here is the distinction between processed agricultural products and unprocessed agricultural products, in order to decide whether or not to grant a VAT exemption. With reference to court decisions and practices in other jurisdictions, this paper considers that all preparation processes that make an agricultural product fit for consumption are not and should not be equated with “processing” as long as the product’s form and value have not changed cumulatively. This paper, thus, proposes a new paragraph to be introduced in the Rwandan VAT law to shed clarification on the matter.

Key words: VAT, exemption, processed agricultural products, rice

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1. Introduction

From a general perspective, the Value Added Tax (VAT) was first introduced in France in 1954.¹ The conception of VAT was driven by the spirit to improve the tax on turnover, which was perceived as unfair in one way or another. France exported the VAT system to its former colonies and subsequently VAT became famous in several jurisdictions. Rwanda first introduced VAT in 2001 with Law No. 06/2001 of 20/01/2001 on the code of value added tax.² In 2012, that law was repealed and replaced by Law No. 37/2012 of 09/11/2012.³ The 2012 law was later modified and complemented by Law No. 02/2015 of 25/02/2015.⁴ To this adds Ministerial Order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details.⁵

According to Article 86 of the 2001 law on VAT, unprocessed agricultural products were VAT exempted. The 2012 law on VAT reiterated the same in 6(13). Article 2(13) of the 2015 modification also emphasized that exemption and clarified that all agricultural products are VAT exempted except those that are processed. In this regard, it is fair to say that all VAT laws that Rwanda has had, over time have exempted unprocessed agricultural products from VAT. In this regard, we commend the legislature to have explicitly mentioned it in the law, which contributed to certainty as one of the canons of taxation.

However, despite such a statutory certainty, there have been controversies between Rwanda Revenue Authority (RRA) and taxpayers. On the one hand, Rwandan tax administration kept imposing VAT on some agricultural products such as rice, which it qualified as processed products. RRA's legal position in charging the disputed VAT is that the act of milling rice for consumption should be considered processing, which RRA believes reflects the will of the legislature, who limited the tax exemption to unprocessed products.⁶ In contrast, rice mill owners take a different view on the classification of rice milling as processing as per the legislature's intention.⁷ These taxpayers believe that milling rice cannot be considered

¹ K. James, 'Exploring the Origins and Global Rise of VAT' (2011) *The VAT Reader Tax Analysts* 15(20), p.16.

² Law No. 06/2001 of 20/01/2001 on the code of value added tax.

³ *O.G.* No. Special of 05/02/2013.

⁴ *O.G.* No. 11 bis of 16/03/2015.

⁵ *O.G.* No. 45 of 07/11/2016.

⁶ Case No. RCOM 00878/2017/TC/NYGE, SODAR Ltd v. Rwanda Revenue Authority, Nyarugenge Commercial Court, 5th October 2017, para. 16.

⁷ *Id.*, para.12.

processing, as the milled rice is ultimately still the same rice and no new product is created from such a simple process, so no VAT should be imposed.

These diverging views sparked several court litigations between taxpayers and the tax administration.⁸ Moreover, there are also controversies in practice: some rice millers do not pay VAT, as they qualify what they do as falling under the tax exemption, while others do. From a legal point of view, this situation is really critical because it contradicts the basic principles of a good tax system, such as the canons of certainty, simplicity, and equity.

It is this controversial situation that motivated the authors to undertake this research on imposition of VAT on Agricultural Products under Rwandan Tax Law with a focus on rice milling. The main objective of this paper is to show the case of rice milling as an unprocessed product in order to shed light on the legal dimensions of processing agricultural products in general. More specifically, this paper addresses two research questions: (1) what do processed agricultural products mean in the context of VAT? and (2) what are the legal dimensions of processing an agricultural product for the purposes of VAT?

To produce this paper, we largely relied on the legal doctrinal approach.⁹ The data used were collected through desk or library-based research. In this connection, we collected from primary sources directly related to the topic such as laws, ministerial orders, etc. Secondary data was collected from varied sources such as scholarly writings, and court decisions, etc. After data collection, the data collected data was analysed, alongside inspirations from other jurisdictions.

We explain the relevance of this paper in three ways. Firstly, this paper helps to better understand the legal dimensions of processing an agricultural product like rice, which will save dealers of unprocessed agricultural products, especially rice millers, from inappropriate VAT payments. Secondly, if done properly, this will reduce the cost of unprocessed products like rice, which will further mitigate the tax burden that is passed on to the consumers.

⁸ Case No. RCOM 0023/13/CS, Supreme Court, SODAR Ltd v. Rwanda Revenue Authority, Supreme held on 16th January 2015; Case No. RCOM 00070/2018/TC, SODAR Ltd v. Rwanda Revenue Authority, Commercial Court, 26th October 2018; Case No. RCOMA 00753/2019/HCC, Rwanda Revenue Authority v. SODAR Ltd, High Commercial Court, 01st January 2019, Case No. RCOMAA 00033/2021/CA, Court of Appeal, 11 February 2022.

⁹ T Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) *European L. Rev.* 3, p. 131.

Thirdly, this paper will help avoid unnecessary disputes as the RRA will charge the VAT that is due and the taxpayers pay the VAT that is due.

After the introduction which is the first section of this article, the second section discusses Rwanda's VAT regime of agricultural products. The third section analyses the interpretation of the VAT regime on agricultural products by the Rwandan courts. The fourth section looks at the VAT regime for agricultural products in other jurisdictions. The fifth section draws lessons from the jurisdictions discussed in the fourth section. The same section draws conclusions and recommendations.

2. VAT regime of agricultural products in Rwanda

Historically, agricultural products were subjected to VAT or not depending on factors that changed from time to time. This section looks at the evolution of VAT imposition on agricultural products under Rwandan law, with a focus on the statutory exemptions, in two perspectives: the era of inception and the era of enhancement that includes the current situation.

2.1. Era of inception

In this paper, we name the period between 2001 and 2012 as the "Era of Inception" to imply the period during which VAT was introduced in Rwanda. During this period, VAT was governed by Law No. 06/2001 of 20/01/2001 on the code of value added tax.¹⁰

According to this law, all processed agricultural and livestock products were subjected to VAT with the exception of milk processed in the local industries.¹¹ In contrast, all unprocessed agricultural and livestock products were not subjected to VAT.¹² This exemption was further elaborated on by the Ministerial Order No. 001 of 13/01/2003 providing for value added tax rules and taxation procedure.¹³ This ministerial order states in Article 75 that "*The agricultural and livestock products exempted under Article 86(12) (i) are those supplied in their original raw form without industrial transformation for any commercial purposes*".¹⁴

¹⁰ Law No. 06/2001 of 20/01/2001 (n.2).

¹¹ *Id.*, article 86 (12).

¹² *Ibid.*

¹³ Ministerial order No. 001 of 13/01/2003 providing for value added tax rules and taxation procedure.

¹⁴ *Id.*, article 75.

During the era of inception, the law did not provide a list of exempted agricultural products. Rather, it set out the criteria for determining whether or not an agricultural product is VAT exempted. These criteria are drawn from Article 75 of Law No. 06/2001 of 20/01/2001 on the code of value added tax and are discussed below.

The first criterion was about a supply in its original raw form. In our understanding, original raw form refers to the very original form of an agricultural product before it is transformed by manufacturing process in a factory or by other machinery. However, this criterion seems to be problematic as transformation can happen in various ways, some of which being complex, while others are very simple. The technical aspects of the transformation process also have nothing to do with the extent of change from a raw form to another form.

The second criterion was the absence of any industrial transformation that might have been undertaken on the agricultural and livestock products. This criterion also seems problematic because it is not clear what “industrial” means. In other words, what is considered industrial and what is not considered industrial. This question is very important considering that a transformation can happen through a heavy industry as well as by a simple industry. Nevertheless, both can achieve the same result in terms of the processed product.

The third criterion was about commercial purpose that would have led to industrial transformation. This criterion would mean that a product that is processed, but not for commercial purpose, is an unprocessed product.

2.2. Era of enhancement

This era corresponds to a period from 2012 to present. We refer to this period as an era of enhancement because several improvements have been made to revamp VAT imposition. Moreover, it is in 2012 that Law No. 37/2012 of 09/11/2012 establishing value added tax¹⁵ replaced the code of value added tax of 2001.¹⁶

Like the 2001 law, the 2012 law provides in its article 6(13) that all agricultural and livestock products, except those that are processed, are exempted from value added tax, including milk processed in the local industries.¹⁷ The same law defines processed food as “*foodstuffs that are*

¹⁵ Law No. 37/2012 of 09/11/2012 establishing value added tax, O.G. No. Special of 05/02/2013.

¹⁶ Law No. 06/2001 of 20/01/2001 on Tax Code (n.2).

¹⁷ Law No. 37/2012 of 09/11/2012 establishing value added tax (n.15) 6 (13).

*transformed into a new form and value.*¹⁸ The same law added that a ministerial order may provide more clarification on this definition.

Compared to the 2001 law, the 2012 law dropped the criteria of original raw form, lack of industrial transformation, and transformation for commercial purpose, to introduce two new criteria for exemption namely, transformation into a new form and transformation into a new value.

With regard to the first criterion, namely transformation into a new form, the Ministerial Order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details, provides that “*an agricultural or livestock foodstuff is considered transformed into a new form when it loses its raw form during processing.*”¹⁹ This means that an agricultural product is processed when it has lost its original form to take on a new form. However, this definition is problematic because it does not explain the extent of transformation that is taken into account. In other words, the question is whether even a minor change constitutes transformation into a new form.

The second criterion is transformation into a new value. The legislator explained that transformation into a new value occurs when an agricultural or livestock foodstuff has increased its market value as a result of processing.²⁰ This criterion is also problematic as it does not define the extent to which the value is or is not eligible for the VAT exemption. The question is still whether even a minor increase of the market value is considered as transformation into a new value.

The law does not also mention whether the two criteria are cumulative or whether one is sufficient to consider processing. Even though it can be possible for a product to fulfil one criterion but not the other, a textual interpretation implies that the use of the conjunction “and” means that the two criteria are cumulative. This would also mean that in case one is not met, there shall be no VAT imposition.²¹

¹⁸ *Id.*, article 2 (3).

¹⁹ Article 1 of Ministerial order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details, O.G. No. 45 of 07/11/2016.

²⁰ *Ibid.*

²¹ Case No. RCOMAA 00034/2020/CA, Rwanda Revenue Authority v. SODAR Ltd, Court of Appeal, 19/02/2021, para.18.

Still pursuing the spirit of revamping the VAT imposition, the Rwandan legislature in 2015 adopted Law No. 02/2015 of 25/02/2015 modifying and complementing Law No. 37/2012 of 09/11/2012.²² The 2015 law emphasizes that all agricultural and livestock products are exempt from VAT, except for processed products.²³ The same law adds that processed milk is also exempted, but milk powder and milk derived products are not exempt.²⁴ At this point, it is unfortunate that the problem of the dimensions and extent of “processed” versus “unprocessed” still persists. To sort out this problem, the only available reference is the Ministerial Order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details discussed above.

3. Interpretations by Rwandan courts

From the era of inception until now, the legislature has exempted unprocessed agricultural products from VAT.²⁵ Despite such statutory exemption, the Rwandan tax administration, in several circumstances, imposed VAT on unprocessed agricultural products such as rice,²⁶ among others. We do not know whether this is due to the ambiguity of the law or whether the tax administration has deliberately turned a blind eye. Whatever the case, it is beyond the scope of this paper, which focuses on discussing what the proper interpretation would be.

There are a large number of agricultural products that are affected by the statutory VAT exemption. In this paper, we focus on rice as it has been the subject of consternations in courts and outside the courts. Extra-judicially, several rice millers exchanged written and oral communications with Rwanda Revenue Authority (RRA), disagreeing on whether or not milled rice are processed agricultural products, therefore, subject to VAT. There were also court cases between e RRA and a rice miller over the disagreement of whether a milled rice is processed or not.

On the one hand, the tax administration took the view that milling the rice for consumption should be considered as processing which, therefore, reflects the legislature’s intention when

²² Law No. 02/2015 of 25/02/2015 modifying and complementing law No. 37/2012 of 09/11/2012 establishing the value added tax, O.G. No.11 bis of 16/03/2015.

²³ *Id.*, article 2(13).

²⁴ *Ibid.*

²⁵ Law on code of value added tax (n 2), art.12; Law No. 37/2012 of 09/11/2012 establishing value added tax (n 15) article 6 (13), Law No. 02/2015 of 25/02/2015 (n 22) article 2(13).

²⁶ SODAR Ltd v. Rwanda Revenue Authority (n 6).

establishing an exception to the exemption of agricultural products.²⁷ Rice millers, on the other hand, took a different view on the classification of rice milling as processing that the legislator wanted to mean while establishing an exception to the exemption of VAT on agricultural products. Their stand was that rice milling cannot be qualified as processing because the milled rice is ultimately still the same rice and no new products are made from the harvested rice, so no VAT should be imposed.²⁸ The following paragraphs discuss the legal dimensions of processing agricultural products under Rwandan law, and the related court decisions.

3.1. Statutory dimensions of processing agricultural products in Rwanda

From a legal perspective, the expression “processed agricultural products” is not a legal term and is a subject of discussion. The discussion is fuelled by its relevance in the VAT taxation, but also by the fact that it is not self-defining. It is therefore opportune to discuss what it means and how it should be understood. This is a momentum point in view of the fact that, as discussed in earlier sections, the extent of “processed agricultural products” has caused much consternations in Rwandan courts.

Under Rwandan VAT law, the determination of “processing” an agricultural product is made by reference to the Ministerial Order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details.²⁹ Article one of this Order sets out the conditions to be taken into account when determining whether or not an agricultural or livestock foodstuffs is processed. This article states that an “agricultural or livestock foodstuff is considered transformed into a new form when it loses its raw form during processing”.³⁰ The same article mentions that the same product acquires a new value if its market value has increased as a result of processing.³¹

This would mean that according to Rwandan VAT law, processing an agricultural or livestock foodstuff is fulfilled when the product (a) has been transformed into a new form, (b) has lost

²⁷ Law on code of value added tax (n 2), article 2(13), see also SODAR Ltd v. Rwanda Revenue Authority (n 6), para.16.

²⁸ SODAR Ltd v. Rwanda Revenue Authority (n 6) para.12.

²⁹ O.G. No. 45 of 07/11/2016.

³⁰ Ministerial order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details, (n 19) article 1(1).

³¹ *Id.*, article 1(2).

its raw form, and (c) has increased its market value. It is not clear from the Ministerial Order whether these conditions are cumulative or not. However, it is obvious that the loss of a raw form leads to a transformation into a new form. From an economic point of view, it is also very likely, but not obvious, that the loss of a raw form to obtain a transformed form is aimed at increasing the market value, although not guaranteed. Some of these discussions have been touched on by the courts, as elaborated on in the next section.

As the terms “processed agricultural product” are not legal concepts, it has given rise to several discussions in the practice of VAT. The courts have also had their say on different occasions as discussed below.

3.2. Judicial interpretations under the law of 2001

Here we will extensively rely on the case No. RCOMA 0023/13/CS of 16/01/2015. In this case, the Supreme Court interpreted various statutory provisions relating to the VAT imposition on agricultural products. The matter was between SODAR Ltd (rice milling industry) and RRA. The matter arose when RRA audited SODAR Ltd and contended that SODAR should have levied 60.741.450 Frw of VAT on the milled rice sold. RRA further argued that this amount should be paid by SODAR Ltd as it was its duty to add it to the cost of the milled rice sold. SODAR was not satisfied with the administrative appeal, challenged the RRA’s decision before the Commercial Court. This Court ruled that Article 85(19) of Law No. 06/2001 on value added tax, clearly states that processed products are those that undergo processing steps to acquire a new form and market value, which was not the case with the milled rice, as the mere act of milling the rice does not result in it acquiring a new form.³²

RRA made an appeal against that decision, arguing that the court failed to understand and decide whether milled rice was natural rice to be VAT exempted.³³ The Supreme Court interpreted Article 85(19) of Law No. 06/2001 of 20/01/2001 on value added tax³⁴, which was in force at the time, together with Article 86(12) of the same law,³⁵ and Article 75 of the

³² RRA v. SODAR Ltd (n 6), para.3.

³³ *Id.*, para.5.

³⁴ Law No. 06/2001 of 20/01/2001 on value added tax (n 2), article 85(19).

³⁵ *Id.*, Article 86(12).

Ministerial Order No. 001 of 13/01/2003 providing for value added tax rules and taxation procedure,³⁶ and upheld the previous court's decision.³⁷

The Supreme Court based its decision on the fact that it should be said to be a formation of a new product if the process of milling rice involves chemical products which alter the nature of the milled rice.³⁸ The Supreme Court further went on to say that the milling of rice harvested by farmers, intends to make the harvested rice consumable and it could not be considered as producing a new product that should be taxed under the VAT laws that were in force at the time. The Court also reasoned that even farmers use traditional methods to make their rice consumable, and this is what rice mill industries do by using modern technologies to obtain white, clean, and consumable rice.³⁹

It would be interesting to opine on the Supreme Court's decision, agreeing or disagreeing. However, since the decision was based on the law of 2001, which is currently repealed, it would be futile to comment on a decision whose basis is no longer existing. Reference to that would only be for the purpose of a historical view. This justifies our focus on commenting the Supreme Court's subsequent decisions whose basis is on the current law. This is the subject of the next section.

3.3. Judicial interpretation under the law of 2012

After the adoption of the 2012 law on VAT and its modification of the 2015, the matter was raised again before the courts. RRA audited again SODAR Ltd and with reference to the new laws, charged the company 89,427,701 Frw, which it would have collected if it had added this amount to the price of the milled rice it sold to different customers. SODAR challenged that decision in the Commercial Court.

The Commercial Court in case No. RCOM 00070/2018/TC decided on 26/10/2018⁴⁰ that the milling of rice results in a new form and new value, which the legislature has established in the Ministerial Order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and

³⁶ Article 75 of the Ministerial Order No. 001 of 13/01/2003 providing for value added tax rules and taxation procedure.

³⁷ RRA v. SODAR Ltd (n 6), para.20.

³⁸ *Ibid.*

³⁹ Case No. SODAR Ltd v. Rwanda Revenue Authority, Case No. RCOMA 0023/13/CS Supreme Court, 16th January 2015, para. 22 &23.

⁴⁰ Case No. RCOM 00070/2018/TC, SODAR Ltd v. Rwanda Revenue Authority, Commercial Court, 26/10/2018.

debit notes details in Article 1 which states that “An agricultural or livestock foodstuff is considered to have acquired a new value when its market value has increased following processing”⁴¹ and that an “agricultural or livestock foodstuff is considered transformed into a new form when it loses its raw form during processing”.⁴²

SODAR Ltd appealed that decision before the Commercial High Court, which in its judgment No. RCOMA 00753/2019/HCC of 01/01/2019 overturned the Commercial Court’s decision.⁴³ RRA appealed against that decision and the Court of Appeal, in the Judgment No. RCOMAA 00034/2020/CA of 19/02/2021 analysed the disputed interpretation with reference to the criteria provided for in the law, namely acquisition of a new form after transformation process and acquisition of a new value.⁴⁴

Regarding the acquisition of a new form after transformation process, it was disputable whether rice loses its original form after undergoing the milling process to acquire a new form. On the one hand, RRA argued that the processing of rice goes through several stages, including rinsing, removing the rice husks, bleaching the bran layer, destining, and packaging. RRA further argued that there should be VAT consequences at each stage in that process, as each stage is undertaken with the intention of making profit. SODAR Ltd, on the other hand, argued that rice milling cannot be considered as a process of transforming rice into a new form, as milling is only done to make rice consumable. It further argued that the product after milling is still rice and no new product results from the milling process.⁴⁵

The Court of Appeal, on the basis of Article 1 of Ministerial Order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details, interpreted together with Article 6(13) of Law No. 37/2012 of 09/11/2012 establishing the value added tax as modified and complemented by Law No. 02/2015 of 25/02/2015, ruled that the rice going through some stages of processing in order to become consumable, is not enough to make it a new product to be VAT taxed.⁴⁶

⁴¹ Ministerial order No. 010/16/10/Tc of 01/11/2016 on processed foodstuffs and credit and debit notes details (n 19), article one.

⁴² *Ibid.*

⁴³ Rwanda Revenue Authority v. SODAR Ltd, RCOMA 00753/2019/HCC, Commercial High Court, 01/01/2019.

⁴⁴ Rwanda Revenue Authority v. SODAR Ltd, RCOMAA 00034/2020/CA Court of Appeal, 19/02/2021.

⁴⁵ Rwanda Revenue Authority v. SODAR Ltd (n 44) para.14.

⁴⁶ *Id.*, para.24.

With regard to the second criterion, *i.e.* the acquisition of a new value, the Court of Appeal analysed whether the milling of rice increases its value. According to the RRA, rice is harvested with a lower value compared to its market value after processing (milling). The Court of Appeal, pointed out that it is obvious that the market value increases when the harvested rice is milled.⁴⁷ However, this Court noted that the legislature's intention was to consider the two criteria cumulatively, which means that the absence of one criterion suffices to exempt the product from VAT.

We totally agree with the decision of the Court of Appeal, because the legislator's intention would practically be paralyzed if the conditions to tax as elaborated in Article 1 of Ministerial Order N^o. 010/16/10/TC of 01/11/2016 in conjunction with Article 6(13) of the law No. 37/2012 of 09/11/2012 were not cumulative. This reasoning is based on the fact that the fulfilment of one condition would easily happen. The risk would, therefore, be that several products would be subject of VAT taxation, and the legislature's intention of exemption would then loose sense as it may rarely happen.

4. VAT Imposition on agricultural products in other jurisdictions

Without undermining Rwanda's tax sovereignty, we recognize that Rwanda is not an island. This means that Rwanda cannot completely set itself apart from other jurisdictions. This makes even more sense in this era of globalization, where states and people interact more than ever before. Therefore, a brief look at what is happening in other jurisdictions would enrich this paper's arguments, in one way or another. A look at other jurisdictions is also motivated by the fact that the reasons for introducing VAT are similar almost in all jurisdictions.⁴⁸ In this paper, we randomly limited ourselves to China, the European Union, the United Kingdom, and Mauritius.

4.1. In China

In China's tax system, agricultural products, among other things, are VAT exempted.⁴⁹ However, the tax exemption does not apply to agricultural products that are processed. In

⁴⁷ *Ibid.*

⁴⁸ H. George, 'The Common Sense of Taxation' (1881) *The North American Review*, 133(296), pp. 65-74.

⁴⁹ W, Lachlan, 'China: VAT Essentials Guide' (2021) *KPMG Global Head of Indirect Taxes*, p.7.

fact, there are three categories: exemption for domestically produced agricultural products, i.e. at the farm level of production, tax rate for the first stage of processed products, and tax rate for value added products.⁵⁰ At this point, the question arises as to the distinction between these three levels of production as a determinant of the applicable tax rate.

In the Chinese tax system, the first stage of production is at the farm level. This stage has been explained as “*self-produced agricultural products sold by agricultural producers*”.⁵¹ By “agricultural producer”, the legislator has clarified that it is “*a farmer engaged in planting and reaping or breeding and raising animals or fish*”.⁵² Importantly, not only are first stage agricultural products exempted from tax but also the Chinese law exempts VAT on agricultural equipment and inputs such as seeds, pesticides, herbicides, some fertilisers, and agricultural machinery.⁵³

The second stage of production of agricultural products is referred to as the first stage of processing. This stage is defined by law as concerning business people who buy agricultural products from suppliers and resell them.⁵⁴ This is the case of merchants and wholesalers, who are obliged to charge VAT when selling products they bought from suppliers. At this level, different tax rates apply depending on the product.⁵⁵ The third stage of production of agricultural products concerns the products whose market value has increased. This category concerns the products that have been further processed beyond the first stage of processing. These are, for example, yoghurt, corn flour, potato flour, etc.⁵⁶

4.2. In the European Union

The European Union uses different approaches to impose VAT on agricultural products. Due to tax sovereignty, of course EU member states may make slight differences in the application of the VAT to agricultural products. However, it is worthy to commend that under EU legal

⁵⁰ *Ibid.*

⁵¹ Decree No. 538, the Interim Regulation of the People’s Republic of China on the value added tax, January 1, 2009, article 15.

⁵² China, Notice No. 52 of the State Council on December of June 15, 1995.

⁵³ China, Decree No. 113, of August 1, 2001, entitled “Notice of Ministry of Finance and the State Administration of Taxation on the VAT Exemption on Some Agricultural Means.

⁵⁴ Decree No. 538, the Interim Regulation of the People’s Republic of China on the value added tax, January 1, 2009, article 8.

⁵⁵ DTB Associates LLP, ‘Study of the value added tax system in China for agricultural products’(2009) *Global Broad Based Initiative Study*. p. 18.

⁵⁶ *Ibid.*

framework, there exist a clear list of products that are considered to be processed.⁵⁷ The list includes, for example, products such as buttermilk, curdled milk and cream, yoghurt, fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa; yoghurt, flavoured or containing added fruit, nuts or cocoa; other flavoured or containing added fruit, nuts or cocoa; dairy spreads of a fat content, by weight of 39% or more but not exceeding 75%; sweetcorn (uncooked or cooked by steaming or boiling in water), frozen; margarine, excluding liquid margarine, containing, by weight, more than 10% but not more than 15% of milk-fats; chocolate and other food preparations containing cocoa; prepared foods obtained by the swelling or roasting of cereals or cereal products (like corn flakes); cereals (other than maize (corn) in grain form or in the form of flakes or other worked grains (except flour, groats and meal), precooked or otherwise prepared, not elsewhere specified or included; yams, sweet potatoes and similar edible parts of plants containing 5% or more by weight of starch, prepared or preserved by vinegar or acetic acid.⁵⁸

This approach adopted by the EU to list agricultural products that are considered processed, implies that a product which is on the list is VAT charged, while a product which is not on the list is exempted. This approach has a positive and a negative comment. On the positive side, the list of processed products helps to avoid misunderstandings about which products are processed and which are not. On the negative aspect the list cannot be exhaustive, thus making it difficult to accommodate the likely changes to be introduced with time and technology.

4.3. In the United Kingdom

In the United Kingdom, the VAT taxation system is mainly governed by the Value Added Tax Act 1994, supplemented by various regulations.⁵⁹ The UK system does not commonly use the terms “agricultural products” in most cases. Rather, it uses the terms “food stuffs” while referring to the taxation of food products. Under UK law, a foodstuff refers to a food of a kind used for human consumption, and is so if:

⁵⁷ Annex I Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009.

⁵⁸ *Ibid.*

⁵⁹ UK value added tax Act 1994.

The average person, knowing what it is and how it is used, would consider it to be food or drink fit for human consumption such as products eaten as part of a meal, or as a snack like flour, which, although not eaten by themselves, are recognised food ingredients.⁶⁰

According to Section 30 of the UK VAT Act, in particular Section 30, there are various conditions to be considered in order to decide whether a food stuff is zero rated or not.⁶¹ In addition, the Act contains a list of food stuff that are zero rated.⁶² These include, for example, food used for human consumption; animal feed; seeds or other means of propagating plants. This dual approach of the UK VAT Act would mean that a food stuff that is on the list is automatically zero-rated, while others are checked to see if the conditions are met. In other words, this would mean that the list is not exhaustive.

4.4. In Mauritius

Under Mauritian law, there is a clear list of agricultural products that are not concerned with the VAT. These include, for example rice; wheat flour, wheat bran, edible oils; margarine and butter; milk and cream; buttermilk; fermented or acidified milk and cream; cheese and curd; sugar; sugar cane; molasses and bagasse; soya bean cakes, honey, spices, fertilisers, and animal feed other than prepared pet foods.⁶³

The Mauritius VAT Act is a good example of a legal instrument that clarifies whether certain agricultural products can be subjected to the VAT or not. This is a great step taken by the legislature in this jurisdiction as it helps both the tax administration and the taxpayers to have a common understanding on whether a given agricultural product can be taxed or not. Although, the Act does not specify whether the list is indicative or exhaustive, it at least gives a firm starting point for determining the imposition of VAT on agricultural products.

⁶⁰ United Kingdom, HM Revenue & Customs (25 May 2021). "*Food products (VAT Notice 701/14)*" available at <https://www.gov.uk/guidance/food-products-and-vat-notice-70114> accessed on 11th October 2021.

⁶¹ UK, value added tax Act 1994, S.30.

⁶² *Id.*, S.30, Sc.8.

⁶³ Mauritius VAT Act, consolidated version up to Finance Act 2020, Schedule 11, available at <https://www.mra.mu/download/VATAct.pdf> accessed on 12 October 2021.

The Mauritius VAT Act goes further to provide a detailed list of feed mill stages that do not amount to processing, and are therefore, not the subject of the VAT. This is the case for:

Primary agricultural and horticultural products (including tomatoes, potatoes, onions and other vegetables, fruits, coffee, cocoa beans and nuts but excluding tea, honey and spices) which have not been processed except for reaping, threshing, peeling, crushing, winnowing, trimming, drying and packaging to put them to a marketable condition, and birds' eggs in shell.⁶⁴

Using a literal interpretation of the last part of the above extract from the Mauritius VAT Act, one observes that the term processing under the Mauritius law, does not include the steps of reaping, debarking, trimming, drying, and packaging to bring them to a marketable condition, as well as birds' eggs in shell, threshing, peeling, and crushing. In other words, in Mauritius, an agricultural product that has undergone any of the above steps is not considered processed and is not charged VAT. This is a commendable example of how the term "processed" should be understood in order to provide a clear and conventional understanding of when a product is considered processed and when it is not.

5. Lessons to learn, conclusion and recommendations

This section summarises the lessons that Rwanda can learn from the other jurisdictions discussed in this paper. The section also provides a conclusion and recommendations.

5.1. Lessons to learn from other jurisdictions

This sub-section highlights the lessons that Rwanda can learn from other jurisdictions' taxation systems in relation to determination of processed and unprocessed agricultural products for the purposes of VAT. Three important lessons that can be learnt from are explained below.

5.1.1. Application of the zero-rating policy

As we have discussed in the previous sections, the issue of imposing VAT on agricultural products in Rwanda seems to be very complicated, especially when it comes to determining whether an agricultural product is processed or not. The tax administration and taxpayers

⁶⁴ *Ibid.*

have different views on the stage at which an agricultural product is considered processed so that it can or cannot enjoy a statutory VAT exemption.

In this paper, we have praised the UK's zero-rating system for food stuffs, which are defined as food that an average person, who knows what it is and how it is used, would consider to be food or drink fit for human consumption.⁶⁵ This would be a good lesson for Rwanda. To avoid disputes between the tax administration and taxpayers, Rwanda's policy and laws should avoid the confusing terms of exempting "agricultural products" to adopt less or more clearer terms such "food stuffs". To be more specific, food stuffs would be defined as in the UK, with reference to the average person's judgement.

5.1.2. Introduce different tax rates for the different stages of processing

The Rwandan tax system does not charge different rates of VAT in consideration of different stages of processing agricultural products. Due to the fact that there is no clear understanding regarding the stage at which an agricultural product is considered processed, it would be reasonable for the legislature to differentiate the stages of processing and apply different rates depending on the stage of processing. With this proposal, China would be a good example.

As shown above, the Chinese tax system starts charging VAT on the first stage of processing and exempts the earliest stage of acquisition of unprocessed agricultural products. The Chinese tax system also applies different rates depending the stage of processing. We thus consider the Chinese case to be fairer, as the processing of an agricultural product goes through different stages that differ significantly in terms of value added. Therefore, it would be fair to introduce in Rwanda a VAT system that takes into account this difference in processing.

5.1.3. Listing exempted agricultural products and processing stages

Unlike Rwanda, some jurisdictions such as China and Mauritius have established a list of agricultural products that enjoy VAT exemption, without considering whether they are processed or not. Such listing increases certainty and reduces ambiguity in the taxation of agricultural products, as it is easier to check whether a particular product is listed or not. The

⁶⁵ United Kingdom, HM Revenue & Customs (n 60).

introduction of such an approach in Rwanda would thus facilitate the imposition of VAT on agricultural products without causing disquiet and disagreement.

In parallel, Rwanda could learn from the Mauritian legislature's approach of listing the stages of processing. Indeed, under Mauritian law, some stages of processing are not considered processing for the purposes of VAT. These include, for example, reaping, threshing, shelling, crushing, stoning, trimming, drying, and packaging.⁶⁶ In Rwanda, the same approach should be taken by enumerating which processes are part of processing and which do not. Indeed, it should be made clear that the fact that an agricultural product has undergone simple processing stages that may change its colour or shape does not itself constitute processing for the VAT purposes.

It is our view that both Article 6 (13) of the law No. 37/2012 of 09/11/2012 establishing the value added tax and Article 1 of the Ministerial order N^o. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details do not give much clarification as to when a product is processed, since the mere fact that a product loses its raw form, does not make it processed.⁶⁷ Thus, there is a need to indicate the stages do not amount to the processing. In this respect, there is a need to add a paragraph to Article 1 of the Ministerial Order N^o. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details which may read as follows: "*However, an agricultural product shall not be considered processed if it undergoes through the stages aiming at attacking it ready for consumption or for preservation purposes such as reaping, threshing, husking, crushing, winnowing and trimming*".

5.2. Conclusion and Recommendations

The objective of this paper was to explore the diverging views between the Rwandan tax administration and taxpayers with regard to the imposition of VAT on processed agricultural products, especially the rice product. The main consternation arises when it comes to the

⁶⁶ Mauritius VAT Act, Schedule 11 of the Consolidated Version up to Finance Act 2020 available at <https://www.mra.mu/download/VATAct.pdf> accessed on 12th October 2021.

⁶⁷ RRA v. SODAR Ltd, RCOM 0023/13/CS, Supreme Court, 16th January 2015; and Rwanda Revenue Authority v. SODAR Ltd, RCOMAA 00034/2020/CA Court of Appeal, 19th February 2021.

VAT exemption on unprocessed agricultural products applied to products that undergo some processes such as milling.

In this context, we first analysed the VAT regime for agricultural products in Rwanda. The main focus was to show the historical development of the VAT laws in Rwanda and the consideration of the tax exemption for agricultural products. We then looked at the judicial interpretation of the VAT exemption for agricultural products. Here it is worth noting that the main subject of judicial discussion has been the determination of “processed agricultural products”. To broaden our view, we also looked at what is happening in other jurisdictions, *i.e.*, what agricultural products are VAT taxed. We then drew the lessons that Rwanda can learn from other jurisdictions and then formulated relevant recommendations.

In a summative view, Rwanda can learn three important lessons from the jurisdictions discussed in this paper: the application of the zero-rating policy, the introduction of different tax rates for different stages of processing, and the listing exempted agricultural products and stages of processing. This paper also recommends the Rwandan tax administration to implement court rulings that have decided that milling a product such as rice does not fulfil the requirements to be considered processed. A similar understanding should also apply to other products of a similar or almost similar nature. Indeed, the point here is that not all processes result in a processed product, thus this paper proposed a new paragraph to be introduced in the Rwandan VAT law to shed clarification on the matter. In this respect, we consider that all preparation processes that make an agricultural product consumable are not and should not be equated with “processing” as long as the product has not undergone a cumulative change in its origin form and value. We further conclude that, with the courts’ decision, the meaning and extent of processed products are clear enough. Therefore, tax actors should adhere to the clarifications so far provided, to tax what is taxable and exempt what is exemptible. By so doing, they will be in full compliance with the principle of legality along with compliance with Article 164 of the Constitution of the Republic of Rwanda.

6. Cited References

1. Legal instruments

1.1. Rwandan laws and regulations

1. Law No. 02/2015 of 25/02/2015 modifying and complementing the law No. 37/2012 of 09/11/2012 establishing Value Added, O.G. No.11 *bis* of 16/03/2015.
2. Law N°37/2012 of 09/11/2012 establishing value added tax, O.G. No. Special of 05/02/2013.
3. Ministerial Order No. 010/16/10/TC of 01/11/2016 on processed foodstuffs and credit and debit notes details, O.G. No.45 of 07/11/2016.
4. Ministerial Order No. 001 of 13/01/2003 providing for value added tax rules and taxation procedure.

1.2. Foreigner domestic laws and regulations

5. Mauritius VAT Act, consolidated version to Finance Act 2020, Schedule 11, available at <https://www.mra.mu/download/VATAct.pdf> accessed on 12 October 2021.
6. Annex I Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009.
7. Decree No. 538, the Interim Regulation of the People's Republic of China on the Value Added Tax, January 1, 2009.
8. China, Decree No. 113, of August 1, 2001, Notice of Ministry of Finance and the State Administration of Taxation on the VAT Exemption on Some Agricultural Means.
9. China, Notice No. 52 of the State Council on December of June 15, 1995.
10. UK, Value Added Tax Act 1994.

2. Cases

1. No. RCOMAA 00034/2020/CA, Rwanda Revenue Authority v. SODAR Ltd, Court of Appeal, 19 February 2021.
2. No. RCOMA 00753/2019/HCC Rwanda Revenue Authority v. SODAR Ltd, , High Commercial Court, 01 January 2019.
3. No. RCOM 00070/2018/TC, SODAR Ltd v. Rwanda Revenue Authority, Commercial Court, 26 October 2018.

4. No. RCOM00878/2017/TC/NYGE SODAR Ltd v. Rwanda Revenue Authority, Nyarugenge Commercial Court, 5 October 2017.
5. RCOM 0023/13/CS, RRA v. SODAR Ltd, Supreme Court, 16 January 2015.

2. Journal Articles

3. James, K., 'Exploring the origins and global rise of VAT' (2011) *The VAT Reader Tax Analysts* 15(20).
4. Hutchinson, T., 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) *European Law Review* 3.
5. George, H., 'The Common Sense of Taxation' (1881)", *The North American Review*, 133(296).
6. Lachlan, W. 'China: VAT Essentials Guide' (2021) *KPMG Global Head of Indirect Taxes*.

4. Electronic references

1. DTB Associates LLP, 'Study of the value added tax system in china for agricultural products' (2009) *Global Broad Based Initiative Study*.

