

## AMSAR v. IKIGOCY'IGIHUGU GISHINZWE KWINJIZA IMISORO N'AMAHORO (RRA)

[Rwanda URUKIKO RW'IKIRENGA– RCOM A 0056/10/CS(Mukanyundo, P.J.,  
Havugiyaremye na Kayitesi R, J.) 05 Kanama 2011]

*Amategeko y'imisoro – Igenagaciro ry'Umusoro ku nyungu hashingiwe ku ihame ry'ubwigenge bw'isoreshwa – Buri mwaka usoreshwa ukwawo – Itegeko n° 16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 2(7°).*

*Amategeko y'imisoro – Igenagaciro k'ubwicingure – Ubwicingure ku gikoresho cy'akazi bubarwa iyo cyakoreshejwe mu nyungu zitaziguye z'ibyo cyagenewe – Itegeko n° 8/97 ryo kuwa 26/06/1997 rigena Imisoro itaziguye ku nyungu zinyuranye no ku bihembo nk'uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 10 (2°); (5°).*

**Incamake y'ikibazo:** Urega yakorewe igenzura ry'umusoro ku nyungu y'umwaka wa 2003, acibwa umusoro nta nteguza ungana na 25.703.169 Rwf, ajuririye komiseri Mukuru, asubizwa ko ubujurire bwe bufite ishingiro kuri bimwe, ku musoro yaciwe agabanyirizwaho 1.372.044 Rwf, hasigara 24.331.125 Frw.

Urega yajuririye Urukiko Rukuru rw'ubucuruzi asaba ko rwayikuriraho uwo musoro asanga yaraciwe kandi muri uwo mwaka yaragize igihombo kingana na 31.862.937 Frw. Urukiko Rukuru rw'Ubucuruzi rwemeje ko ikirego cye nta shingiro gifite, ko umusoro wemejwe na Komiseri Mukuru asubiza ku itakamba ry'urega ugumyeho.

Urega yajuririye Urukiko rw'Ikirenga anenga kuba Urukiko Rukuru rw'Ubucuruzi rutarahaye agaciro icyemezo kigaragaza igabanuka ry'umwenda wa 69.583.125 frw yerekeranye na pièces de rechange/spare parts n'imashini zinyuranye, rukanga ko akurwa mu nyungu zisoreshwa mu mwaka wa 2003 kandi nyamara urega yararishye ayo mafaranga, rukaba rutaranitaye no kubwicingure (*depreciation*) bwa “*groupe électrogène*” yakoreshwaga aho Umuyobozi Mukuru wungirije wa sosiyete yari atuye mu nyungu zisoreshwa.

Naho Uregwa akavuga ko ingingo z'ubujurire bw'urega nta nshingiro zifite kubera ko nta mwaka w'umusoro uvangwa n'undi.

Ikindi ni uko kubirebana n'ubwicingure (*depreciation*) bwa “*groupe électrogène*” yakoreshwaga aho Umuyobozi Mukuru wungirije wa sosiyete yari atuye, avuga ko atavanwa mu nyungu z'isoreshwa kuko ibivanwamo ari ibyashowe mu birengera inyungu z'umurimo ku buryo butaziguye cyangwa mu birebana n'icungwa risanzwe ry'umurimo akaba atariko byagenze.

**Incamake y'icyemezo:** 1. Amafaranga angana na 69.583.838 agaragara mu cyemezo kigaragaza igabanuka ry'umwenda cyatanze n'urega ntabwo yakurwa mu nyungu z'isoreshwa ry'umwaka wa 2003, kubera yuko yishyurwe nyuma y'uwo mwaka. Bityo ihame ry'ubwigenge bw'igihe cy'isoresha rikaba rigomba kubahirizwa.

2. Kugira ngo ubwicingure (*depreciation*) bw'icyuma gitanga amashanyarazi “*groupe électrogène*” buvanwe mu nyungu ni uko kiba cyakoreshejwe mu nyungu z'umurimo cyagenewe ku buryo butaziguye. Mu gihe ubwicingure butemejwe ntabwo byafatwa nka kimwe mu byasohotse bigendanye n'umurimo kugirango buvanwe mu nyungu zisoreshwa.

**Uburire nta shingiro bufite.  
Urubanza rwajuririwe ntiruhindutse.  
Amagarama aherereye ku wajuriye.**

**Amategeko yashingiweho:**

Itegeko n° 16/2005 ryo kuwa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 2(7°).

Itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, ingingo ya 35, igika cya gatatu.

Itegeko n° 8/97 ryo kuwa 26/06/1997 rigena imisoro itaziguye ku nyungu zinyuranye no kubihembo nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ingingo ya 10 (2°);(5°).

**Nta manza zifashishijwe.**

## **Urubanza**

### **I. IMITERERE Y'URUBANZA MURI MAKE**

[1] Sosiyete AMSAR BURUNDI SA, succursale du Rwanda, yakorewe igenzura ry'umusoro ku nyungu (Impôt sur les Bénéfices des Sociétés) w'umwaka wa 2003, icibwa umusoro nta nteguza (imposition d'office) ungana na 25.703.169 Frw. AMSAR yajuririye Komiseri Mukuru, ayisubiza ko ubwo bujuriye bufite ishingiro kuri bimwe, maze ku musoro yaciye hagabanywaho 1.372.044 Frw, isigara yishyuzwa umusoro ungana na 24.331.125 Frw. AMSAR ntiyishimiye icyo cyemezo, iregera Urukiko Rukuru rw'Ubucuruzi isaba ko rwayikuraho uwo musoro isanga yaraciye kandi muri uwo mwaka yaragize igihombo kingana na 31.862.937 Frw.

[2] Urukiko Rukururw'Ubucuruzi rwemeje ko ikirego cya AMSAR nta shingiro gifite, ko umusoro wemejwe na Komiseri Mukuru wa Rwanda Revenue Authority asubiza ku itakamba rya AMSAR ugumyeho.

[3] Mu mpamvu rwashingiyeho, Urukiko rwasanze ku byererekeranye n'uko AMSAR yasoreshwe nta nteguza byarakurikije amategeko, by'umwihariko ingingo ya 19 igika cya mbere n'ya 24 z'itegeko n°08/97 ryo kuwa 26/06/1997 ryagengaga icyo gihe imisoro itaziguye ku nyungu zinyuranye no ku bihembo. Ku birebana n'uko Rwanda Revenue Authority yanze gukura "amortissement du groupe électrogène" mu nyungu zisoreshwa, rwasanze ayo mafaranga adakwiye gukurwa muri izo nyungu hakurikijwe ibiteganywa n'ingingo ya 10, agace ka 1°, y'itegeko rivuzwe haruguru, naho ku birebana na 69.583.858 Frw avugwa muri note de débit AMSAR yasabaga ko yakurwa mu nyungu zisoreshwa mu mwaka yishyuriwemo, rusanga AMSAR itagaragaza ikimenyetso cy'uko yayasohoye mu mwaka wa 2003, uretse gusa kuba yaremeraga ko hari uwo igomba ayo mafaranga.

[4] AMSAR yajuririye urwo rubanza mu Rukiko rw'Ikirenga inenga kuba Urukiko Rukuru rw'Ubucuruzi rutarahaye agaciro note de débit ya 69.583.125 frw yerekeranye na pièces de rechange/spare parts n'imashini zinyuranye, rukanga ko akurwa mu nyungu zisoreshwa mu mwaka wa 2003 kandi nyamara AMSAR yararishye ayo mafaranga SOBIMAC, kandi ko rwanze gukura "amortissement ya groupe électrogène" yakoreshwaga aho Umuyobozi Mukuru wungirije wa sosiyete yari atuye mu nyungu zisoreshwa. Ku

ruhande rwayo Rwanda Revenue Authority ivuga ko izo ngingo z'ubujurire nta shingiro zifite.

[5] Urubanza rwaburanishijwe kuwa 30/06/201, AMSAR ihagarariwe na Me Munderere Léopold hamwe na Me Mugemana J.M.V, naho Rwanda Revenue Authority ihagarariwe na Me Gasana Raoul A.

## **II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO**

**a. Kumenya niba 69.583.858 FRW ari kuri note de débit n° 004/2003/MAT yakurwa mu nyungu zisoreshwa mu mwaka wa 2003.**

[6] Me Munderere Léopold uhagarariye AMSAR avuga ko AMSAR yishyuye ayo mafaranga SOBIMAC, ko ariko kubera ko ariho yari igitangira bitewe n'ibyangombwa byinshi yabanje kuzaza kugira ngo itangire gukorera mu Rwanda, ibishyira mu mwaka wa 2004, kandi ko kubera ko yakoze ihomba ikishyura amafaranga menshi, asanga ayo mafaranga agaragara kuri note de débit yabarwa nk'ayakoreshejwe ( dépense) muri 2003.

[7] Me Gasana Raoul A. uhagarariye Rwanda Revenue Authority yibutsa ihame rijyanye na "indépendance des exercices fiscaux", bishatse kuvuga ko nta mwaka w'umusoro uvangwa n'undi. Asobanura ko amafaranga agaragara kuri iyo note de débit yari atarishyurwa muri 2003, ko ahubwo bigaragara ko hari uwo AMSAR yagombaga kuzayishyura, akaba rero atakurwa mu nyungu zisoreshwa zijyanye n'uwo mwaka hashingiwe ku ngingo ya 10, igika cya kabiri, y'itegeko n° 08/97 ryo kuwa 26/06/1997 ryagengaga imisoro itaziguye ku nyungu zinyuranye no ku bihembo.

[8] Ku byerekeranye n'inyemezabuguzi zatanzwe na AMSAR isaba ko zafatwa nk'ikimenyetso ko ibikoresho bijyanye n'ayo mafaranga byaguzwe bikanishyurwa, asobanura ko zitujuje ibiteganywa n'ingingo ya 35, igika cya gatatu y'itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, by'umwihariko ku birebana na kopi z'inyandiko zidateyeho icyemezo cy'uko zihuye n'inyandiko y'umwimerere, ko kandi zimwe muri zo zigaragaza ko amafaranga azigaragaraho yishyuwe muri 2005, andi muri 2006, ko rero nta kuntu zaza kugabanya umusoro wo muri 2003.

[9] Me Mugemana nawe asobanura ko ayo mafaranga yishyuwe ibikoresho SOBIMAC yari yaraguze na sosiyete ASTALDI nyuma nayo ibigurisha AMSAR iyigurije amafaranga kugira ngo iyoroherenze mu rwego rw'imikoranire hagati yabo nka sosiyete zifitanye isano.

[10] Ingingo ya 10 y'itegeko n°8/97 ryo kuwa 26/06/1997 rishyiraho amategeko agenga imisoro itaziguye ku nyungu zinyuranye no ku bihembo ryakurikizwaga mu mwaka wa 2003 iteganya ko urwunguko rugenwa havanyweho ibyasohotse byose. Isobanura ariko ko kugira ngo amafaranga ajyanye n'iby byasohotse, kimwe n'ibindi bitubya umutungo avanwe mu nyungu zisoreshwa hagomba kuba hujijwe ibikurikira :

1° Kuba amafaranga yarashowe mu birengera inyungu z'umurimo ku buryo butaziguye, cyangwa mu birebana n'icungwa risanzwe ry'umurimo;

2° Kuba amafaranga yasohotse ajyana n'imirimo idashidikanywa y'akazi kandi ifite gihamba ihagije igaragaza ukuri kw'ibyanditse mu ibaruramari;

3° Kuba byarabaruwe, hakurikijwe amategeko abigenga, mu byatunze umurimo mu mwaka bifatwaho nk'umwenda udashidikanywa mu nyito no mu ngano.

[11] Hashingiwe kuri iyi ngingo, cyane cyane mu duce twayo, aka (2) n'aka (5), Urukiko rurasanga dépenses zingana na 69.583.858 frw zigaragara muri note de débit yatanzwe na AMSAR zitakurwa mu nyungu zisoreshwa mu mwaka wa 2003, kuko nk'uko bigaragazwa n'ayo note de débit, ayo mafaranga atishyuye koko muri 2003, ko ahubwo yishyuye nyuma.

[12] Urukiko rurasanga kandi ibimenyetso bindi AMSAR itanga bigizwe n'inyemezabuguzi, uretse n'uko bitubahiriza ibiteganywa n'ingingo ya 35 igika cya gatatu y'itegeko n° 15/2004 ryo kuwa 12/6/2004 ryerekeye ibimenyetso mu manza n'itangwa ryabyo, bigaragaza nabyo ahubwo ko amafaranga amwe yishyuye muri 2005, andi yishyurwa muri 2006, ndetse n'impamvu yishyuye ikaba ahubwo ari indi, kuko basobanura ko ari "remboursement des frais" aho kuba kwishyura ibyo bikoresho bivugwa, bityo ingingo y'ubujurire ya AMSAR ko amafaranga ari kuri note de débit yakurwa mu nyungu zisoreshwa mu mwaka wa 2003 ikaba nta shingiro.

**b) Kumenya niba amortissement du groupe électrogène yakoreshwaga mu icumbi ry'akazi ry'umuyobozi wungirije wa sosiyete yakurwa mu nyungu zisoreshwa.**

[13] Kuri iyi ngingo Me Munderere Léopold avuga ko basanga nta mpamvu Rwanda Revenue Authority yari kwemera amortissement ku bintu bimwe ngo iyange ku birebana na groupe électrogène ku mpamvu z'uko ngo atari "dépense professionnelle". Asobanura ko kubera ikibazo cy'umuriro cyariho mu mwaka wa 2003, uwo muyobozi rimwe yakoreraga akazi mu biro, ubundi agakorera mu rugo, ko hakurikijwe inshingano z'umuyobozi w'urwo rwego amafaranga yatanzwe kuri iyo "groupe électrogène" yagombye gushyirwa mu rwego rw'amafaranga yakoreshejwe mu bijyanye n'akazi akavanwa mu nyungu zisoreshwa.

[14] Me Gasana Raoul avuga ko ibintu bisobanutse mu ngingo ya 10 y'itegeko n°8/97 ryo kuwa 26/06/1997 rishyiraho amategeko agenga imisoro itaziguye ku nyungu zinyuranye no ku bihembo mu gace kayo ka mbere aho ivuga ibyerekeranye n'ibivanwa mu nyungu zisoreshwa (charges déductibles/ deductible expenses from company tax), ikaba igaragaza by'umwihariko ko ibyo bivanwamo ari ibyashowe mu birengera inyungu z'umurimo ku buryo butaziguye (dans l'intérêt direct de l'exploitation). Akomeza avuga ko ikigomba kurebwa ari nacyo Rwanda Revenue Authority yashinyeho ari ibiba amortis, akaba ariyo mpamvu yemeye amortissement y'ibikoresho bimwe igakuramo "groupe électrogène" yakoreshwaga ku muyobozi mukuru wungirije wa sosiyete kuko ingingo y'itegeko ivuga ibifite "lien direct/direct interest" n'akazi, ko atari ibifite lien "indirect" nk'uko bimeze ku bijyanye na "groupe électrogène" yakoreshwaga mu rugo rw'umuyobozi mukuru wungirije, gutandukanya ibifitanye lien direct n'ibitayifite bikaba byagorana.

[15] Ingingo ya 10 y'itegeko n° 8/97 ryo kuwa 26/06/1997 rivuzwe haruguru ryakurikizwaga mu mwaka wa 2003 mu gace kayo ka mbere iteganywa ko urwunguko rugenwa havanyweho ibyasohotse byose, ko kugirango amafaranga yerekeranye n'ibyo byasohotse avanwe mu nyungu, agomba kuba yarashowe mu birengera inyungu z'umurimo ku buryo butaziguye, cyangwa mu birebana n'icungwa risanzwe ry'umurimo.

[16] Hashingiwe kuri iyi ngingo, Urukiko rurasanga "groupe électrogène" ivugwa, n'ubwo muri rusange yakoreshwaga mu rwego rwo korohereza uwo muyobozi ngo ashobore gutunganya inshingano ze neza z'akazi, kuba yarakoreshwaga no mu yindi mirimo yo mu rugo ishobora kuba idafite aho ihuriye n'inshingano ze z'akazi bituma isano itaziguye (*lien direct*) iteganywa n'itegeko ishidikanywaho, bityo amortissement ijyanye nayo ikaba itagomba kuvanwa mu nyungu zisoreshwa.

[17] Urukiko rurasanga kandi ku ruhande rwa AMSAR abayihagarariye batarashoboye kurugaragariza ibyagenerwaga uwo muyobozi bijyanye no kumworohereza akazi birimo by'umwihariko ibyerekeranye n'imikoreshereze ya "groupe électrogène" ivugwa.

[18] Hashingiwe ku bimaze kuvugwa, urukiko rurasanga amortissement y'iyi groupe électrogène itafatwa nka dépense professionnelle kugira ngo ivanwe mu nyungu zisoreshwa, bityo ubujurire bwa AMSAR no kuri iyi ngingo bukaba nta shingiro bufite.

### **III ICYEMEZO CY'URUKIKO**

[19] Rwemeye kwakira ubujurire rwashyikirijwe na AMSAR BURUNDI SA,, succursale du Rwanda kuko bwatanzwe mu buryo bukurikije amategeko, ko ariko nta shingiro bufite;

[20] Rwemeje ko urubanza RCOM 0115/09/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi kuwa 29/04/2010 rudahindutse;

[21] Rutegetse AMSAR BURUNDI SA, succursale du Rwanda, gutanga amagarama y'urubanza angana na 23.300Frw, itayatanga mu gihe cy'iminsi umunani akavanwa mu byayo ku ngufu za Leta.