FOREST COMPANY VOLCANOES GORILLAS (FCVG) Ltd v IKIGO CY'IMISORO N'AMAHORO (RRA)

[Rwanda URUKIKO RW'IKIRENGA – RCOMAA00055/2016/SC (Kayitesi Z P.J., Mutashya na Karimunda, J.) 29 Nzeri 2017]

Amategeko agenga umusoro – Umusoro ku nyongeragaciro – Umusoro ku nyungu – Amafaranga ahabwa uwatsindiye isoko rya Leta kugirango atangire imirimo iyo ariyo yose asonerwa umusoro kuko adafatwa nkubwishyu – Itegeko Nº37/2012 ryo kuwa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, ingingo ya 10 – Itegeko Nº12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta, ingingo ya 86.

Incamake y'ikibazo: Forest Company Volcanoes Gorillas (FCVG) Ltd yakorewe igenzura n'abagenzuzi bo mu kigo cy'imisoro n'amahoro ku musoro wo mu mwaka wa 2011, 2012, na 2013 hanyuma itegekwa kwishyura nta nteguza imisoro itandukanye ikubiyemo umusoro ku nyungu, umusoro ku nyongeragaciro, umusoro ufatirwa itatanze ndetse icibwa n'ibihano n'inyungu ihwanye na 125.737.718Frw.

FCVG yajuririye icyo cyemezo kwa Komiseri Mukuru nawe ayisubiza ko ubujurire bwayo bufite ishingiro kuri bimwe yemeza ko, ku musoro yaciwe hakurwamo ungana na 20.186.699Frw, ajyanye n'umusoro ufatirwa wa 15% kuko yawugaragarije ibimenyetso bityo akishyura umusoro ungana na 105.551.109Frw.

FCVG ntiyishimiye icyo cyemezo iregera Urukiko rw'ubucuruzi rwa Nyarugenge irusaba kwemeza ko, nta musoro ku nyongeragaciro ugomba gucibwa kuri avansi yo gutangira imirimo ya 90.876.120Frw yahawe muri 2012, ko avansi yo gutangira imirimo ya 52.665.710Frw yahawe muri 2012 atabarirwa mu mafaranga acibwaho ihazabu yo kutiyandikisha mu musoro ku nyongeragaciro (TVA), ko yacibwa ibihano bibariwe kuri 50%, ko avansi yo gutangira imirimo yahawe muri 2012 ikwiye gukurwa mu mafaranga acibwaho umusoro ku nyungu, ko umusoro ku nyungu wa 2011, 2012 na 2013 ukwiye kubarwa hashingiwe ku gipimo cy'urwunguko rwa 3%; hashingiwe ku ihame ryo kugereranya abasoreshwa bakora imirimo isa kuko COCOASTER bakora imirimo imwe ariko isoreshwa, ko Urukiko rutegeka Ikigo cy'Imisoro n'Amahoro kwishyura igihembo cy'Avoka.

Urukiko rwemeje ko ikirego cyayo nta shingiro gifite, ko avansi yo gutangira imirimo Leta y'u Rwanda yahaye FCVG Ltd iri mu maboko yayo, Leta itari kuyishyurira umusoro, ahubwo ari umucuruzi wiyishyurira umusoro, bityo urukiko rwemeza ko amafaranga ya avansi yo gutangira imirimo ikwiye kuyishyurira umusoro ku nyungu hakiyongeraho n'ibihano by'ibyaha yakoze mu kutayishyura, ndetse runayitegeka kwishyura Ikigo cy'Imisoro n'Amahoro amafaranga y'ikurikiranarubanza.

FCVG Ltd ntiyishimiye uwo mwanzuro, ijuririra Urukiko Rukuru rw'Ubucuruzi ivuga ko avansi yo gutangira imirimo itari gucibwaho umusoro ku nyongeragaciro kuko atari ubwishyu kandi ko hari ibyo yaregeye urukiko ntirwabisuzuma.

Urukiko nyuma yo gusuzuma ubujurire rwemeje ko nta gihindutse ku mikirize y'urubanza rwajuririwe kuko rwasanze FCVG Ltd yarakoreye inyemezabwishyu avansi yo gutangira imirimo yahawe zigaragaza umusoro ku nyongeragaciro (TVA) kandi n'ibihano yaciwe kubera kunyereza umusoro byaratanzwe hashingiwe ku mategeko agenga isoresha nta nteguza.

FCVG Ltd ntiyanyuzwe n’imikirize y’urwo rubanza maze ijuririra mu Rukiko rw’Ikirenga ivuga ko Urukiko Rukuru rw’Ubucuruzi rwavuze ko avansi yo gutangira imirimo igomba gucibwaho umusoro TVA kuko wanditse ku nyemezabuguzi kandi ataribyo, ibihano bikwiye kubarirwa kuri 50% aho kuba 100% hashingiwe ku ihame rya «indépendance de l’exercice fiscal»; avansi yo gutangira imirimo ikurwa mu mafaranga asoreshwa umusoro ku nyungu, asaba kandi urukiko gutegeka ko yasoreshwa ku kigero cy’urwunguko nkicyo abo bakora akazi kamwe basoreshwaho.

Ikigo cy’imisoro n’amahoro (RRA) cyo gisobanura ko avansi yo gutangira imirimo isonewe ari iyatanzwe ku mirimo y’ubwubatsi kandi akaba atari yo yakozwe na FCVG Ltd. Isobanura kandi ko iyo FCVG Ltd yumva idakwiye gucibwa umusoro ku nyongeragaciro yari kuvangura fagitire zayo zijyanye n’isoko yari yatsindiye n’izijyanye na avansi yo gutangira imirimo ariko ko atari uko yabikoze ahubwo ko fagitire zijyanye niyo avansi yo gutangira imirimo yakoreye MINAGRI yashyizemo n’uwo musoro, irawuhabwa ariko ikaba idashaka kuwushyikiriza umusoresha.

Incamake y’icyemezo:1. Amafaranga ahabwa uwatsindiye isoko rya Leta kugirango atangire imirimo asonerwa umusoro kuko adafatwa nkubwishyu bityo kuba FCVG Ltd yarakoze inyemezabuguzi igashyiraho ibicibwa umusoro n’ibitawucibwa ubwabyo ntibihagije kugirango iryozwe umusoro kuri avansi yo gutangira imirimo mu gihe itari mu byo itegeko riteganya ko bisoreshwa

2. Imirimo y’ubwubatsi ivugwa mu Itegeko siyo yonyine isonerwa umusoro kuri avansi yo gutangira imirimo kuko yavuzwe nk’urugero bityo imirimo iyo ariyo yose cyangwa avansi yahawe uwegukanye isoko iryo aririyo ryose, isonerwa umusoro.

3. Avansi yo gutangira imirimo ntibarirwa mu mafaranga agomba gucibwaho ibihano by’ihazabu ku mucuruzi utiyandikishije ku musoro kandi yabisabwaga n’Itegeko kuko atari mu gicuruzo cyangwa mu rwunguko rw’uwahawe isoko.

4. Iyo sosiyete itagaragaza ibitabo by’ibaruramari cyangwa ngo igaragaze ibaruramari rya sosiyete y’igererenya nayo, isoreshwa ku rwunguko rugereranyije. yagaragarije umusoresha.

5. Mu gihe hari ibimenyetso bigaragaza ko umusoreshwa yakoze imenyekanishamusoro agamije kuwunyereza, agomba kubihanirwa acibwa ihazabu ingana n’ijana ku ijana (100%) by’umusoro yanyereje.

6. Amafaranga y’igihembo cy’avoka nay’ikurikiranarubanza ntagenwa igihe buri mu buranyi wese ku bimureba haribyo yatsindiwe.

Ubujurire bufite ishingiro kuri bimwe.
Urubanza RCOMA 00184/2016/CHC/HCC rujuririrwa ruhindutse kuri bimwe.
Amagarama y’urubanza aherereye ku baburanyi bombi.

Amategeko yashingiweho:

Itegeko Nshinga rya Repubulika y’u Rwanda ryo mu 2003 ryavuguruwe muri 2015, ingingo ya 164.

Itegeko Nº37/2012 ryo ku wa 09/11/2012 rishyiraho umusoro ku nyongeragaciro, ingingo ya 10.

Itegeko Nº12/2007 ryo ku wa 27/03/2007 rigenga amasoko ya Leta, Ingingo ya 87 na 89.

Itegeko Nº25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y’isoresha nk’uko ryahinduwe kandi ryujujwe kugeza ubu, ingingo ya 10, 45,60,63 na 64.

Itegeko Nº16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 16 na 37.

Itegeko Nº06/2001 ryo ku wa 20/01/2001 rishyiraho umusoro ku nyongeragaciro, ingingo ya 12 na16.

Imanza zifashijijwe:
Ikigo cy'Imisoro n'Amahôro v. Misigaro Louis, RCOMA0074/11/CS, rwaciwe n'Urukiko rw'ikirenga ku wa 11/04/2014.
Ikigo imisoro n'Amahôro v. Rubare Josias, RCOMA0149/12/CS, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/03/2016.

Inyandiko z'abahanga zifashishijwe:
Yvon Colson, Le principe de légalité de l'impôt et *l'interprétation* des lois fiscales in Pacoli n° 327, 2011, p.2.

URUBANZA

I. IMITERERE Y'URUBANZA

[1] Forest Company Volcanoes Gorillas (FCVG) yakorewe igenzura ry'umusoro mu myaka ya 2011, 2012 na 2013, icibwa umusoro n'ibihano, itegekwa kwishyura 125.737.718Frw.FCVG Ltd ntiyishimiye umwanzuro w'abagenzuzi, ijuririra Komiseri Mukuru, nawe asubiza ku wa 08/10/2012, ayimenyesha ko ubujurire bwayo bufite ishingiro ku bijyanye n'umusoro ufatirwa wa 15% ungana na 1.293.537Frw igomba kwemererwa kuko yawugaragarije ibimenyetso, yemeza ko ku musoro yaciwe hakurwaho ungana na 20.186.699Frw, ikishyura ungana na 105.551.109Frw.

[2] FCVG Ltd ntiyishimiye uwo mwanzuro iregera Urukiko rw'Ubucuruzi rwa Nyarugenge irusaba kwemeza ko :

a. Nta musoro ku nyongeragaciro ugomba gucibwa "avance de démarrage" ya 90.876.120Frw mu mwaka wa 2012 ;

b. *Avance de démarrage* ya 52.665.710Frw mu mwaka wa 2012 idakwiye kubarirwa mu mafaranga acibwaho ihazabu yo kutiyandikisha mu musoro ku nyongeragaciro (TVA) ;

c. FCVG Ltd igomba gucibwa ibihano bya 50% aho gucibwa ibihano bya 100% ;

d. *Avance de démarrage* FCVG Ltd yahawe muri 2012 akwiye gukurwa mu mafaranga acibwaho umusoro ku nyungu ;

e. Umusoro ku nyungu wa 2011, 2012 na 2013 ukwiye kubarwa hashingiwe ku gipimo cy'urwunguko rwa 3% ;

f. Urukiko rutegeka Ikigo cy'Imisoro n'Amahôro kwishyura igihembo cy'Avoka kingana na 3.000.000Frw.

[3] Mu rubanza RCOM1574/15/TC/NYGE rwaciwe ku wa 24/03/2016, Urukiko rwasanze "avance de démarrage" Leta y'u Rwanda yahaye FCVG Ltd iri mu maboko yayo, Leta itari kuyishyurira umusoro, ahubwo ari umucuruzi wiyishyurira umusoro hashingiwe ku biteganywa n'ingingo ya 29 y'Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu, rwemeza ko amafaranga ya «avance de démarrage » ikwiye kuyishyurira umusoro ku nyungu hakiyongeraho n'ibihano by'ibyaha yakoze mu kutayishyura, bityo ko ikirego cyayo nta shingiro gifite, itegekwa kwishyura Ikigo cy'Imisoro n'Amahôro 500.000Frw y'ikurikiranarubanza.

[4] FCVG Ltd ntiyishimiye icyo cyemezo, ijuririra Urukiko Rukuru rw'Ubucuruzi ivuga ko « avance de démarrage » itari gucibwaho umusoro ku nyongeragaciro kuko atari ubwishyu kandi ko hari ingingo Urukiko rw'Ubucuruzi rwashyikirijwe ariko ntirwazisuzuma.

[5] Mu rubanza RCOMA00184/2016/CHC/HCC rwaciwe ku wa 29/07/2016, Urukiko rwasanze FCVG Ltd yarakoreye « avance de démarage » yahawe inyemezabwishyu (factures) zigaragaza umusoro ku nyongeragaciro (TVA) kandi n'ibihano yaciwe kubera kunyereza umusoro byaratanzwe hashingiwe ku mategeko agenga isoresha nta nteguza, rwemeza ko izo nyemezabwishyu zihagije kugira ngo yishyure umusoro kuko iyo "avance de démarrage" itari ikiri inguzanyo, bityo ko nta gihindutse ku mikirize y'urubanza rwajuririwe.

[6] FCVG Ltd ntiyanyuzwe n'icyo cyemezo ijuririra mu Rukiko rw'Ikirenga ivuga ko :

a) Urukiko Rukuru rw'Ubucuruzi rwavuze ko « avance de démarrage» igomba gucibwaho umusoro ku nyongeragaciro (TVA) kuko wanditse ku nyemezabuguzi kandi ataribyo kuko umurongo watanzwe mu rubanza RCOMA 0074/11/CS rwaciwe n'Urukiko rw'Ikirenga ku wa 11/04/2014 ari uko « avance de démarrage » isubizwa uko yakabaye harimo n'icyiswe umusoro ku nyongeragaciro hamwe na « acompte » ya 3%;

b) Urukiko Rukuru rw'Ubucuruzi rwavuze ko « avance de démarrage » yagombaga gucibwaho umusoro ku nyongeragaciro kuko wanditse ku nyemezabuguzi ariko ntirwagaragaza niba inyemezabuguzi zashingiweho FCVG Ltd icibwa ibihano nazo zanditsweho uwo musoro, ko niba hari ikosa ryabaye muri 2012 nta mpamvu y'uko ahanirwa imyaka itarabayemo amakosa bivuze ko ibihano bikwiye kubarirwa kuri 50% aho kuba 100% hashingiwe ku ihame rya « indépendance de l'exercice fiscal » ;

c) Uru Rukiko ruramutse rwemeje ko « avance de démarrage » idasoreshwa umusoro ku nyongeragaciro (TVA) kuko atari ubwishyu, rwakomeza rukanemeza ko ikwiye gukurwa no mu mafaranga asoreshwa umusoro ku nyungu.

d) Mu kubara umusoro ku nyungu, umusoresha yagereranyije FCVG Ltd n'abandi bahuje imirimo, amubarira urwunguko rwa 21% kandi azi neza ko uwitwa Cocoaster Ltd bakora imirimo imwe, yamenyekanishije urwunguko rwa 1% mu mwaka wa 2011, urwa 6% mu mwaka wa 2012 n'urwa 1% mu mwaka wa 2013, impuzandengo (moyenne/average) ikaba 3% FCVG Ltd yamenyekanishije.

[7] Iburanisha ryashyizwe kuwa 20/06/2017 ariko uwo munsi ntirwaburanishwa kubera ko Ikigo cy'Imisoro n'Amahôro cyari kitarishyura ihazabu mbonezamubano cyari cyaciwe mu rundi rubanza, iburanisha ryimurirwa kuwa 28/06/2017 Uwo munsi iburanisha ribera mu ruhame, FCVG Ltd iburanirwa na Me Nsengiyumva Abel naho Ikigo cy'Imisoro n'Amahôro kiburanirwa na Me Byiringiro Bajeni.

[8] Iburanisha rigitangira, Me Byiringiro Bajeni yamenyesheje Urukiko ko inzitizi y'iburabubasha ry'uru Rukiko yari yatanze ishingiye ku kuba FCVG Ltd yaratsinzwe ku mpamvu zimwe mu Nkiko zombi zibanza ayiretse kuko yasanze atari uko bimeze.

[9] Urukiko rwategetse Ikigo cy'Imisoro n'Amahôro kugaragaza niba umusoreshwa witwa COCOASTER akora imirimo isa n'iya FCVG Ltd no kumenya ingano y'urwunguko yasoresherejweho, urubanza rwimurirwa kuwa 12/07/2017 kugira ngo ababuranyi bazagire icyo bavuga kuri ayo makuru.

Uwo munsi iburanisha ribera mu ruhame, ababuranyi bahagarariwe nka mbere, urubanza rurapfundikirwa.

II. IBIBAZO BIGIZE URUBANZA N'ISESENGURA RYABYO

II.1 Kumenya niba « avance de démarrage » icibwaho umusoro ku nyongeragaciro n'umusoro ku nyungu.

[10] Me Nsengiyumva Abel avuga ko, ku wa 12/09/2012, FCVG Ltd yahawe na Minisiteri y'Ubuhinzi n'Ubworozi (MINAGRI) « avance de démarrage » ingana na 42.815.120Frw, ku wa 12/10/2012 ihabwa indi ingana na 48.061.400Frw. Asobanura ko Ikigo cy'Imisoro n'Amahôro cyafashe iyo « avance de démarrage » nk'ubwishyu, babijurira kwa Komiseri Mukuru, ku mpapuro za 5, 6 na 9 z'icyemezo cye bikaba bigaragara ko nawe yakomeje kubifata atyo, bageze mu Rukiko Rukuru rw'Ubucuruzi narwo rwemeza ko ayo mafaranga ari ubwishyu bugomba gucibwaho umusoro. Asobanura ko Urukiko Rukuru rw'Ubucuruzi rwashingiye icyemezo cyarwo ku kuba FCVG Ltd yaribeshye igashyira umusoro ku nyemezabwishyu yakoreye MINAGRI, rwirengagiza ikibazo rwari rwabajijwe cyo kumenya niba « avance de démarrage » isoreshwa. Avuga ko « avance de démarrage » yasobanuwe bihagije n'uru Rukiko mu rubanza Ikigo cy'Imisoro n'Amahôro cyaburanaga na Misigaro Louis,[1] rwemeza ko atari ubwishyu kuko ari amafaranga asubizwa Leta isoko ireba ryaba ryarangiye cyangwa ritarangiye, ariyo mpamvu asaba uru Rukiko kuguma mu murongo rwemeje, rukavuga ko ariya 90.876.520Frw atagomba gucibwaho umusoro ku nyongeragaciro n'umusoro ku nyungu.

[11] Me Byiringiro Bajeni avuga ko Itegeko risobanura neza ko « avance de démarrage » isonewe umusoro ari iyatanzwe ku mirimo y'ubwubatsi kandi akaba atari yo yakozwe na FCVG Ltd. Asobanura ko iyo FCVG Ltd yumva idakwiye gucibwa umusoro ku nyongeragaciro yari kuvangura fagitire zayo zijyanye n'isoko yari yatsindiye n'izijyanye na « avance de démarrage», ariko ko atari uko yabikoze, ahubwo ko fagitire zijyanye niyo « avance de démarrage » yakoreye MINAGRI yashyizemo n'uwo musoro, irawuhabwa ariko ikaba idashaka kuwushyikiriza umusoresha, ariyo mpamvu asanga ibisobanuro byatanzwe n'uru Rukiko kuri « avance de démarrage » mu rubanza Ikigo cy'Imisoro n'Amahôro cyaburanaga na Misigaro Louis ntacyo byarumarira kuko zitandukanye bitewe nuko Misigaro Louis yari akurikiranweho kudaca uwo musoro muri fagitire za « avance de démarrage » yari yakoze.

UKO URUKIKO RUBIBONA

[12] Ingingo ya 12, igika cya mbere y'Itegeko N^{o}06/2001 ryo kuwa 20/01/2001 rishyiraho umusoro ku nyongeragaciro ryakoreshwaga FCVG Ltd ihabwa "avance de démarrage" iteganya ko "ibintu n'imirimo bisoreshwa […] iyo ibintu bikorwa hagamijwe ikiguzi n'usoreshwa wiyandikishije ubwe, uwo bafatanije cyangwa umukozi we […]" Naho ingingo ya 16, igika cya mbere y'iryo tegeko ikavuga ko "agaciro gasoreshwa kuri buri kintu cyangwa umurimo kagenwa […] ku buryo bukurikira: a) uretse ibyo iri tegeko riteganya ukundi, agaciro gasoreshwa ku kintu cyangwa ku murimo ni ikiguzi cyabyo cyarishywe mu mafaranga cyangwa ku bundi buryo."

[1] Reba urubanza RCOMA0074/11/CS hagati y'Ikigo cy'Imisoro n'Amahôro na Misigaro Louis, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/04/2014.

[13] Ingingo ya 87 y'Itegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta ryakoreshwaga FCVG Ltd ihabwa "avance de démarrage" iteganya ko "avansi yo gutangira imirimo itagomba kurenga makumyabiri ku ijana (20%) by'igiciro cyose cy'isoko kandi yishyurwa ari uko uwegukanye isoko abanje guha urwego rutanga isoko ingwate ingana n'amafaranga asabirwa avansi. Iyo ngwate igomba gutangwa na Banki cyangwa Ikigo cy'Imari kibifitiye ububasha." Naho ingingo ya 89 y'iryo Tegeko N°12/2007 ryo kuwa 27/03/2007 rigenga amasoko ya Leta ryakoreshwaga FCVG Ltd ihabwa "avance de démarrage" iteganya ko "avansi yahawe uwegukanye isoko isubizwa hakoreshejwe ikatwa ry'umubare runaka w'amafaranga ku nyemezabuguzi zatanzwe kandi zemejwe. Igitabo cy'amabwiriza agenga ipiganwa giteganya ijanisha ry'amafaranga azagenda akatwa kugeza igihe avansi yose yishyuriwe. Ingwate ya avansi isubizwa uwegukanye isoko mu minsi mirongo itatu (30) uhereye igihe avansi yose yatanzwe yishyuriwe."

[14] Ingingo ya 16 y'Itegeko Nº16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro iteganya ko inyungu ku bikorwa by'ubucuruzi ingana n'umusaruro wakiriwe ku bikorwa byose hakuwemo ibyasohowe byose ku birebana n'ibyo bikorwa. Inyungu ku bikorwa irimo kandi umusaruro uva mu igurisha ry'umutungo uwo ariwo wose no ku mafaranga ava mu irangizamutungo yakiriwe mu gihe cy'umusoro. Naho ingingo ya 37 y'iryo Tegeko igateganya ko umusaruro ku nyungu z'amasosiyete ukurwa ku nyungu z'ubucuruzi zabonywe n'amasosiyete.

[15] Mu nyandiko zigize dosiye y'urubanza harimo Invoice of Advance n°01/RSSP/10/2012 yakozwe na FCVG Ltd kuwa 24/10/2012 yishyuza 48.061.400Frw, muri ayo mafaranga hakaba habariwemo umusoro ku nyongeragaciro wa 18% ungana na 7.331.400Frw na acompte ya 3% ingana na 1.221.900Frw, ku mbonerahamwe y'amafaranga yishyuwe FCVG Ltd bigaragara ko yishyuwe amafaranga yose hamwe angana na 112.428.925Frw, umusoro ku nyongeragaciro ukaba waranganaga na 11.944.489Frw naho acompte ya 3% ikaba yaranganaga na 1.990.748Frw, cyakora bigaragara ko kuri 48.061.400Frw ya *avance de démarrage* yishyuwe ku wa 09/11/2012 nta musoro ku nyongeragaciro cyangwa "acompte" biriho.

[16] Muri dosiye harimo na none inyandiko yitwa "facture n°2-06/12/2011" yakozwe ku wa 06/12/2011 yishyuza igice cya kabiri cya avansi yo gutangira imirimo ingana na 6.506.528Frw, icyo gice kijyanye na Nzeri 2011, Gashyantare 2012, ayo mafaranga akaba yarishyuwe ku wa 06/01/2012, imbonerahamwe yishyuriweho ikaba ntaho igaragaza ko hari umusoro waciwe kuri ayo mafaranga (cote 24)

[17] Urukiko rurasanga igisoreshwa ku mirimo ari ikiguzi cyayo cyaba cyarishyuwe mu mafaranga cyangwa mu bundi buryo, ni ukuvuga ko nyuma yo gukora imirimo yatsindiye, umusoreshwa akorera uwayimuhaye inyemezabwishyu igaragaza agaciro gahwanye n'imirimo yakoze, akaba ari nako gaherwaho amenyekanisha umusoro ku bwishyu yakiriye.

[18] Urukiko rurasanga, nk'uko rwabyemeje mu rubanza Ikigo cy'Imisoro n'Amahôro cyaburanga na Misigaro Louis,[2] ndetse rukongera no kubigarukaho mu rubanza icyo Kigo cyaburanaga na Rubare Josias,[3]avansi yo gutangiza imirimo n'amafaranga ahabwa uwatsindiye isoko kugirango abashe gutangira gushyira mu bikorwa isoko yatsindiye, akaba nta gice cy'umurimo runaka aba yishyuriwe ku

[2] Urubanza RCOMA0074/11/CS hagati y'Ikigo cy'Imisoro n'Amahôro na Misigaro Louis, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/04/2014, ibika bya 18-20.
[3] Urubanza RCOMA0149/12/CS hagati y'Ikigo cy'Imisoro n'Amahôro na Rubare Josias, rwaciwe n'Urukiko rw'Ikirenga ku wa 11/03/2016, ibika cya 15 na 16.

buryo yafatwa nk'ubwishyu, ahubwo uko uwatsindiye isoko agenda yishyuza agaciro k'imirimo yakoze, agenda avanamo (déduction) ingano runaka ya avansi nk'uko byumvikanweho n'impande zagiranye amasezerano, akazarangiza kwishyurwa imirimo yakoze yose na ya avansi yose isubijwe uwamuhaye isoko, ntiyaba rero isubizwa uwatanze isoko, ngo yongere ifatwe nk'ubwishyu kuri iryo soko.

[19] Urukiko rurasanga uwatanze isoko afite inshingano ahabwa n'Itegeko zo gukurikirana uburyo avansi yo gutangira imirimo ikoreshwa, yasanga idakoreshwa ibijyanye n'isoko ryatanzwe igafatwa nk'umwenda kandi bikamuhesha uburenganzira bwo gufatira ingwate yatanzwe kugirango yiyishyure, naho avansi yakoreshwa kandi yasubizwa uko bikwiye, uwatanze isoko akarekura ingwate yari yatanzwe mu gihe cy'iminsi mirongo itatu (30) uhereye igihe avansi yose yasubirijwe abari batanze isoko, nabyo bishimangira ko ibyo Ikigo cy'Imisoro n'Amahôro kivuga ko avansi ari ubwishyu nta shingiro bifite kuko bibaye ari ubwishyu byaba bivuze ko iguma mu maboko y'uwayihawe aho gusubizwa uwatanze isoko.

[20] Urukiko rurasanga kandi ihame rusange rigenga amategeko y'imisoro mu Rwanda ari uko umusoro ushyirwaho, uhindurwa kandi ukurwaho n'Itegeko, ndetse ukaba utasonerwa cyangwa ngo ugabanywe bidakozwe mu buryo buteganywa n'Itegeko, Itegeko Nshinga[4] rikaba rishimangira iri hame kugirango umusoro ujye ushyirwaho n'urwego rubifitiye ububasha kandi umusoreshwa amenye hakiri kare imisoro agomba kwishyura,[5]bityo kuba FCVG Ltd yarashingiye ku biteganywa n'ingingo ya 89 y'Itegeko N⁰12/2007 ryo ku wa 27/03/2007 yibukijwe haruguru ivuga ko avansi yahawe uwegukanye isoko isubizwa hakoreshejwe ikatwa ry'umubare runaka w'amafaranga ku nyemezabuguzi zatanzwe kandi zemejwe, igakora inyemezabuguzi yashyizeho ibicibwa umusoro n'ibitawucibwa ubwabyo ntibihagije kugirango iryozwe umusoro kuri *avance de démarrage* mu gihe iyo avansi itari mu byo itegeko riteganya ko bisoreshwa, bityo avansi ya 90.876.520Frw MINAGRI yahaye FCVG Ltd ikaba idakwiye gucibwaho umusoro ku nyongeragaciro.

[21] Urukiko rurasanga kandi ibitegenywa n'ingingo ya 10, igika cya mbere, agace ka 2, y'Itegeko Nº37/2012 ryo kuwa 09/11/2012 rishyiraho umusoro ku nyongeragaciro ko " […] igihe giteganijwe umusoro wakirwa ku bintu no kuri serivisi ari ikibanziriza ibindi mu bihe bikurikira : 1º[…], 2º ku itariki igicuruzwa cyangwa serivisi byishyuriweho harimo n'ubwishyu bw'igice. Cyakora, aka gace ntikareba avansi ihabwa abubaka nyuma bakazayisubiza bayikura mu nyemezabuguzi bakorera umukiriya nabyo bishimangira ko "avance de démarrage" atari ubwishyu, iyi ngingo ahubwo ikaba yibutsa ihame ry'uko igisoreshwa ari ubwishyu bwaba ubw'ibyakozwe cyangwa ibyaguzwe byose cyangwa igice cyabyo, kandi yasomerwa hamwe n'ingingo ya 87 n'iya 89 z'Itegeko Nº12/2007 ryo kuwa 27/03/2007 ryavuzwe hejuru, zivuga muri rusange "avansi yo gutangira imirimo" iyo ariyo yose cyangwa "avansi yahawe uwegukanye isoko" iryo ariryo ryose, ikumvikanisha ko imirimo y'ubwubatsi iyivugwamo ari urugero rwatanzwe, bityo ibyo Me Byiringiro Bajeni avuga ko ingingo ya 10, igika cya mbere, agace ka 2, y'Itegeko Nº37/2012 ryo ku wa 09/11/2012 rimaze kuvugwa yaje gusonera umusoro kuri avansi yahawe abubatsi gusa bikaba nta shingiro bifite.

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[4]«Umusoro ushyirwaho, uhindurwa cyangwa ukurwaho n'itegeko. Nta sonerwa cyangwa igabanywa ry'umusoro rishobora gukorwa mu gihe bidateganywa n'itegeko. » Reba ingingo ya 164 y' Itegeko Nshinga rya Repubulika y'u Rwanda ryo mu 2003 ryavuguruwe mu 2015.

[5] *« Cette interdiction vise à garantir au citoyen que l'impôt qu'il doit payer a été mis en place exclusivement par une institution qu'il a élue. Le citoyen est donc en droit de savoir à l'avance la hauteur des prélèvements qu'il va devoir subir. » Reba Yvon Colson, « Le principe de légalité de l'impôt et l'interprétation des lois fiscales » in Pacoli No 327, 2011, p.2.*

[22] Urukiko rurasanga na none, hashingiwe ku byasobanuwe hejuru, “avance de démarrage” atari ubwishyu ku buryo yafatwa nk’umusaruro wabonywe na sosiyete utegangwa mu ngingo ya 37 y’Itegeko N°16/2005 ryo ku wa 18/08/2005 ryavuzwe hejuru, kuko isubizwa uwatanze isoko kugirango arekure ingwate yahawe, bityo ikaba idakwiye kubarirwa mu mafaranga acibwaho umusoro ku nyungu.

II.2 Kumenya ingano y’urwunguko rukwiye guciribwaho ibihano byo kutiyandikisha mu basora umusoro ku nyongeragaciro.

[23] Me Nsengiyumva Abel avuga ko FCVG Ltd yaciwe ibihano byo kutiyandikisha mu basora umusoro ku nyongeragaciro kuri 100.000.000Frw nyamara Ikigo cy’Imisoro n’Amahôro cyemera ko ayo mafaranga akubiyemo « avance de démarrage » ya 6.506.528Frw FCVG Ltd yahawe ku wa 06/01/2012, hakaba n’andi 46.159.182Frw yahawe kuwa 13/04/2012 icyo Kigo kitemera ariko MINAGRI ihamya mu rwandiko rwayo rwo ku wa 09/09/2016 ko nayo ari « avance de démarrage » yatanzwe ku isoko rya GATSIBO-8 kandi ko yayasubijwe, bivuze ko mu gihe aya 52.665.710Frw ari« avance de démarrage» kandi ikaba idacibwaho umusoro ku nyongeragaciro, ayo mafaranga adakwiye gushyirwa mu gicuruzo giherwaho FCVG Ltd ihanirwa gutinda kwiyandikisha mu basora umusoro ku nyongeragaciro kuko byaba bisobanuye ko yahanishijwe ihazabu ya 100% aho kuba iya 50% iteganywa n’ingingo ya 63, agace ka mbere, y’Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y’isoresha.

[24] Me Byiringiro Bajeni avuga ko FCVG Ltd nayo yemera ko nta cyabuzaga ko icibwa ihazabu iteganywa n’ingingo ya 63, agace ka mbere, y’Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y’isoresha mu gihe yari igejeje kuri “chiffre d’affaires” ya 20.000.000Frw ntiyiyandikishe mu basora umusoro ku nyongeragaciro mu gihe cy’iminsi irindwi (7). Asobanura ko 46.159.182Frw atari “avance de démarrage” kuko yakorewe fagitire n°1-03/03/2012 yo ku wa 26/3/2012 yishyurwa ku wa 3/4/2012, acibwaho na 3% kuko ryari isoko rya Leta, anacibwaho umusoro ufatirwa wa 15% nk’amafaranga yishyuwe serivisi akaba ari nako byagenze kuri 6.506.528Frw yakorewe fagitire ku wa 6/12/2011, yishyurwa ku wa 6/1/2012, akaba asanga amafaranga yagiye asorerwa imisoro itandukanye ndetse iyo misoro igakurwa mu gicuruzo gikosoye, atafatwa nka “avance de démarrage” uretse ko niyo yaba ariyo bitabuza ko acibwa umusoro ku nyongeragaciro kuko imirimo FCVG Ltd ikora itarebana n’ubwubatsi busanzwe busonewe umusoro kuri “avance de démarrage”.

UKO URUKIKO RUBIBONA

[25] Ingingo ya 10, igika cya mbere, y’Itegeko N°25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y’isoresha nk’uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko “Umuntu wese utangiye igikorwa cy’ubucuruzi cyangwa ibikorwa bishobora gusoreshwa agomba kwiyandikisha mu Buyobozi bw’Imisoro mu gihe kitarenze iminsi irindwi (7) kuva atangiye igikorwa cyo gucuruza cyangwa atangiye isosiyete.” Naho igika cya 2 cy’iyo ngingo kikavuga ko “Umuntu wese wakoze ibikorwa bisoreshwa birenze amafaranga y’u Rwanda angana na miliyoni makumyabiri (20.000.000Frw) y’ibyacurujwe mu gihe cy’umwaka usanzwe warangiye cyangwa angana n’amafaranga y’u Rwanda miliyoni eshanu (5.000.000Frw) mu gihembwe kirangiye, agomba kwiyandikisha ku musoro ku nyongeragaciro mu buyobozi bw’imisoro mu gihe kitarenze iminsi irindwi (7) y’irangira ry’umwaka cyangwa ry’igihembwe byavuzwe haruguru.”

[26] Ingingo ya 60, igika cya mbere, agace ka 7° y’Itegeko N°25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y’isoresha nk’uko ryahinduwe kandi ryujujwe kugeza ubu, iteganya ko “Umusoreshwa

cyangwa undi muntu wese acibwa ihazabu iyo ananiwe kwiyandikisha nk'uko bivugwa mu ngingo ya 10." Naho Ingingo ya 63, agace ka mbere, y'iri Tegeko ikavuga ko "amahazabu akurikira acibwa abatarubahirije ibirebana n'umusoro ku nyongeragaciro : 1) igihe uwakoze ubucuruzi atiyandikishije ku musoro ku nyongeragaciro, kandi yarabisabwaga, acibwa ihazabu ingana na mirongo itanu ku ijana (50%) by'umusoro ku nyongeragaciro yagombaga kwishyura mu gihe cyose yakoze ubwo bucuruzi » .

[27] Muri dosiye y'urubanza harimo inyandiko yitwa "Facture n^o 01- 03/03/2012" igaragaza ko ku wa 26/03/2012, FCVG Ltd yishyuje 46.159.240Frw nka « avance de démarrage » kuri site ya Gatsibo-8, ayo mafaranga yishyurwa hakoreshejwe sheki yahawe FCVG Ltd ku wa 03/04/2012, MINAGRI ikaba yaremeye mu ibaruwa yanditse ku wa 09/09/2016 ko ayo mafaranga yari aya "avance de démarrage"

[28] Muri dosiye harimo na none inyandiko yitwa "facture n^{o}2-06/12/2011" yakozwe ku wa 06/12/2011 yishyuza igice cya kabiri cya avansi yo gutangira imirimo ingana na 6.506.528Frw, kijyanye na Nzeri 2011 - Gashyantare 2012, ayo mafaranga akaba yarishyuwe hakoreshejwe sheki ku wa 06/01/2012, imbonerahamwe yishyuriweho ikaba nta na hamwe igaragaza ko haba harabariwemo umusoro ku nyongeragaciro.

[29] Urukiko rurasanga Ikigo cy'Imisoro n'Amahôro cyemera ko 6.506.528Frw yatanzwe nka « avance de démarrage », byongeye kandi inyandiko zigize dosiye zikaba zigaragaza ko 46.159.182Frw nayo yatanzwe muri urwo rwego, MINAGRI ikaba ishimangira mu ibaruwa yayo yo ku wa 09/09/2016 ko ayo 46.159.182Frw yayashubijwe yose ariyo mpamvu yemeye kurekura ingwate yari yatanzwe na FCVG Ltd muri SONARWA S.A., bityo hakaba nta gushidikanya guhari ko aya 52.665.710Frw (6.506.528Frw + 46.159.182Frw) yari amafaranga yatanzwe na MINAGRI nka « avance de démarrage» kandi ikaba yarayasubijwe.

[30] Urukiko rurasanga nk'uko byasobanuwe hejuru « avance de démarrage » idacibwa umusoro ku nyongeragaciro kuko ari amafaranga uwatsindiye isoko asubiza uwarimuhaye kugirango uyu arekure ingwate yari yahawe, bivuze ko atari mu gicuruzo cyangwa mu rwunguko rw'uwahawe isoko, bityo akaba ataherwaho mu kubara ingano y'igihano cya 50% y'ihazabu icibwa umucuruzi utiyandikishije mu basora umusoro ku nyongeragaciro kandi yabisabwaga n'Itegeko.

[31] Urukiko rurasanga, hashingiwe ku bimaze gusobanurwa mu gika kibanza, 99.004.711Frw yahereweho FCVG Ltd icibwa igihano cy'ihazabu cya 50% kubera kutiyandikisha mu batanga uwo musoro ku gihe, agomba kuvanwamo 52.665.710Frw kuko aya yari « avance de démarrage » yasubijwe MINAGRI yari yatanze isoko.

II.3 Kumenya ingano y'urwunguko rukwiye kubarirwaho umusoro ku nyungu.

[32] Me Nsengiyumva Abel avuga ko ibaruramari rya FCVG Ltd ritakoraga koko mu buryo buteganywa n'amategeko, ariyo mpamvu yemera ko yagombaga gusoreshwa hashingiwe ku ihame rya "comparaison des contribuables", FCVG Ltd ikagereranywa n'abakora imirimo nk'iyayo, ariko ko batamenye aho Ikigo cy'Imisoro n'Amahoro cyakuye umusoreshwa ukora imirimo nk'iya FCVG Ltd wungutse 21% kuko batigeze bamumenyeshwa, uwo bazi akaba ari uwitwa COCOASTER Ltd, bakora imirimo imwe kandi wasoreshejwe ku rwunguko rwa 3%, akaba asaba ko umusoro ku nyungu FCVG Ltd yishyuzwa wabarirwa kuri urwo rwunguko rwa 3%.

[33] Me Byiringiro Bajeni avuga ko FCVG Ltd itigeze ikora ibaruramari cyangwa ngo igaragaze ibitabo byayo by'ubucuruzi ngo bihuzwe n'imenyekanishamusoro yakoze, byumvikanisha ko nta wundi

musoreshwa bari kugereranywa, na COCOASTER ivuga ko bakwiye kugereranywa bakaba barasanze hari COCOASTER icuruza nka sosiyete kandi ikaba yarafunze muri 2014 na COCOASTER ya koperative mu by'ubuhinzi n'ubworozi ikora ibijyanye no gutegura za « terrasse », bivuze ko badakora bimwe. Asobanura ko aribyo byatumye FCVG Ltd isoreshwa nta nteguza, umusoresha asanga yaravuze mu imenyekanishamusoro ko yacuruje 34.105.600Frw yunguka 7.809.700Frw bihwanye n'urwunguko rwa 23% naho muri « historique bancaire » avuga ko yungutse 21%, ariyo mpamvu yasoreshejwe ku rwunguko rugereranyije (moyenne) rwa 21%, bityo akaba asanga ntaho Urukiko Rukuru rw'Ubucuruzi rwakosheje rwemeza ko FCVG Ltd isoreshwa ku rwunguko rwa 21%.

UKO URUKIKO RUBIBONA

[34] Ingingo ya 45, agace ka mbere, y'Itegeko Nº25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha iteganya ko umusoreshwa asabwa ibimenyetso iyo: 1º Ubuyobozi bw'Imisoro bwakoze isoresha nta nteguza.

[35] Dosiye y'urubanza igaragaza ko FCVG Ltd yaciwe umusoro ku nyungu wa 2.849.742Frw ku mwaka wa 2011, uwa 16.988.112Frw ku mwaka wa 2012 n'uwa 12.394.551Frw ku mwaka wa 2013, imenyeshwa n'abagenzuzi ko itazasoreshwa ku rwunguko rwa 3% kuko itashoboye kurugaragariza ibimenyetso, ijuririra kwa Komseri Mukuru ivuga ko yagize urwunguko rusange (marge beneficiaire brut) rwa 20% ariko iyo havuyemo ubwishingizi, imishahara, imisoro, ubwicungure, inyungu z'umwenda hasigara urwunguko rwa 3%. Mu ibaruwa ye yo ku wa 17/09/2015, Komiseri Mukuru yasanze FCVG Ltd itagaragaza ibimenyetso by'ibyo ivuga, yemeza ko ubujurire bwayo nta shingiro bufite.

[36] Urukiko rurasanga FCVG Ltd yemeranywa n'umusoresha ko ibaruramari ryayo ritari ryujuje ibisabwa n'amategeko, isoreshwa nta nteguza (taxation d'office), bivuze ko, hashingiwe ku biteganywa n'ingingo ya 45, agace ka mbere, y'Itegeko N°25/2005 ryo kuwa 04/12/2005 ryavuzwe haruguru, ariyo ifite inshingano yo kugaragaza ko koko urwunguko umusoresha yafatiyeho ayisoresha atari rwo, na nubu ikaba itagaragaza icyo ishingiraho ivuga ko igomba gusoreshwa ku rwunguko rwa 3% kuko itabasha kugaragaza ibyo yacuruje ngo nivanamo ibyatunze umwuga hasigare urwo rwunguko rwa 3%, bityo ibyo ivuga ko igomba gusoreshwa ku rwunguko rwa 3% bikaba nta shingiro bifite.

[37] Urukiko rurasanga kandi FCVG Ltd itarabashije kurugaragariza ko urwunguko ntarengwa rw'uwitwa COCOASTER Ltd yigereranya nawe ari 3% ahubwo Me Nsengiyumva Abel uyiburanira avuga ko batashoboye kubona ibitabo by'ibaruramari bya COCOASTER byemewe, Ubuyobozi bw'Imisoro nabwo bukaba buvuga ko butashoboye kubona amakuru y'ibaruramari rya COCOASTER ikora nka koperative ku buryo yashingirwaho hemezwa ko urwunguko ntarengwa rw'abakora ibijyanye no gutunganya za « terrasse » ari 3%, kubera izo mpamvu, uru Rukiko rukaba ntaho rwahera rwemeza ko ayo FCVG Ltd yungutse ari 3% aho kuba 21% agaragara mu menyekanishamusoro yikoreye no muri « historique bancaire » yayo, bityo ingano y'urwunguko ikwiye kubarirwaho umusoro ku nyungu ikaba ari 21%.

II.4 Kumenya niba FCVG Ltd yaranyereje umusoro bigatuma yacibwa ibihano.

[38] Me Nsengiyumva Abel avuga ko ibihano FCVG Ltd ikwiye ari ibya 50% byo kutiyandikisha mu batanga umusoro ku nyongeragaciro ku gihe, ariko ko umusoresha yayiciye n'ihazabu ya 100% yo kunyereza umusoro bitewe n'uko hari abahakanye inyemezabuguzi z'umusoro ku nyongeragaciro

bayihaye muri 2012, nyamara ari ibisanzwe ko abazitanze bazihakana kuko baba batarazimenyekanishije. Asobanura ko ikibazo cyasuzumwe mu buryo butaribwo kuko hari gusuzumwa nimero z'izo nyemezabuguzi n'uwazitanze, bigakorwa ku mwaka wa 2012 gusa hashingiwe ku ihame ry'uko buri mwaka w'isoresha wigenga (indépendance de l'exercice fiscal), haba hari amakosa ibihano ntibirenge uwo mwaka.

[39] Me Byiringiro Bajeni avuga ko ibyo FCVG LTD iburanisha ko igomba gucibwa ibihano bya 50% kubera kunyereza umusoro nta shingiro bifite kubera ko igenzura ryagaragaje ko yamenyekanishije ibyatunze umwuga n'umusoro ku nyongeragaciro ku kiranguzo bitabayeho igamije kunyereza umusoro ku myaka ya 2011, 2012 na 2013, ibi bikaba bigaragazwa n'uko hari abavuze ko ntacyo bayigurishije, ari nacyo cyatumye Urukiko Rukuru rw'Ubucuruzi rwemeza mu bika bya 11, 14 na 15 ko ihazabu ya 100% iteganywa n'ingingo ya 64 y'Itegeko N^{o}25/2005 ryo kuwa 04/12/2005 rigena imitunganyirize y'isoresha yari ifite ishingiro.

UKO URUKIKO RUBIBONA

[40] Ingingo ya 64 y'Itegeko N^{o}25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu iteganya ko umusoreshwa wanyereje umusoro ahanishwa ihazabu ingana n'ijana ku ijana (100%) by'umusoro yanyereje.

[41] Dosiye y'urubanza irimo amabaruwa y'abacuruzi (UPROTUR, RUTA Trading Company Ltd, Gasangwa Vianney, S.R.D.S. Ltd) bandikiye Komiseri Mukuru w'Ishami rishinzwe kurwanya magendu bose bemeza ko nta bicuruzwa bagurishije FCVG Ltd mu myaka ya 2011, 2012 na 2013. Dosiye igaragaza kandi ko FCVG Ltd yamenyeshejwe n'abagenzuzi ko icyatumye icibwa ibihano bya 100% ari uko yamenyekanishije inyemezabuguzi ku musoro ku nyongeragaciro zitavugisha ukuri, kandi yo ubwayo ikaba yarivugiye ko nta bimenyetso ifite by'ibyo ivuga ko byatunze umwuga, ijuririye ibyo bihano kwa Komiseri Mukuru, nawe asanga itagaragaza ibimenyetso by'ibyo yavugaga ahubwo yaranyereje umusoro ibigambiriye (cotes 8 na 13).

[42] Urukiko rurasanga inyandiko zigize dosiye y'urubanza zigaragaza ko FCVG Ltd ivuga ko hari ibicuruzwa yaguze ibicibwaho umusoro ku nyongeragaciro igomba gusubizwa nyamara abo ivuga ko yabiguze nabo babihakana, hakiyongeraho kuba idatanga ibimenyetso by'ibyo ivuga ko byatunze umwuga bikwiye kuvanwa mu byo yacuruje, byumvikanisha ko icyo yari igamije ari ugusubizwa umusoro ku nyongeragaciro kandi nta kigaragaza ko yawutanze ndetse igashaka no gutubya ingano y'ibyo yacuruje ivanamo ibyatunze umwuga itagaragariza ibimenyetso, ibi byose bikaba ari uburyo bwo kunyereza umusoro.

[43] Urukiko rurasanga mu gihe hari ibimenyetso bigaragaza ko FCVG Ltd yakoze imenyekanishamusoro igamije no kuwunyereza, igomba kubihanirwa icibwa ihazabu ingana n'ijana ku ijana (100%) by'umusoro yanyereje nk'uko biteganywa n'ingingo ya 64 y'Itegeko N^{o} 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujujwe kugeza ubu.

II.5 Kumenya niba FCVG Ltd yahabwa indishyi isaba.

[44] Me Nsengiyumva Abel avuga ko Ikigo cy'Imisoro n'Amahôro kigomba guha FCVG Ltd amafaranga miliyoni eshatu (3.000.000Frw) yishyuye Avoka wayiburaniye.

[45] Me Byiringiro Bajeni avuga ko indishyi FCVG Ltd isaba nta shingiro zifite, ko ahubwo Ikigo cy'Imisoro n'Amahôro gikwiye guhabwa indishyi z'ikurikiranarubanza zigenwe mu bushishozi bw'Urukiko hashingiwe ku biteganywa n'ingingo ya 258 y'Igitabo cya gatatu cy'urwunge rw'amategeko mbonezamubano.

UKO URUKIKO RUBIBONA

[46] Urukiko rurasanga FCVG Ltd n'Ikigo cy'Imisoro n'Amahôro, buri wese kubimureba, hari ibyo atsindiwe, bityo muri uru rubanza, hakaba ntawavuga ko yashowe mu manza nta mpamvu, aricyo gituma amafaranga y'igihembo cya Avoka FCVG Ltd isaba ndetse n'amafaranga y'ikurikiranarubanza Ikigo cy'Imisoro n'Amahoro gisaba ntayo bakwiriye.

III. ICYEMEZO CY'URUKIKO

[47] Rwemeje ko ubujurire bwa Forest Company Volcanoes Gorillas (FCVG) Ltd bufite ishingiro kuri bimwe;

[48] Rwemeje ko imikirize y'urubanza RCOMA00184/2016/CHC/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 29/07/2016 ihindutse kuri bimwe;

[49] Rwemeje ko *avance de démarrage* ingana na 90.876.520Frw itagomba gucibwaho umusoro ku nyongeragaciro;

[50] Rwemeje ko *avance de démarrage* ingana na 90.876.520Frw itagomba gucibwaho umusoro ku nyungu;

[51] Rwemeje ko 99.004.711Frw yahereweho Forest Company Volcanoes Gorillas (FCVG) Ltd icibwa igihano cy'ihazabu cya 50% kubera kutiyandikisha mu batanga umusoro ku nyongeragaciro ku gihe, agomba kuvanwamo 52.665.710 Frw kuko yari « avance de démarrage » yasubijwe MINAGRI yari yatanze isoko;

[52] Rwemeje ko ingano y'urwunguko igomba kubarirwaho umusoro ku nyungu ari 21%;

[53] Rwemeje ko Forest Company Volcanoes Gorillas (FCVG) Ltd ikwiye guhanishwa ihazabu ingana n'ijana ku ijana (100%) ry'umusoro yanyereje;

[54] Rutegetse Ikigo cy'Imisoro n'Amahôro na Forest Company Volcanoes Gorillas (FCVG) Ltd gufatanya gutanga amagarama y'urubanza angana n'ibihumbi ijana (100.000Frw).