

PACE Tax Alert

Proposed Amendment Proposals of Tax Laws in Uganda for the Financial Year 2020/2021.

Compilation by; Peter M. KAHINDI ,
Harold TURIGYE , Mercy KAMUGISHA.

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Peter M. Kahindi. Tax Partner,
Managing Partner, PACE Advocates.

The Tax Amendment Bills 2020 have been tabled to Parliament and these include the Income Tax (Amendment) Bill, The Value Added Tax (Amendment) Bill, The Excise Duty Amendment Bill and The Stamps Duty Amendment Bill. If passed by the Parliament and assented to by the President, they will become effective 1st July, 2020.

As we build up towards the budgetary period, we deemed pertinent that business owners, employees and employers, contractors both foreign and domestic should be appraised of the said Proposals and the implications they will have on the general conduct of business.

The Value Added Tax (Amendment) Bill, 2020

The object of this Bill is to restrict a taxable person from claiming input tax credit in respect of specific construction of commercial building, to exempt Islamic Development Bank from tax; to re require an owner of a commercial building to account for tax for each building separately; to provide for exemptions from tax for specified supplies and other related matters. The key changes proposed are;

- (a) The Bill proposes to amend Section 28 (3) of the Value Added Tax Act, Cap 349 which currently provides that a person is allowed a claim for input VAT which is incurred not more than six months prior to the person being registered for VAT provided the supply or import was for use in the business of a taxable person. The Amendment has created an extension of the time in which the credit is allowed on goods and supplies to manufacturers for a period not exceeding twelve months before the registration.
- (b) It further proposes that the tax credits on inputs used on commercial buildings shall be accounted for separately therefore a person who owns more than one commercial building must account for each building separately. It would appear that the Uganda Revenue Authority (hereinafter referred to as the Authority) hopes that this measure will decrease, if not eliminate, instances where owners of several commercial properties rely on credits gained from separate properties to make VAT claims on multiple other properties. Limiting the credits due to separate buildings will address this concern.
- (c) Tax credit on purchase of goods and services from a supplier who uses e-invoicing shall be restricted to those expenses supported by e-invoices or e-receipts therefore where a supplier uses e-invoicing a tax credit will only be allowed on the goods and services supported by e-invoices or e-receipts. The Authority, as most as Revenue collection agencies across the globe, some times “forces” the tax payer to deal with certain relatable taxpayers or businessmen in order to streamline the tax collection operations. In this regard, this move is meant to encourage e-invoicing because it is naturally easier to audit for tax accountability purposes. Although this might take a while on account of the fact that most business people deal with physical invoicing, it will eventually be an effective tax collection and compliance tool as tax payers stand to lose out on their VAT input claims.

(d) Section 42 of Value Added Tax Act, Cap 349 which provides for a refund from the Commissioner General or allows credit for the input tax paid on goods in stock lost due to theft or fire is also amended to the effect that that amount shall be for a maximum of 3 months after which the person shall claim a refund in accordance with Sub section (1) which allows a person to get a refund where their input tax credit exceeds his/ her liability for tax for that period. This amendment introduces a time limitation to the discretion that was conferred on the Commissioner hitherto since it was perceived as open ended by many a tax payer before.

(e) The Bill proposes to exempt the following supplies from VAT (this is in addition to those already exempted under the Act);

- Trailer for agricultural purposes;
- Combine harvesters.
- Supply of services to conduct a feasibility study and design; the supply of locally produced materials for the construction of a factory or a warehouse and the supply of locally produced raw materials and inputs or machinery or equipment, to an operator within an industrial park, free zone or any other person carrying on business outside the industrial park or free zone and whose investment capital is at least ten million United States Dollars in the case of a foreigner or one million United States Dollars in the case of a citizen for ten years who, subject to availability, uses at least fifty percent of locally sourced raw materials and employs at least one hundred citizens and—

(i) Processes agricultural goods;

(ii) Manufactures or assembles medical appliances, medical sundries or pharmaceuticals, building materials, automobile, house hold appliances;

- (iii) Manufactures furniture, pulp, paper, printing and publishing of instructional materials;
- (iv) Establishes or operates vocational or technical institutes;
- (v) Carries on business in logistics and ware housing, information technology or commercial farming; or
- (vi) The manufacture of tyres, footwear, mattress or toothpaste.

The supply of digital stamps for purposes implementing tax verification, quality and safety system;

- Supply of cotton seed cake;
- The supply of the following imported services—
 - (i) Software and equipment installation services to manufactures;
 - (ii) Services incidental to tele-medical services;
 - (iii) Royalties paid in respect of agricultural technologies;
- The supply of accommodation in tourist hotels and lodges located up-country;
- The supply of liquefied gas;
- The supply of processed milk.

The proposals above are self-explanatory. It is a common practice for governments to use tax incentives like exempting certain supplies in order to encourage deliberate investments in certain sectors as can be seen above. However as can be seen some of the proposals therein are targeted at giving the local investors an advantage especially when it comes to the minimum capital requirement in order for the investment to take advantage of the benefit. Further, some of the supplies that are likely to be supplied by foreign entities are exempted because the Authority intends to limit VAT input claims from the persons to whom such supplies have been made.

The Income Tax (Amendment) Bill, 2020



Harold Turigye, Legal Associate,
PACE Advocates.

(a) The Bill proposes to introduce a minimum tax rate to apply to tax payers whose declared tax liability for a consecutive period of five years is less than 0.5% of the gross income, to amend Section 4 of the Income Tax Act, Cap 340 (ITA) to provide that such a tax payer will pay a minimum tax at a rate of 0.5 percent of the gross turnover after the sixth year. It would appear that what has inspired this move is the Authority's desire to bring registered tax payers who file either nil returns or losses for five or more years from the commencement of their business into the tax bracket. It is a matter of concern that someone can operate a business for that long when not or without making a profit. Most commentators have argued that most would be taxpayers have been taking advantage of the current law to avoid paying of taxes even when they are actually profiting

from their businesses.

(b) The Bill proposes to revise the tax rate applicable to individuals and companies for purposes of rental income. The Bill proposes that a tax rate of 30% (from 20%) will be applicable to individual persons earning rental income. Whereas it is understandable that tax rates should be increased from time to time, we also opine that the increment should be justified by other market considerations depending on the business or income source that the Authority is targeting. We believe that the focus of the Authority in this regard should be enforcement of compliance on the existing tax payers who derive rental income. An increment that is not inspired by an increment in demand for rental space may have the effect of discouraging compliance from would-be complaint business people.

- (c) Section 5 of the ITA is amended to provide that where the person is a partnership for purposes of rental income, the tax shall be imposed on the individual partners. There is a need to reconcile this Amendment with the current Partnership law which creates cooperate liability for some Partnerships. Some Partnerships are registered in such a manner that they are capable of being liable as artificial persons away from the Partners. In such a case, it might be difficult to hold the Partners personally liability for the income tax liabilities of the Partnership.
- (d) Under the current principal Act, 20% of the rental income is allowed as expenditures and losses incurred by an individual in the production of the rent. However, the Bill is now proposing that for rental income purposes, 50% (fifty percent) of the rental income should be allowed as expenditures and losses incurred by persons in the production of such income. This means that the expenses or losses allowable for purposes of determining chargeable income will be 50% of the rental income.
- (e) A person who earns rental income for more than one building shall account for the income and expenses of the building and pay taxes for the buildings separately therefore the rental income will not be paid collectively for all the buildings owned by the person but rather for each building separately. The import here is to minimize tax evasion where expenditures from several properties are compounded to give the person deriving the rental income an undue tax advantage.
- (f) This Bill provides for a ceiling on deductible expenses on rental income by amending Section 22 of the ITA to provide that incase of rental income, fifty percent of the rental income as expenditures and losses incurred by a person in the production of such income
- (g) This Bill imposes withholding tax on sale of land, other than a business asset by amending Section 118 B of the ITA to the effect that a resident person who purchases land, other than land which is a business asset, from a resident person shall withhold tax at a rate of 0.5% of the purchase price this essentially means

every purchaser of land will become a withholding tax agent. This is one of the more controversial amendment proposals because of some of the issues it raises. We shall attempt to point some of the more obvious ones which we hope the Tax Policy unit in both the Authority and Ministry of Finance, Planning and Economic Development have addressed their minds to:

1. Where does one draw the distinction between land as a business asset and land that is not? Is there a Practice Direction clearly setting out the difference so that the Authority and the tax payers will be appropriately guided when making decisions on how to transact?
 2. Apart from instances where the purchaser is desirous of transferring the land so purchased into their name, what enforcement mechanisms are in place to ensure that people adhere or that both vendor and purchaser will not conspire not to declare the transaction?
 3. The starting point of enforcing compliance by withholding agents has been the Withholding Agents List that is published regularly so we are keen on learning about whether or not every prospective purchaser of land will be assumed to be an Agent.
 4. Will the land price be determined by what has been declared by the tax payers or the Authority will rely on the land prices determined by the Government Land Valuer in the Ministry of Lands, Housing and Urban Development?
- (h) The Income Tax (Amendment) Act, 2019 provides that withholding tax under section 119 does NOT apply to agricultural supplies. However, the Bill now proposes that withholding tax on agricultural supplies be reinstated. This is an interesting move because whereas it has been argued by some commentators that agricultural supplies enjoy an unnecessary favorable tax advantage compared to the rest of the supplies, it would appear that it is still the government's top priority for sectors which should enjoy most of the incentives.

- (i) To exempt income of the Deposit Protection Fund established under section 108F the Financial Institutions Act, 2016. This is a fair and reasonable development as an incentive for a body that ensures the safety of every tax payers deposits. Other institutions like the Bank of Uganda enjoy similar incentives and the Fund ought not to be left out.
- (j) The Bill further proposes a withholding tax on commissions paid to insurance and advertising agents it provides that an insurance service provider who makes a payment of a commission to an insurance agent shall withhold tax on the gross amount of the payment at the rate prescribed in the Part XII of the Third Schedule of the ITA. This has been one of the more controversial proposed amendments for the last few financial years. This was partly because of the need to decide whether or not such agents are employees with the meaning of Section 19 of the ITA or independent contractors in which case they would have to declare business income and account for taxes under Section 18 of the same Act. However, the biggest challenge was of enforcement of whichever route taken. It would therefore appear that compelling the companies paying out these commissions to without at source would be the best mode or realizing this tax.
- (k) Additionally, seeks to introduce the aspect of a person who makes payment for a commission to an advertising agent to withhold tax on the gross amount of the payment at a rate prescribed in part XII of the Third Schedule of the same Act. This is also a development aimed at covering any loophole in the tax collection chain where advertising agents may earn commissions without paying taxes. Fortunately, the commission paid is of course an allowable expense to the company paying it out and the other end of the chain, it would be well within the agent's rights to capture the tax withheld when filing tax returns so long as the same was remitted by the former.
- (l) The Bill proposes that a taxpayer who provides a passenger transport service or a freight transport service where the goods used has a loading capacity of at least two tonnes, shall be required to obtain a tax clearance certificate from the Commissioner before renewal of operational licences.

(m) The Bill proposes that a withholding agent who makes a payment subject to withholding tax under sections 83 to 86 and 117 to 119 shall furnish a return of withholding tax for every month in the Form specified by the Commissioner not later than fifteen days after the end of every month to which withholding tax relate. A lot of sensitization will be needed in this regard especially targeted towards both tax payers and tax agents.

(n) The Bill proposes new tax rates for small businesses as follows:

Gross turnover	Tax rate per annum without records 'Ushs	Tax rate per annum with records 'Ush
Where the gross turnover of the taxpayer does not exceed ten million shillings per annum	NIL	NIL
Where the gross turnover of the taxpayer exceeds ten million shillings but does not exceed thirty million shillings per annum	80,000	0.4% of the annual turnover in excess of ten million shillings
Where the gross turnover of the taxpayer exceeds thirty million shillings but does not exceed fifty million shillings per annum	200,000	Shs 80,000 plus 0.5% of the annual turnover in excess of thirty million shillings
Where the gross turnover of the taxpayer exceeds fifty million shillings but does not exceed eighty million shillings per annum	400,000	Shs 180,000 plus 0.6% of the annual turnover in excess of fifty million shillings

Where the gross turnover of the taxpayer exceeds Eighty million shillings but does not exceed one hundred and fifty million shillings per annum	900,000	Shs 360,000 plus 0.7% of the annual a turnover in excess of eighty million shillings
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The Authority has relentlessly tried to bring small businesses and especially those in the informal sector within the tax fold. This is a good move as it provides for business with and without records and offers both relatively comparative tax rates, if the schedule provided above it followed in arriving at the tax payable. This will encourage compliance by both categories.

Stamp Duty (Amendment) Bill, 2020

The Bill proposes Stamp duty on Professional Licenses or certificates of UGX 100,000 (One hundred thousand shillings). It would appear that this is a move aimed at collecting taxes from professional bodies like lawyers, accountants and the like. This is most likely than not going to cause a lot of debate because, among others, some have argued that the Professional Licenses are paid for separately to the relevant bodies that regulate the said

Mercy Kamugisha, Legal Associate, PACE Advocates.

professionals and therefore the Authority has no right to impose a national tax on them. Secondly, the professionals might argue that they

already pay taxes on all existing tax heads (business income tax, employment income tax or P.A.Y.E, V.A.T., Withholding Tax...) through their respective businesses and therefore applying stamp duty on them is discriminatory, unfair and unconscionable.

The Excise Duty (Amendment) Bill

This Bill proposes to vary the excise duty on different items as follows:

No.	Item	Current Duty	Proposed Duty
1	Soft cap cigarettes-locally manufactured	Shs 55,000 per 1000 sticks	Shs 75,000 per 1000 sticks
	Soft cap cigarettes-imported	Shs 75,000 per 1000 sticks	Shs 75,000 per 1000 sticks
2	Hinge lid cigarettes- locally manufactured	Shs 80,000 per 1000 sticks	Shs 120,000 per 1000 sticks
	Hinge lid-imported	Shs 100,000 per 1000 sticks	Shs 120,000 per 1000 sticks
3	Malt beer	60% or Shs 1,860 per litre whichever is higher	60% or Shs 2,050 per litre whichever is higher
4	Beer whose local raw materials content, excluding water, is atleast 75% by weight of its constituent	30% or Shs 650 per litre whichever is higher	30% or Shs 790 per litre whichever is higher
5	Beer produced from barley grown and malted in Uganda	30% or Shs 950 per litre whichever is higher	30% or Shs 1,115 per litre whichever is higher
6	Ready to drink spirits	80% or Shs 1,500 per litre whichever is higher	80% or Shs 1,700 per litre whichever is higher

7	Wine made from locally produced raw materials	20% or Shs 2,000 per litre whichever is higher	20% or Shs 2,300 per litre whichever is higher
8	Un denatured spirits made from locally produced raw materials	60% or Shs 2,000 per litre whichever is higher	60% or Shs 1,500 per litre whichever is higher
9	Non alcoholic beverages not including fruit or vegetable juices	12% or Shs 200 per litre whichever is higher	12% or Shs 250 per litre whichever is higher
10	Fruit juice and vegetable juice, except juice made from at least 30% of pulp from fruit and vegetables grown in Uganda	13% or Shs 300 per litre whichever is higher	13% or Shs 300 per litre whichever is higher
11	Motor spirit (Gasoline)	Shs 1200 per litre	Shs 1350 per litre
12	Gas oil (automotive, light, amber for high speed engine)	Shs 880 per litre	Shs 1030 per litre
13	Gas oil for power generation to national grid	Shs 630 per litre	Nil
14	Illuminating kerosene	Shs 200 per litre	Shs 300 per litre
15	Sacks and bags of polymers of ethylene and other plastics under its HS codes 3923.21.00 and 3923.29.00 except vacuum packaging bags for food, juices, tea and coffee, sacks and bags for direct use in the manufacture of sanitary pads;	120%	120% or Shs 10,000 per kilogram of the plastic bags
16	Lubricants HS codes 2710.19.51, 2710.19.52, 3403.19.00 and 3403.99.00 including motor		15%

	vehicle lubricants except aircraft Lubricant		
17	Motorcycles at first registration	Shs 200,000	Shs 300,000
18	Other fermented bevarages including cider,perry, mead,spears, near beer		60% or Shs 950 per litre whichever is higher

Our only comment on above proposed amendment proposal would be regarding oil and gasoline related products. We would hope that the Authority was mindful of the current circumstances affecting the oil industry globally on account of the COVID-19 pandemic which will grossly affect the demand for such products in probably the next 18 months. In our humble opinion it would counter-intuitive to apply higher rates on products whose demand will decline substantively in the near future.

**PACE Advocates | 2nd Floor Inter-service Tower | Plot 33
Lumumba Avenue | P. O. Box 27960, Kampala - Uganda,
Tel: +256 (0) 392 965 976, Email: info@pace-advocates.com
Website: www.pace-advocates.com**