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Global Tax Alert

Uganda issues Tax Amendment Bills for 2018

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Executive summary

On 3 April 2018, Uganda's Minister of Finance, Planning and Economic Development (Minister of Finance) tabled before Parliament the following bills:

- Income Tax (Amendment) Bill, 2018
- Value Added Tax (Amendment) Bill, 2018
- Excise Duty (Amendment) Bill, 2018
- Tax Procedure Code (Amendment) Bill, 2018
- Tax Appeals Tribunal (Amendment) Bill, 2018
- Stamp Duty (Amendment) Bill, 2018
- Traffic and Road Safety (Amendment) Bill, 2018

If passed by Parliament and assented to by the President of the Republic of Uganda, all the Bills will become law on 1 July 2018. Passage of the Bills is anticipated in early June.

This Alert summarizes the key reforms contained in each bill.

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Detailed discussion

The Income Tax (Amendment) Bill, 2018: Key reforms

The key Income Tax reforms proposed include:

Exemption from tax of income derived by operators and investors of an industrial park or free zone

The proposed amendment introduces new sections to exempt the income of operators and developers in an industrial park or free zone for a specified period of time. It specifically exempts:

(i) The income of a new developer of an industrial park or free zone whose investment capital is at least US$200m for a period of 10 years from the date of commencement of construction.

(ii) The income of an operator in an industrial park or free zone or other business outside the industrial park or free zone whose investment capital is at least US$30m in the case of a nonresident or US$10m in the case of a Ugandan citizen, for five years from the date of commencement of business.

Repeal of exemption with respect to income of Savings and Cooperative Societies

Currently, under paragraph (ad) of Section 21 of the *Income Tax Act* (ITA) Cap 340, the income of a savings and cooperative society is exempt through 30 June 2027.

The bill proposes to repeal this provision. Thus, the income of the savings and cooperative societies would be taxable.

Deduction for interest on a mortgage from a financial institution

The bill proposes to allow interest incurred on a mortgage from a financial institution as a deductible expense by an individual who acquires or constructs premises that generate rental income.

Capping of interest deductibility

Currently, Section 25 of the ITA Cap 340 allows a deduction for interest incurred during the year of income in respect of a debt obligation to the extent that the debt obligation was incurred in the production of income included in gross income.

Section 89 of the ITA restricts the amount of interest that is deductible where a foreign controlled resident person has a debt to equity ratio in excess of 1.5 to 1 during the year of income to that part of interest arising from debt that does not exceed the 1.5 to 1 ratio.

The bill proposes to repeal the thin capitalization provisions under Section 89 of the ITA while prescribing new interest deductibility limitations under Section 25 as follows:

(i) For all debts owed by a taxpayer who is a member of a group, the amount of deductible interest in respect of all debts shall not exceed 30% of the tax earnings before interest, tax, depreciation and amortization (EBITDA).

(ii) Any taxpayer whose interest exceeds 30% of the tax EBITDA may carry forward the excess interest for not more than three years, and the excess interest shall be treated as incurred during the next year of income.

"**Tax earnings before interest, tax, depreciation and amortization**" means the sum of:

(i) Gross income less allowable deductions, except a deduction under subsection (1)

(ii) Depreciation

(iii) Amortization

"**Group**" means persons other than individuals, with common underlying ownership.

This proposal effectively caps deductible interest expense during the year of income and any excess interest expense is deferred for future deduction within the following three years of income after which the interest expense loses would its deductibility for income tax purposes.

Exclusion of returnable containers from minor capital equipment

Subsection 2 of Section 26 of the ITA provides for a deduction of expenditure incurred in acquiring a depreciable asset whose value does not exceed UGX1 million (approx. US$271). This applied to returnable containers. The proposed bill now seeks to exclude a deduction for returnable containers as minor capital assets but rather provides for a deduction of an amount representing the reduction in value of returnable containers for a year of income.

The Bill however does not prescribe how the amount representing the reduction of value of returnable containers will be established.

Minimum tax of 0.5% of turnover by loss making companies

The ITA currently allows a taxpayer who has assessed tax losses to carry forward their assessed tax losses indefinitely to be deducted against future gross income.

The bill proposes to impose a tax of 0.5% of the gross turnover of a taxpayer after the seventh year of income and onwards, where the taxpayer has had consecutive tax losses for a period of seven years.

Tax accounting for Islamic financial transactions

It has been proposed that the Minister shall make regulations for tax accounting of Islamic financial transactions.

Introduction of additional provisions regarding change in control of companies as per Section 75 of the ITA Cap 340

Where income has been derived from the direct or indirect change in ownership by 50% or more of a person (other than an individual, a government, a political subdivision of government and a listed institution) located in Uganda. The person whose ownership has changed by 50% or more within a three year period is treated as:

a. Realizing all its assets and liabilities immediately before the change
b. Having parted with ownership of each asset and deriving an amount in respect of the realization equal to the market value of the asset at the time of the realization
c. Re-acquiring the asset and incurring expenditure of the amount referred to in paragraph (b) for the acquisition
d. Realizing each liability; and is deemed to have spent the amount equal to the market value of that liability at the time of the realization
e. Re-stating the liability for the amount referred to in paragraph (d)

This provision is likely to trigger capital gains tax on the entity whose assets and liabilities are deemed to have been realized and re-acquired or re-stated following a direct or indirect change of 50% or more of its ownership.

Expansion of Immovable property definition

The Bill proposed to amend Section 78 of the ITA that provides the definition of improvable property to include "any intangible asset which is a business asset or any part of the business."

This provision means that non depreciable intangible assets as well as parts of the business would be immovable property for income tax purposes.

Sourcing of income from a direct or indirect change of ownership of 50%

It has been proposed that Section 79 include a new paragraph that provides for sourcing of income by direct and indirect disposal of ownership of 50% or more of a person (other than an individual, a government, a political subdivision of government and a listed institution) located in Uganda.

This means that an indirect as well as a direct change of ownership of an entity located in Uganda would now give rise to income sourced in Uganda.

Introduction of an additional provision regarding the meaning of an international agreement as per Section 88 of the ITA Cap 340

The Bill proposes to expand the definition of an international agreement to include the Inter-Governmental Agreement on the East African Crude Oil Pipe Line.

This implies that the Inter-Governmental Agreement on the East African Crude Oil Pipe Line will be treated as an international agreement and in the case of inconsistences between its provision and those of the ITA, its provisions will prevail over the provisions of ITA except in cases of tax avoidance.

Repeal of thin capitalization provisions

As discussed in paragraph 4 above, Section 89 of the ITA that limited the deductibility of interest has been proposed to be repealed while a new interest deductibility provision is proposed to be introduced.

Amendment of Part IX A (Section 89A-89G) regarding the specific provisions for the taxation of mining and petroleum operations:

(i) The bill proposes to repeal the definition of "petroleum exploration right" that is currently defined as "a reconnaissance permit or petroleum exploration license."

(ii) The amendment of the definition of "mining exploration right" in Section 89A is proposed to mean "a prospecting, exploration or retention license granted under the *Mining Act*" from "a prospecting, exploration, or retention license."

(iii) Section 89GE regarding farm-out is proposed to include the transfer of the whole of the interest in a mining right or petroleum agreement. It previously only provided for the transfer of part of the interest of the transfer of a mining right or petroleum agreement.

Re-introduction of Section 92 into the principle Act from the *Tax Procedural Code Act* regarding furnishing of a return of income

Section 92 had originally been repealed and transferred to the *Tax Procedural Act of 2014*. The proposed amendment suggests the re-introduction of filing of returns provisions into the principle Act.

Introduction of WHT on payments for winnings of betting/gaming, for agricultural supplies, commission paid by telecom service providers on airtime distribution and mobile money

Withholding of tax on payments for winnings of betting/gaming

It has been proposed to replace Section 118C which provided for 15% WHT on payments for winnings of sports betting or pool betting with the following:

> "A person who makes payment for winnings of betting or gaming shall withhold tax on the gross amount of the payment at the rate prescribed in Part X of the Third Schedule to this Act."

This effectively expands the requirement to withhold 15% on payments for winnings of sports betting to payments for winnings of any form of betting.

Withholding of tax on payments for agricultural supplies

The Bill proposes to introduce WHT at a rate of 1% on a gross payment for agricultural supplies in excess of one million shillings if the payer is designated by the Minister to withhold tax.

WHT on commission paid by telecom service providers on airtime distribution and mobile money

Introduction of a WHT requirement for a telecommunications service provider who makes a payment of a commission for airtime distribution or provision of mobile money services. A WHT of 10% shall apply on the gross amount of the payment of such commissions. The above WHT on the commission fees will be a final tax.

Insertion of an additional entity under listed institutions

"African Trade Insurance Agency" has been added to the list of exempt institutions.

Value Added Tax (Amendment) Bill, 2018: Key reforms

The key Value Added Tax (VAT) reforms proposed include:

Specifying of operations under which VAT is not deemed to have been paid in respect of some supplies made to a government ministry, department or agency

Despite the fact that VAT on supplies to a government ministry, department or agency is deemed to have been paid, specifically, taxable supplies such as passenger automobile, the repair and maintenance of that automobile; or entertainment shall **not be** deemed as paid by the ministry, department or agency. The ministries, departments or agencies will therefore be required to pay the VAT on passenger automobiles, repairs and maintenances of the same as well as entertainment.

Amending the definition of "electronic services"

Electronic services shall be defined to include websites, web-hosting or remote maintenance of programs and equipment, software, images, texts and information, access to databases, self-education packages, music, films, games of chances, political, cultural, artistic, sporting, scientific and other broadcasts.

Filing of a return

A taxable person shall file a tax return with the Commissioner General for each tax period within 15 days after the end of the tax period.

In addition to this filing requirement, the Commissioner General may require any person, whether that person is a taxable person or not, to file further or additional returns in the prescribed form, on that person's own behalf or as agent or trustee of another person.

Payment of tax

Where an objection against an assessment has been filed, tax payable under the assessment remains due and payable and may be recovered, notwithstanding that objection or appeal. However the date of payment of the tax may be extended with the discretion of the Commissioner General.

Amending definition of "educational materials"

Education materials shall be defined to mean locally produced materials which are suitable for use in public libraries or for educational services prescribed by the Minister by regulations.

Introduction of withholding VAT

The Minister shall, by notice in the Gazette, designate persons who shall withhold VAT of 50% before making a payment for a taxable supply and the persons designated shall remit the VAT invoiced to the Uganda Revenue Authority (URA).

African Trade Insurance Agency shall be included on the list of Public International Organizations.

The following supplies are proposed to be exempt from VAT:

- Bibles and Qur'ans
- Developer of an industrial park or Free Zone whose investment is at least US$200: The supply of;
  - Services to conduct a feasibility study, design, construction
  - Earth moving equipment and machinery
  - Construction materials
- Operator of an industrial Park, Free Zone, Single factory or other business outside the industrial park or free zone: the supply of;
  - Services to conduct a feasibility study and design
  - Locally produced materials for the construction of a factory or a warehouse
  - The supply of locally produced raw materials and inputs or machinery and equipment
- Hotel or Tourism facility developer with an investment of US$15m and a room capacity exceeding one hundred guests: The supply of;
  - Services to conduct a feasibility study, design and construction
  - Locally produced materials for construction of premises, infrastructure, machinery and equipment or furnishings and fittings which are not available on the local market
- Hospital facility developer whose investment capital is at least US$10m: The supply of;
  - Services to conduct a feasibility study, design and construction
  - Locally produced materials for the construction of premises and other infrastructure, machinery and equipment or furnishings and fittings
- Supply of movie production

Excise Duty (Amendment) Bill, 2018: Key reforms

The key Excise Duty reforms proposed include:

Defining "over the top services"

The bill seeks to insert the definition of "over the top services" as follows: "'over the top services' means the transmission or receipt of voice or messages over the internet protocol network and includes access to virtual private networks but does not include educational or research sites prescribed by the Minister by notice in the Gazette."

Tax point on excisable services and imposition of excise duty on "over the top services"

A person providing an excisable service becomes liable to pay excise duty on that service on the earlier of the date on which the performance of the service is completed; the date on which payment for the service is made; or the date on which an invoice is issued.

A telecommunications service operator providing data used for accessing over the top services is liable to account for and pay excise duty on the access to the over the top services.

Remission of excise duty on manufactured goods that have been exported

The Commissioner may, if satisfied that excisable goods have been exported, remit the excise duty chargeable on those goods. This implies that the manufacturer of these products has to provide proof to the commissioner that the goods have been exported before a waiver/remission is granted. It also implies that for goods for export to qualify for zero rating of excise duty, there must be an application for duty remission to the Commissioner of Domestic Taxes.

Penal tax for failure to comply with various excise duty regulations are:

Offense	Penalty
Failure to apply for an excise license	An amount equal to the duty payable for the period commencing on the last day of the application period until the person files an application or until the Commissioner grants the license, whichever is earlier
Failure to furnish an excise return within the time specified	The greater of UGX200,000 (approx. US$54); or 2% interest per month on the unpaid duty
Failure to pay excise duty on manufactured or imported excisable goods by the due date	2% per month compounded interest
Failure to maintain proper records for any period as required by the Act	An amount equal to the duty payable for that period or ten currency points per filing period, whichever is the higher
Willful or reckless declaration to an Officer of the URA which is false or misleading in a material particular in such a manner that the duty payable by the person exceeds the duty that was assessed as payable, based on the false or misleading information or the amount of the refund claimed was false	An amount equal to the amount of the excess duty, refund or claim

Capping of interest on unpaid tax

Interest that is due and payable as a result of any unpaid excise duty and which exceeds the aggregate of the principal tax shall be waived. This proposed amendment means that the maximum interest that a taxpayer will incur shall not be more than the total of principal tax.

Revised excise duty rates of certain items specified in Schedule 2 of the *Excise Duty Act, 2014*

Generally the proposed excise duty rates are a hybrid of specific and ad- valorem rates and duty is paid on whichever is higher.

The Tax Procedures Code (Amendment) Bill, 2018: Key reforms

The key Tax Procedures Code reforms proposed include:

Provisions in respect of due dates to furnish returns under the *Lotteries and Gaming Act, 2016*

A licensed person shall be required to furnish a weekly in addition to a monthly return with the Commissioner.

Currently an operator of a casino, gaming or betting activity issued with a license under the *Lotteries & Gaming Act, 2016*, is required to file a tax return with the Commissioner by the 15th day of the following month.

- This amendment shall require a licensed person to furnish returns with the Commissioner as follows:
  - A weekly return, by Wednesday of the following week
  - A monthly return, by the 15th day of the following month

This was a proposal within the 2017 Tax Procedures Code (Amendment) Bill, however it met resistance and was never passed into law. The 2018 amendment bill reintroduces it.

The Minister to pay taxes on behalf of a person; to waive all taxes due and unpaid by Government as at 30 June 2018

- The Minister shall pay any tax due and payable by the Government arising from any commitment made by the Government to pay tax on behalf of a person, or owing from government through the acquisition of goods and services.

- All taxes due and unpaid by the Government except tax withheld by Government under subsection (1) as at 30 June 2018 shall be waived.

It is unclear why this amendment refers to subsection (1) of Section 40 which does not provide for WHT by the Government.

The Minister shall publish in the Gazette and in a newspaper of national circulation, a list of all taxes waived.

Introduction of electronic receipting and invoicing and penal tax relating to electronic receipting and invoicing

The amendments introduce new sections dealing with electronic receipting and invoicing. An electronic receipting and invoicing linked to the tax authority's system is a new concept in Uganda. The proposed requirements on electronic billing and receipting are geared towards improving efficiency in tracking and verifying invoices issued by the taxpayer.

Introduction of electronic receipting and invoicing

- A taxpayer may issue an e-invoice or e-receipt, or employ an electronic fiscal device which shall be linked to the centralized invoicing and receipting system or a device authenticated by the URA.
- The Commissioner shall, by notice in the Gazette, specify taxpayers for whom it shall be mandatory to issue e-invoices or e-receipts or employ electronic fiscal devices which shall be linked to the centralized invoicing and receipting system or devices authenticated by the URA.
- A taxpayer specified by the commissioner, shall issue electronic invoices or e-receipts or employ an electronic fiscal device in all business transactions.
- Failure to abide by the electronic receipting and invoicing provisions will expose a taxpayer to penal tax.

The Tax Appeals Tribunal (Amendment) Bill, 2018: Key reforms

The key Tax Appeals Tribunal (TAT) reforms proposed include:

Power of the TAT to refer a matter to a Registrar or a mediator for mediation

Prior to hearing any filed application, the TAT may refer the matter for mediation to a Registrar or to a mediator in accordance with Judicature (Mediation) Rules, 2013.

Power of the TAT to make an order as to damages, interest or any other remedy against any party

The TAT may make an order as to damages, interest or any other remedy against any party, and the order shall be enforceable in the same manner as an order of the High Court of Uganda.

Power of the registrar to handle interlocutory applications, taxation of Bills of Costs and mediation

A registrar shall have power to:

- Hear and determine interlocutory applications arising from an application filed with the TAT
- Tax a bill of costs
- Mediate any matter referred to him or her by a TAT

Interlocutory applications generally deal with some point or matter affecting the rights of the parties in the interval between the commencement of the application and its final determination. Interlocutory decisions are usually provisional in nature pending the final determination of the controversy.

The Stamp Duty (Amendment) Bill, 2018: Key reforms

The key Stamp Duty reforms proposed include:

Imposition of stamp duty on instruments used in Islamic financial transactions

Any instruments used to execute Islamic financial transactions shall be chargeable with a stamp duty prescribed by the Minister by statutory instrument, with the approval of Parliament.

The bill defines, "Islamic financial transactions" to mean "Shariah compliant financial services including *Murabahah, Mudarabah, Musharakah, Ijara, Wakalah, Jualah, Sukuk and Takaful*."

Amendments to Schedule 2 of the *Stamp Duty Act, 2014*

Schedule 2 to the *Principal Act*, is amended as follows:

- By substituting for the stamp duty of UGX10,000 (approx. US$3) wherever it appears, UGX15,000 (approx. US$4).
- By inserting immediately after item 60 selected instruments that have been exempted from stamp duty. These instruments relate to investments in free zones, industrial parks whose investment capital is US$10 million, US$30 million or US$200 million depending on if the investors are Ugandan citizens or operators or developers respectively.

The Traffic and Road Safety Bill, 2018: Key reforms

The key Traffic and Road Safety reforms proposed include:

Imposition of ban on the importation of motor vehicles which are eight years old or more

A person shall not import a motor vehicle which is eight years old or more from the date of manufacture. Currently there is no limit on the age of a motor vehicle imported into Uganda.

Motor vehicles exempted from the ban on the importation as specified in Section 14A are:

No.	Proposed Amendment
2(a)	Road tractors for semitrailers
(b)	Motor vehicles for the transport of goods with a gross vehicle weight of at least six tons
(c)	Special purpose motor vehicles including (e.g. breakdown lorries, crane lorries, fire fighting vehicles, concrete mixer lorries, forklifts, mobile drilling rigs, etc.)
(d)	Agricultural or forestry tractors
(e)	Earth moving motor vehicles, tamping machines and road rollers
(f)	Motor vehicles which are in transit before the commencement of this Act and arrive in Uganda by 30 September 2018.

Imposition of environmental levy on motor vehicles

A person who imports a motor vehicle which is five years old or more from the date of manufacture shall pay an environmental levy on that vehicle. The current rates have been proposed to change as follows:

Item	Motor Vehicle	Proposed Levy Payable
(a)	A motor vehicle which is five to eight years old from the date of manufacture; **excluding goods vehicles**	35% of the CIF value
(b)	A motor vehicle which is eight years old or more from the date of manufacture which is imported or is in transit before the commencement of this Act, and which arrives in Uganda by 30 September 2018	50% of the CIF value
(c)	A motor vehicle which is five years old or more and is principally designed to carry goods	20% of the CIF value

Variation of Motor vehicle registration fees

Addition of the Third Schedule to specify the registration fees on motor vehicles

Item	Motor Vehicle	Proposed amendment fees (UGX)
(a)	Sedan cars, saloon cars, estate car but excluding dual purpose goods passenger vehicles (**initially fees were - 1,200,000**)	1,500,000
(b)	Passenger vehicles, including light omnibuses with a seating capacity not exceeding 28 passengers (**initially fees were - 1,200,000**)	1,500,000
(c)	Estate and station wagon vehicles with an engine capacity of 3500 cc or above (**initially fees were - 1,700,000**)	1,700,000
(d)	Medium omnibuses and heavy omnibuses with a seating capacity of more than 28 passengers (**initially fees were - 1,200,000**)	1,500,000

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