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Tax watch

Tax Amendment Bills – 2016

This newsletter summarises the proposed amendments to the tax laws outlined in the recently released Tax Amendment Bills for FY16/17. If passed by Parliament, the proposed changes are expected to take effect from 1 July 2016.

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The Income Tax (Amendment) Bill 2016

The Bill proposes various amendments to the Income Tax Act (ITA)

Carry forward of tax losses

The Bill proposes an amendment to make it clear that the ability to carry forward tax losses is subject to the change in control provisions.

Generally tax losses are able to carried forward indefinitely. However for a company this is restricted where there has been a change in control (i.e. a 50% or greater change in the underlying ownership) and for a period of two years thereafter the company does not carry on the same business or engages in a new business or investment with the primary purpose of utilising the losses against the resultant income.

The amendment clarifies that the change in control restriction takes precedence over the general loss carry forward provisions. This has generally been the approach applied in practice so the amendment represents a confirmation rather than a significant change.

WHT on rent derived by a non-resident

Rent derived by a non-resident from a source in Uganda has previously been included on the list of payments that are subject to withholding tax, but the Act omitted to impose a specific tax rate.

The Bill proposes to remedy this omission by including rent amongst the payments to non-residents (such as dividends, interest and royalties) that are subject to the tax rate of 15%. Rent for this purpose means a payment for the use of land and buildings.

This means that a tenant paying rent to a non-resident landlord in respect of land and buildings in Uganda will now be required to deduct withholding tax at a rate of 15%.

This requirement is presumably intended to override the regime for separate taxation of rental income that was expanded to cover all landlords (resident and non-resident) in 2014.

Entitlement to tax treaty benefits

The Bill proposes to amend section 88(5) of the ITA to provide clarity as to when a non-resident person is entitled to benefit from a tax exemption or reduced tax rate under a Double Taxation Agreement (DTA).

The current section 88(5) restricts the application of DTA benefits where the underlying ownership of the non-resident person is held 50% or more by individuals resident outside the treaty country. This is an anti-abuse provision intended to prevent the use of conduit entities in treaty countries solely to take advantage of the DTA benefits.

However the application of this restriction created a number of practical challenges, including conflict with the concept of "beneficial ownership" as applied in the treaties and a general question as to the precedence of treaties over domestic law. Further, there was a specific difficulty in establishing the underlying ownership of listed companies and third party suppliers.

The proposed amendment substantially removes these difficulties by rewording section 88(5) as follows (paraphrased):

Except for a public listed company, the benefit of an exemption from Ugandan tax or reduction in the rate of Ugandan tax under a DTA between Uganda and another contracting state will not be available to a person who:

a. *receives the income in a capacity which is other than that of a beneficial owner, within the meaning accorded to that term by the relevant international agreement, and who does not have full and unrestricted ability to enjoy that income and to determine its future uses; and*
b. *does not possess economic substance in the country of residence.*

The amendment therefore lays down three conditions that must be met in order for the non-resident recipient to apply DTA benefits. Namely the non-resident recipient must:

- be the beneficial owner of the income;
- have full and unrestricted ability to enjoy the income and determine its future use; or
- have economic substance in the treaty country..

Further the restriction does not apply where the non-resident recipient is a public listed company (i.e. such companies are fully entitled to apply the DTA benefits).

The proposed amendment better reflects best international practice in line with the UN and OECD model tax conventions and developments in international tax under Action 6 of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan. Further it enables Uganda, as a member of the international community, to honour its treaty obligations under international law.

This amendment is a positive development and will enable the URA to administer the application of DTA benefits in such a way as to recognise genuine economic arrangements while preventing fiscal avoidance and tax evasion. It will also provide greater certainty to investors and those making payments to foreign suppliers in treaty countries.

Income tax returns for persons employed by diplomatic missions

The Bill introduces a requirement for resident individuals employed by diplomatic missions and other prescribed organisations entitled to diplomatic immunities and privileges to file income tax returns. Currently such individuals (along with employees generally) are not required to file an income tax return if their sole income comprises employment income derived from a single employer from which tax is withheld at source (via the PAYE system).

The intention seems to be to require such employees to account for their own income taxes if PAYE is not being withheld by their diplomatic organisation employer. However, based on the proposed wording, the filing of a personal income tax return will still be required even if the employer is deducting PAYE.

Withholding tax on payments to international carriers and telecommunication providers

A specific withholding tax requirement is introduced in relation to payments to non-residents who derive income from sources in Uganda from international carriage and telecommunications services.

The ITA currently imposes tax at the rate of 2% on every non-resident person carrying on the business of ship operator, charterer or air transport operator who derives income from the carriage of passengers or cargo which is embarked in Uganda, and on road transport operators who derive income from the carriage of cargo or mail embarked in Uganda.

The Act also imposes tax at the rate of 5% on a non-resident person who carries on the business of transmitting messages by cable, radio, optical fibre or satellite, in respect of income from the transmission of messages by apparatus located in Uganda or the provision of direct-to-home pay TV or internet connectivity services to Ugandan subscribers.

In each case the tax is applied on the gross income and is a final tax.

Previously, the legislation did not provide specific guidance on how these taxes should be collected and the onus generally fell on the non-resident recipient to pay the tax directly.

The amendment specifically provides that these taxes are now to be collected by way of a withholding tax imposed on the Ugandan payer. Therefore persons making such payments from 1 July 2016 will be required to withhold tax at the 2% and 5% rates as appropriate. Note this will not apply to payments for international air transport because the income of air transport operators is exempt from tax.

Additions to the list of exempt institutions

The International Centre for Research in Agroforestry (ICRAF) and the International Potato Centre are to be included as listed institutions in the First Schedule to the ITA. This means that the income of these entities will be exempt from income tax.

Presumptive tax

The amendment proposes to remove clinics as a separate category of business subject to specific rates of presumptive tax on turnover below Ush 50 million. Presumably this amendment is to be consistent with section 4(7) which prevents the use of the presumptive tax system by persons in the business of providing medical or dental services. There is also a small adjustment to the presumptive tax amount payable by drug shops with a turnover between Ush 10 and 20 million.

Petroleum and Mining

The Bill proposes the following changes to Part IXA of the ITA in relation to mining and petroleum operations.

Meaning of licensee

The definition of "licensee" for the purposes of petroleum and mining operations is reworded to cover persons undertaking upstream and midstream petroleum activities by reference to the correct respective piece of legislation.

A licensee now means "*a person who has been granted a mining right or a person who the Government has entered into a petroleum agreement as defined in the Petroleum (Exploration Development and Production) Act 2013, or a person licensed under the Petroleum (Refining, Conversion, Transmission, and Midstream) Act 2013*"

Previously the definition incorrectly referred to petroleum agreements (i.e. upstream) as being defined in the midstream legislation (the Petroleum (Refining, Conversion, Transmission, and Midstream) Act 2013), leading to uncertainty as to who was covered. It is now clear that both upstream and midstream operators will fall within the special tax rules in Part IXA.

Petroleum exploration information

The definition of "petroleum exploration information" is repealed. This definition is redundant as it is not applied anywhere else in Part IXA of the Act.

Allowable deductions for petroleum exploration

For petroleum exploration licenses issued after 31 December 2015, a new provision will limit the deduction of expenditure against petroleum operations to the extent such limitation is specified in the petroleum sharing agreement (PSA). This will enable the Government to agree and enforce special deduction terms in each individual PSA.

Surplus from decommissioning fund returned to a licensee

The Bill proposes to repeal section 89GD(4)(b) which provides that a surplus in a decommissioning fund that is returned to the licensee upon completion of decommissioning is included in the licensee's gross income. This provision is redundant as such returns are already captured as income under subparagraph (a).

The Value Added Tax (Amendment) Bill 2016

The Bill proposes to amend the VAT Act with the following changes

VAT registration for midstream operators

Persons undertaking midstream operations in the petroleum sector (such as refining, conversion, transmission and storage) will be entitled to apply for voluntary VAT registration regardless of whether they are currently making taxable supplies.

This is similar to the VAT amendment in 2015 which allowed such VAT registration for licensees undertaking mining or petroleum operations, persons undertaking the construction of a petroleum refinery or pipeline and persons engaged in commercial farming.

The need for this amendment is not clear given that licensed midstream operators will generally already fall within the definition of "licensee" in the VAT Act. However it is possible that certain midstream activities such as refining, conversion and operating a pipeline may be seen as falling outside the ambit of "petroleum operations" and therefore require specific inclusion.

No exemption for imported LED lamps

LED lamps and bulbs which are exempt from import duty in accordance with the Fifth Schedule of the EAC Customs Management Act will be specifically excluded from the normal parallel exemption for import VAT. This means that the import of such items will be subject to standard VAT at 18%.

VAT relief for aid-funded projects

The Bill introduces a special treatment for VAT on taxable supplies made by a supplier to a contractor executing an aid-funded project, whereby:

- The VAT on the supply is deemed to have been paid by the contractor to the supplier;
- The supplier does not account for the deemed VAT payment as output tax.

The term "aid-funded project" is not defined, but the same term is used in determining exemption from import duty under the EAC Customs Management Act. To qualify the supply must be used by the contractor solely and exclusively for the aid funded project.

This is similar to the provision that was introduced in 2015 for supplies to mining and petroleum licensees. However in the current case there is no equivalent restriction on the contractor's right to claim an input tax deduction on the supply. The assumption seems to be that the contractor will not be making taxable supplies and therefore will not be entitled to an input tax claim, but this may not always be the case.

The proposal will prevent VAT charged by subcontractors and other suppliers to entities carrying aid-funded projects from becoming an additional cost to the project. This is consistent with the general intention of international donors for aid funds to be wholly applied to the specific project rather than diverted to other uses through the tax system.

Input credit for business process outsourcing services

A person providing business process outsourcing (BPO) services will be entitled to claim an input tax credit for VAT incurred on imported services.

This expands the concession that was introduced in 2015 for mining and petroleum licensees and their contractors.

The Bill does not define the term BPO, but this is generally taken to mean the contracting out of a specific business process to a third party. The intention is presumably to prevent reverse-charge VAT becoming an additional cost to a local BPO service provider where they subcontract some or all of the services to a foreign supplier.

This raises the same question as with last year's amendment – namely as to why the same VAT neutrality should not apply to all business sectors.

Removal of exemption for solar power

The Bill removes the supply of solar power from the list of exempt supplies in the Second Schedule to the VAT Act.

This means that supplies of solar-generated power will now be subject to VAT at the standard rate of 18%, in the same way as other sources of electricity (such as hydro and thermal). This will enable solar power producers to register for VAT purposes and claim VAT on their operating costs.

Exemption for solar and geothermal power projects

The Bill extends the current exemption for supplies to the contractors and subcontractors of hydro power projects, to now also encompass solar power and geothermal power projects.

This means that VAT will not apply to construction and other pre-operation costs incurred by such projects up to the point that they commence commercial production. Given that the VAT Act currently does not permit such projects to be VAT registered until the start of production, this will prevent pre-operation VAT from becoming an additional cost.

Combined with removal of the exemption for the supply of solar power, this now puts most renewable energy generation projects (hydro, geothermal, solar) on a level playing field. It might be expected that the same treatment should be extended to other renewable sources such as wind.

New exemptions for agricultural machinery

The Bill proposes to add the following to the list of agricultural machinery, tools and implements that are exempt from VAT:

- hullers;
- oil presses;
- grain dryers;
- manure spreaders;
- fertiliser distributors;
- transplanters;
- juice presses and crushers;
- seed and grain shellers;
- silage chopper machines;
- colour sorters for coffee;
- coffee roasters.

This adds to the list of exempt agricultural items that was enacted in 2015.

The Finance Bill 2016

The Bill proposes to amend various Finance Acts and Regulations, The Traffic and Road Safety Act and prior amendments to the Mining Act

Removal of import concessions for certain COMESA goods

The amendment proposes to impose import duty on the following goods from Common Market for Eastern and Southern Africa (COMESA) states:

- Lubricants;
- Un-denatured alcohol;
- Steel and steel products;
- Electronics;
- Paper and paper products; and
- Diapers.

According to article 48 of the COMESA treaty, goods from member countries are eligible for common market treatment if they originate in the member states. However, under article 49(2) Uganda may derogate from this obligation for the purposes of protecting an infant industry.

The Finance Act 2014 contained a list of specific goods from COMESA territories which were excluded from the exemption and were therefore liable to normal import duty. The Bill proposes to add the above items to this list.

This measure is aimed at protecting Ugandan manufacturers/assemblers in these sectors. Whereas this creates a potential risk of retaliation in the form of a similar derogation by other member countries, this might be expected to have a limited impact based on Uganda having limited exports to COMESA territories and being a net importer.

Environmental levy increase on used clothes

The Bill proposes to increase the environmental levy on used clothes, shoes and other articles from 15% to 20%.

This increase is in line with the proposal at the EAC Heads of State Summit held in Arusha in March this year where the EAC member states agreed on a three year phased approach to stop the importation of used clothing items, with the aim of boosting local production. The rate was last increased (to 15%) in 2014.

Driving permits

Introduction of new five year permit

The Bill introduces a new driving permit that is valid for five years, in addition to the existing categories valid for one and three years.

Increase in fees

There are increases proposed in various fees under the Traffic and Road Safety Act, as summarised in the table below.

Item	Existing fee (Ush)	Finance Bill 2016 (Ush)
Registration of personalised number plates	6,000,000	20,000,000
Driving permit (original)		
a) One year	50,000	55,000
b) Three years	60,000	150,000
c) Five years	-	250,000
Driving permit (renewal)		
a) One year	40,000	50,000
b) Three years	50,000	130,000
c) Five years	-	200,000
Driving permit (exchange)		
a) One year	50,000	55,000
b) Three years	60,000	150,000
c) Five years	-	250,000
Driving permit provisional	18,000	30,000

Notification period for change of ownership of motor vehicles

The Bill proposes to amend the Traffic and Road Safety Act to extend the period within which a vendor must notify the URA of the sale or disposition of a motor vehicle, from 14 days to 3 months.

Failure to provide such notification within three months is now an offence which, upon conviction, is liable to a fine not exceeding Ush 300,000 and/or imprisonment up to six months. The new penalty is intended to apply with effect from 1 July 2016 and therefore it will be advisable to duly register all pending motor vehicle transfers by this date.

URA to issue Certificates of Origin

The responsibility for issuing Ugandan Certificates of Origin in accordance with section 111 of the EAC Customs Management Act will now fall on the URA.

Currently such Certificates are issued by the Uganda Chamber of Commerce.

This move is consistent with the coming into force of the EAC Customs Union (Rules of Origin) Rules 2015 and the Government's program to create a one-stop centre for investors. The intention is to increase the efficiency of the process and be consistent with international practice where the function of verifying and certifying the place or origin of goods is often undertaken by the Customs Authority.

Manufacturers will now apply to the URA which will verify the products and production processes to determine whether they meet the new origin rules (which entails meeting various minimum local content or value addition percentages). The Certificate of Origin will entitle the exporter to take advantage of EAC tariff rates when exporting goods within the EAC, as well as equivalent concessions in other countries.

Waiver of tax arrears for SACCOs

The Bill proposes to waive all tax arrears owed by Savings and Credit Co-operative Organisations (SACCOs) as at 31 December 2015.

SACCOs that engage in investment of membership funds derive investment income which is subject to income tax, and they also have obligations in respect of other taxes such as withholding and employment taxes. However in practice the level of tax compliance by SACCOs has been variable and some have accrued significant tax arrears. The proposed waiver offers an opportunity for SACCOs to begin complying with their tax obligations from 2016 with a clean slate.

There are over 200 registered SACCOs in Uganda and their compliance is expected to make a positive contribution to Government revenue.

Repeal of amended mining fees

The Bill repeals the fees under the Mining Act 2003 to the extent prescribed under the Finance Acts of 2013 and 2014. Presumably this means that the fees that applied immediately prior to 1 July 2013 are still in effect.

The amendment is aimed at encouraging investment in the mining sector.

The repealed fees per the Finance Act 2014 are as follows:

	Fees (Ush)
Retention licence	
Registration	500,000
Preparation	800,000
Renewal	1,000,000
Annual mineral rent	50000 p.a./sq.km
Transfer	10,000,000
Extract	100,0000/page of registered document
Location licence	
Preparation fees	500,000
Renewal fees	800,0000
Exploration licence	
Registration	500,000
Preparation fees	1,000,0000
Renewal	1,000,000
Annual mineral rent	50,000 p.a./sq.km
Transfer	10,000,000
Prospecting	5,000,000
Surrender	500,000
Suspension certificate	400,000
Extract	100,000

The Stamp Duty (Amendment) Bill 2016

The Bill amends the Stamp Duty Act 2014 to double the duty rates on certain instruments

Exchange of property

The Bill increases the stamp duty on an exchange of property from 1% to 2% of the value of the property.

Transfer of property

The stamp duty on a transfer of property similarly increases from 1% to 2% of the total value of the property.

Any pending property transfers will need to concluded before 1 July 2016 in order to enjoy the lower existing rate.

Although this is a significant increase, the 1% rate has been in place for many years and the new rate still compares favourably with some of our neighbours (e.g. transfers of urban property in Kenya are liable to a stamp duty rate of 4%).

Fixed base rate

The Bill increases the current Ush 5,000 base rate of fixed stamp duty for a wide range of instruments to Ush 10,000. This base rate was last increased (from Ush 1,000) in 2002.

The Excise Duty (Amendment) Bill 2016

The Bill proposes to amend the Excise Duty Act 2014 as follows.

Refund of excise duty on conversion of healthcare and medical products

The Bill allows a manufacturer to claim a refund of excise duty which was previously paid on excisable goods that are converted into approved healthcare or medical products.

Approved healthcare or medical products are products that have been approved by the Minister responsible for Finance in consultation with the Minister responsible for Health, in accordance with specific regulations.

This might include items such as undenatured spirits converted for medical use or furniture converted for specialised use in a hospital.

Repeal of duty on incoming international calls

The Bill removes the existing 9 US cents per minute duty on incoming international calls.

This follows on from the 2015 removal of the duty for such calls originating within the One Network Area (i.e. Kenya, Rwanda and South Sudan).

The complete removal of the duty was necessary due to unregulated operators routing incoming international calls via One Network Area countries and other routing mechanisms, which had led to a significant reduction in the volumes of inbound traffic and interconnect fees for the resident telecom operators. This had a corresponding negative impact on the tax revenues generated by the resident operators.

The amendment is intended to restore a level fiscal playing field for the inbound call business of resident operators.

Exemption for hospital furniture

Specialised hospital furniture will be exempted from the 10% excise duty on furniture (as introduced in 2015).

New duty on ready to drink spirits

The Bill introduces a new excise duty of 80% on ready to drink spirits.

The Bill does not define the term “ready to drink spirits”, and in a general sense this could include any spirit. However in the industry, ready to drink beverages (often referred to as RTDs) are taken to mean those sold in a prepared or pre-mixed form, ready for immediate consumption. Alcoholic RTDs can include alcopops, flavoured beers and those that are a mixture of a particular spirit and a soft drink or fruit juice.

The 80% rate might be seen as a match to the current 80% rate for imported wines or a combination of the 70% rate on spirits and the 13% rate on non-alcoholic beverages.

This amendment is intended to widen the excise duty base to specifically catch RTD spirits, which have recently been increasing their presence on the local market.

Increases in excise duty rates

As now seems to be the annual trend, the Bill increases the excise duty rates on tobacco, cement, sugar, petrol, diesel, motor vehicle lubricants and confectionary. However the duty rates for alcohol (other than RTD spirits) remain unchanged.

The following table summarises the proposed changes, including the trend from 2014.

Item	Excise Duty Act 2014	Excise Duty Act 2015	Excise Duty (Amendment) Bill 2016
Ready to drink spirits	Nil	Nil	80%
Tobacco/cigarettes:			
a) Soft cap	Ush 35,000 per 1000 sticks	Ushv45,000 per 1000 sticks	Ush 50,000 per 1000 sticks
b) Hinge Lid	Ush 69,000 Per 1,000 sticks	Ush 75,000 per 1,000 sticks	Ush 80,000 per 1,000 sticks
c) Cigars, cheroots, cigarillos containing tobacco	160%	160%	200%
d) Smoking tobacco, whether or not containing tobacco substitutes in any proportion	160%	160%	200%
e) Homogenised or reconstituted tobacco	160%	160%	200%
f) Other	160%	160%	200%
Fuel:			
a) Motor spirit(gasoline)	Ush 950 per litre	Ush 1,000 per litre	Ush 1,100 per litre
b) Gas oil (automotive, light, amber for high speed engines)	Ush 630 per litre	Ush 680 per litre	Ush 780 per litre
Cane or beet sugar and chemically pure sucrose in solid form	Ush 50 per Kg	Ush 50 per Kg	Ush 100 per kg
Cement	Ush 500 per 50kgs	Ush 500 per 50kgs	Ush. 1,000 per 50kgs
Incoming international call services from Kenya, Rwanda and South Sudan	USD 0.09 per minute	Nil	Nil
Incoming international call services from other countries	USD 0.09 per minute	USD 0.09 per minute	Nil
Sugar confectioneries (chewing gum, sweets and chocolates)	Nil	10%	20%
Motor vehicle lubricants	Nil	5%	10%
Furniture			
a) Specialised hospital furniture	Nil	10%	Nil
b) Other furniture	Nil	10%	10%

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