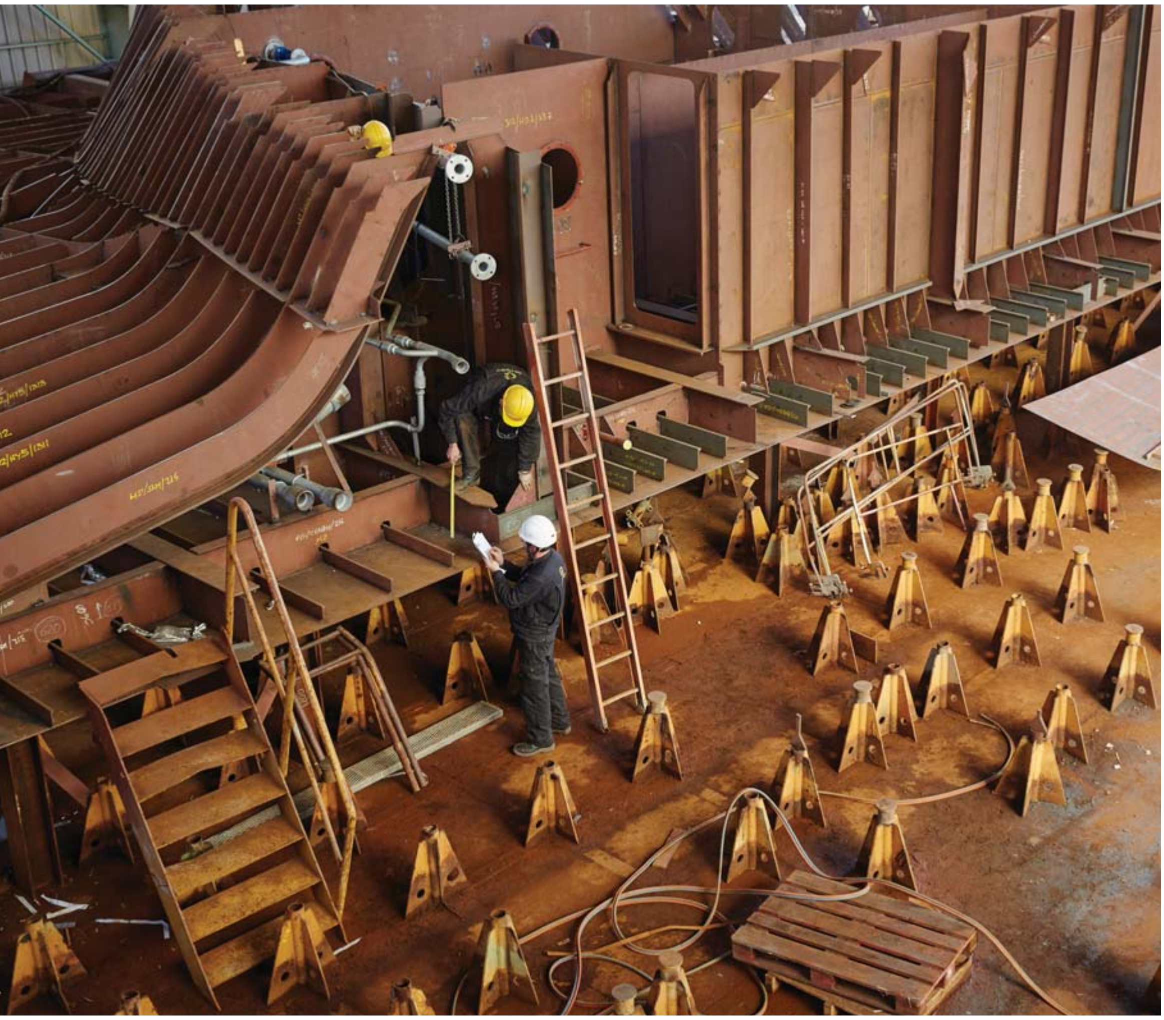
Income Tax (Amendment) Bill 2018

Tax watch



Update on the recent changes in the tax laws of Uganda

Exempt income

Repealing paragraph (ad); Income of a Savings and Credit Cooperative Society up to 30th June 2027.

The Bill proposes to repeal the exemption of the income of a Savings and Credit Cooperative Society (SACCOs) that was inserted by the Income Tax Amendment Act of 2017 (IT(AM) 2017).

The exemption on income of SACCOs was included in the IT (AM) 2017 by the Minister of Finance to encourage savings in the informal sector which would widen financial inclusion and economic productivity.

The Minister is proposing to rescind the 2017 amendment which was supposed to be in force up to 30 June 2027. This means that the income of SACCOs will be subject to Corporate Income Tax at 30% as well as Withholding Tax (WHT) where applicable.

Exemption of income of a developer and operator of an industrial park or free zone

The Bill proposes to exempt income of a developer of an industrial park or free zone whose capital investment is at least US$ 200 million.

The exemption will apply for a period of ten years from the date of commencement of the construction.

The Bill also exempts 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$ 30 million in the case of a foreigner or US$ 10 million in the case of a Ugandan citizen, for five years from the date of commencement of business.

The tax exemptions are not aligned to Government's commitment to the International Monetary Fund to reduce tax exemptions in order to consolidate tax revenue collections.

However, the National Budget Framework Paper FY 2018/19 (NBFP) lists Investment Promotion and Private Sector growth as key a strategic sector for interventions to stimulate growth in the economy. It is against this background that the Bill may be proposing these changes.

The Bill exempts operators of the industrial parks and free zones who are "Ugandan citizens". There is need to clarify whether this change targets only individual investors.

We also recommend that the developer and operator thresholds be reduced especially for Ugandan investors following further consultation with the Uganda Investment Authority and the Uganda Free Zones Authority.

Deductibility of expenses

Limitation rules on interest deductibility for group companies

The Bill proposes to limit the deductibility of interest on debts owed by a taxpayer who is a member of a group to thirty percent of the tax earnings before interest, tax, depreciation and amortization (EBITDA).

The Bill further states that a taxpayer whose interest exceeds thirty percent of 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.

As a result of the above proposed interest limitation rules, section 89 of the ITA on thin capitalisation has been repealed.

The proposed amendment seems to follow the Organisation for Economic Cooperation and Development (OECD) Base Erosion on Profit Shifting (BEPS) Action 4 on limiting base erosion via interest deductions and other financial payments.

The amendment appears to be putting a restriction on the deduction of interest paid on all debts, as opposed to restricting interest paid on only debt owed to associates or members of the same group.

Since the restriction makes reference to "debts owed by a taxpayer who is a member of a group", it follows logically that the interest restriction should only apply to debts owed by a taxpayer to another member of the same group.

The provision in its current form will be a major disincentive to investment into Uganda as it would mean that corporate investors (both local and foreign) which have common ownership with any other company (whether local or foreign) would not be able to get a full tax deduction for the interest they pay on loans to finance their investment projects in Uganda.

In its current form, the restriction will also affect highly leveraged sectors and / or projects that have long development periods before deriving profits (e.g. mining, oil and gas, large infrastructure projects, financial institutions).

The Bill proposes to repeal section 89 which exempts financial institutions from thin capitalisation rules and this is majorly due to their nature of business.

The proposed interest limitation rules do not exempt financial institutions. This means that these institutions may not be able to obtain a full interest deduction which is a disincentive to the industry.

The Bill proposes that excess interest will be carried forward for a period of three years. Considering that the carrying forward of tax losses without paying income tax has been reduced to seven years, there is a risk of losing the excess interest deduction in instances where the same company is making tax losses.

The definition of a "group" is based on common underlying ownership but with no percentage threshold. So for example, two Ugandan companies in which the same individual owns 1% of the shares in

each will be regarded as a group. To avoid such an overly broad application, it would be preferable to either specify a minimum percentage of common underlying ownership (say 50%) or to instead rely on the existing definition of “associate”.

Carry forward of tax losses

The current Bill introduces a tax of 0.5% on the gross income of a taxpayer, in the eighth year of income, in instances where such a taxpayer made tax losses for seven consecutive years of income. The amendment seems to target persons that have been perpetually tax loss making.

However, the Bill does not state the years of income for which this amendment will apply to. For example there may be companies that are already loss making whose eighth year of tax losses commences on or after 1 July 2018.

Tax losses are currently carried forward for an indefinite period with no obligation to pay tax in any of the years where tax losses are incurred. This amendment introduces a 0.5% income “tax” on gross revenue which may turn out be too high especially in industries that are highly capital intensive like oil and gas and other public utility sectors.

Clarity as to which years of income this amendment will apply to should be included in the Act. We also suggest that some exceptions should be considered under this provision for example public parastatals that provide public goods or services.

Deductibility of minor capital equipment – returnable containers

The Bill proposes to amend section 26 of the ITA by excluding returnable containers under minor capex and only allowing a tax deduction in respect of a diminution in value of the returnable containers. This means where there is no diminution in value of the returnable container, the expenditure incurred in acquiring a returnable container will not be allowed a tax deduction in terms of section 26 but rather capital allowances will apply.

It would be good for the Bill to define the term “returnable containers” to avoid any unintended adverse tax consequences across different industries.

Interest incurred by individuals on mortgages

The Bill introduces a tax deduction in respect to interest incurred by individuals on mortgages obtained from financial institutions to acquire or construct premises that generate rental income. This is a welcome change as it will encourage individuals to obtain loan financing to acquire or construct houses which bridges the current housing deficit.

Currently deductions in respect to rental income are limited to 20% of the respective revenue derived by an individual from rental income. Accordingly, where rental houses have been built using a loan from a financial institution, only 20% of the respective interest expense is allowed a tax deduction.

The proposed change will now allow a full tax deduction for interest incurred in addition to the 20% expenses allowed in deriving rental income. This amendment is meant to encourage the construction or acquisition of houses by individuals to close the current housing deficit.

In our view section 5 should also be amended to give effect to the proposed tax deduction. Obtaining a tax deduction in isolation of this section which specifies the allowable deduction for rental tax causes inconsistencies in the application of the tax law.

Taxation of an indirect change in ownership and expansion of source rules

The Bill expands the scope of source rules under section 79 by including; income derived from the direct or indirect change of ownership of a person other than an individual, a government, a political subdivision, of a government and a listed institution in Uganda, by fifty percent or more.

Furthermore section 75 has been amended by treating a change in ownership under the source rules as a realisation of all assets and liabilities immediately after the change in ownership which will be subject to tax at a rate of 30%.

If the intention of these amendments is to tax indirect changes in ownership using Ugandan subsidiaries as a basis, then it is not clear that there is need for an amendment to the sourcing rules per the proposed changes to section 79. If a Ugandan resident or branch is deemed to dispose of its assets/liabilities then any gain will already be sourced in Uganda under the existing provisions of section 79.

Alternatively, if the intention is to also include persons located outside Uganda, then the provisions extend the Uganda tax net to all entities worldwide regardless of whether they hold interests in any asset in Uganda.

This would extend the Ugandan tax jurisdiction too far and may not be applicable in practice.An indirect change in ownership is too wide as it also encompasses a change in ownership of an overseas company even where the ownership of the Ugandan subsidiary remains the same. For example, according to this Bill, if a company that has a Ugandan subsidiary sells 50% or more of its shares listed on the London Stock Exchange, the Ugandan subsidiary (with a few exceptions) will be treated as having realised all its assets and liabilities for purposes of computing tax due.

However, this Bill does not state who will pay the tax and how it will be collected which may make the implementation difficult.

In practice, we have seen countries that have such provisions and the obligation to account for tax due is normally on the in-country entity. We wait to see how this provision will be applied in Uganda.

Widening the definition of immovable property

Currently, immovable property is defined to include a mining right, petroleum right, mining information, or petroleum information.

The Bill is proposing to widen the definition by including "any intangible asset which is a business asset or any part of the business" to mean immovable property.

It is not clear whether the reference to "any intangible asset" is intended to refer to intangible assets in the context of the mining and petroleum sectors or more generally to all intangible assets which are business assets.

If it refers to all intangible assets it would mean that intangibles such as patents, trademarks and other intellectual property will comprise immovable property for purposes of international taxation.

This is likely to create a distortion in the taxation of intangibles. For example currently a disposal of industrial or intellectual property ("IP") used in Uganda constitutes a Ugandan-sourced royalty in terms of section 79(j)(iii) and there is no need to also include this under section 79(g).

Furthermore, an intangible asset does not fall within the normal meaning of "immovable property" and the amendment raises the potential for misinterpretation of this term in general.

Overall, it is not clear what this amendment is intended to achieve.

Tax accounting for Islamic financial transactions

The Bill gives the Minister authority to make regulations for tax accounting of Islamic financial transactions. We welcome this proposal in light of the Financial Institutions Amendment Act (2016) that legalised Islamic banking in Uganda. In our view the Minister should involve the relevant stakeholder in formulating these regulations.

Tax administration

Section 92 which provided for the furnishing of an income tax return was repealed by the Tax Procedures Code Act 2014 (TPCA). This followed the Minister's proposal to ensure that tax administration procedures are simplified and are provided for under one Act, the TPCA. However, the obligation to file an income tax return was not adequately catered for under the TPCA.

As a result of the above, an amendment has been proposed to introduce section 92A in the ITA which provides for the obligation of a taxpayer to file an income tax return. This amendment now requires tax agents to sign off their respective clients income tax returns. However, the Bill does not provide guidance on how the tax agent sign off will be effected.

Reducing Withholding tax on payments made for agricultural supplies from 6% to 1%

The Bill proposes to introduce section 118D which provides for a new 1% withholding tax ("WHT") to apply on payments for agricultural supplies. Although agricultural supplies have not been defined in the Bill, we understand that it is the intention of the Ministry of Finance, Planning and Economic Development ("MoFPED") to impose a reduced WHT on agricultural produce in order to widen the tax base.

It is presumed that the reference to section 118D is a typographical error and it is not intended that the new provision replaces the existing section 118D (dealing with re-insurance premiums).

It is not clear if the list of designated payers is per the existing Notice dated 2013 or will be subject to a separate list. If this is as per the former, we suggest that the list be expanded to ensure that the burden of WHT falls equally across all players in the agricultural commodities sector

10% WHT on commission paid by telecom service providers on airtime distribution and mobile money

A 10% WHT has been introduced on all commissions paid by telecom service providers on airtime distribution and mobile money services. The proposed new rate of 10% replaces the current WHT rate of 6%. It is also proposed that the new rate will be levied on individuals as a final tax.

The proposed 10% WHT rate is generally very high and (assuming a tax rate of 30%) implies a net profit margin of 33%. It will greatly affect the cash flow of the airtime dealers and mobile money agents as they operate under very small margins.

Also, treating the tax on resident individuals as a final tax means the Government assumes that these individuals do not incur tax deductible expenses in deriving the commission income.

This assumption is not entirely correct as these individuals incur fees charged by the telecom companies, they pay rent for their stalls, transport expenses etc.

Considering the very low margins that are made by the distributors and agents, an additional tax cost of 10% is going to be burdensome for the individuals.

Special provisions for the taxation of petroleum operations

East African Crude Oil Pipeline

The Bill extends the meaning of the term "international agreement" to include Inter-Government Agreement on the East African Crude Oil Pipeline. The amendment will give full effect to the income tax relief and benefits contained in the Inter-government agreement for the pipeline project.

However, the Inter-Government Agreement on the East African Crude Oil pipeline was not specifically defined as an international agreements under the VAT Act.

As you may be aware, the Income Tax Act does not require ratification of the agreement by Parliament for it to have legal force in Uganda. However, the VAT Act requires international agreements to be ratified by the Cabinet and approved by Parliament to give effect to the agreement for VAT purposes.

Therefore, the inter-government agreement for the pipeline project should be approved by Parliament for the relevant tax relief and benefits to have full legal force under the domestic law.

Definitions

The Bill clarifies the definition of a mining exploration right to mean "a prospecting exploration or retention licence granted under the Mining Act." The Bill also proposes to repeal the definition of petroleum exploration right.

It is not clear why the meaning of exploration right under the petroleum provisions is being repealed yet the same definition is maintained under the mining provisions.

Farm-outs

Section 89GE sets two conditions that must apply for a transaction to qualify as a farm-out for tax purposes.

The Bill expands the first condition (under section 89GE (1) (a)) to include a transfer of the whole interest of the transferor in a mining right or petroleum agreement where a licensee (i.e. transferor) has entered into an a farm out agreement with a person (i.e. transferee).

Value Added Tax (Amendment) Bill, 2018

Introduction of withholding Value Added Tax

The Bill proposes to introduce a provision for withholding fifty percent of the Value Added Tax ("VAT") payable on payments for taxable supplies by designated persons. The designated persons will be required to withhold VAT on payment for supplies from;

a) Registered tax payers; and

b) Unregistered persons who are required to be registered where such persons make supplies for an amount equivalent to one quarter of the annual registration threshold (currently UGX 150 million x 25% =37.5 million)

Introducing withholding VAT together with the already existing withholding tax requirements under section 119 of the ITA is going to create an excessive tax burden on the cash flow of businesses in Uganda. In addition, it will increase the administrative burden on taxpayers who are already withholding tax agents and result in additional compliance costs since it will require them to adjust/ modify their systems to align them with the new withholding VAT obligations.

If the Bill is passed into law, the Minister will have to address the practicalities of how the withheld VAT will be applied. For example;

- What happens if the designated withholding agent fails to withhold?
- How and when the withheld tax ought to be paid to the URA?
- What is the status of the withheld tax? and
- How should a supplier who should be registered claim a credit for the withheld tax if they are unregistered at the time of the supply? Will it represent their final VAT liability in the same way as a final withholding tax liability under section 122 of the ITA?

To address the above queries, the Minister may need to provide additional provisions in the law equivalent to those in sections 123 to 128 of the ITA that provide for administration of the current withholding tax regime including guidance on payment of withholding tax, consequences of failure to withhold tax, issuance of tax credit certificates, priority of tax withheld and withholding agents' indemnity.

Exclusion of blocked items from the list of deemed VAT supplies

The Bill proposes to exclude the VAT payable on a passenger automobile, the repair and maintenance of that automobile and entertainment from forming part of VAT deemed to have been paid by a licensee for mining or petroleum operations to a contractor.

This also applies to supplies of passenger automobiles and entertainment made to a Government Ministry, department or agency by a contractor executing an aid funded project for exclusive use for the aid funded projects.

The implication of this proposal is that the licensees will be required to pay VAT charged by contractors who supply passenger automobiles and entertainment. Also, the Government Ministry, department or agency will be required to pay VAT charged by contractors under an aid funded project.

The licensees and Government Ministry, department or agency will not be entitled to claim the input VAT and will be become a cost to them.

Due date for payment of VAT

The Bill proposes to introduce section 34A which reinstates the tax payment provisions that were previously included in section 34 of the VAT Act (repealed from 1 July 2016 on the coming into force of the Tax Procedures Act 2014).

Section 34A sets out the requirement that where an objection or notice of appeal against an assessment has been lodged, the tax payable under the assessment remains due and payable and may be recovered by the URA notwithstanding the objection or appeal.

In our view, this proposed amendment defeats the objection or appeal process if a taxpayer is required to settle the VAT due in full prior to the objection being considered by the URA or the appeal being disposed by court.

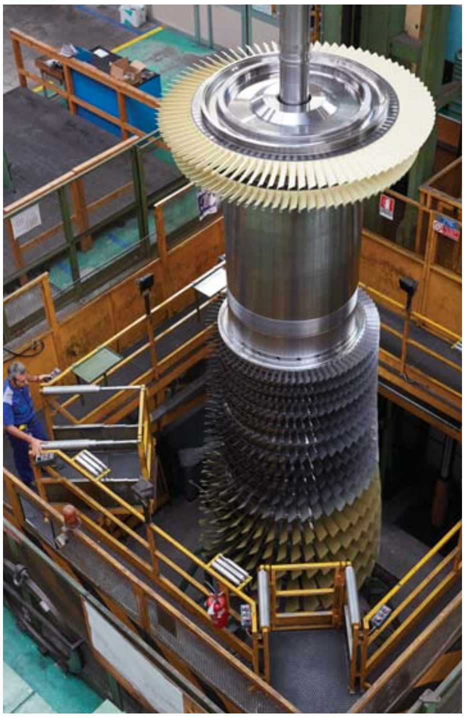
If this Bill is passed into law as it is, this will have an adverse cash flow impact on taxpayers. For example, taxpayers may have to seek a refund of VAT paid in the event that the objection/appeal decision is in their favour.

The taxpayer has a burden of proof under section 26 of the Tax Procedures Code Act (TPCA) that an assessment is incorrect. The requirement to pay the VAT due upfront presumes that the taxpayer is liable to pay the tax and defeats the rules of natural justice and is likely to be challenged in court since it contravenes section 27(4) of the TPCA.

Section 27(4) of the TPCA provides that:

"The Commissioner may waive the amount or accept a lesser amount than is required to be paid under section 24(3) where an objection has reasonably been made to a tax assessment."

In addition, this is in conflict with the Tax Appeals Tribunal Act (TAT) which requires the payment of only 30% of the



tax assessed after lodging of an objection against an assessment.

The Minister will have to align this proposed provision of the VAT Act to the TPCA and TAT Acts in order to rectify the anomaly brought about by the proposed amendment.

Capping of interest on over payments and late refunds

The Bill proposes to amend section 44 of the VAT Act which relates to interest on over payments and late refunds from the tax authority to cap interest due and payable on over payments and late refunds to the amount of principal tax.

This provision has been harmonized with the existing capping of interest provision under Section 65A of the VAT Act that caps the interest due and payable on unpaid tax.

Amendment of the definition of electronic services provided by non-resident persons

The Bill proposes to amend the definition of electronic services to include the following when provided or delivered remotely through:

a) Websites, web hosting or remote maintenance of programs and equipment

b) Software and updating of software

c) Images, text and information

d) Access to databases

e) Self-education packages

f) Music, films and games including games of chance; or

g) Political, cultural, artistic, sporting, scientific and other broadcasts and events including television;

Currently the VAT Act restricts electronic services to those provided on or through a telecom network.

This amendment will expand the scope of electronic services to include all the above services irrespective of the medium of delivery of these services to a person in Uganda.

Regulations for VAT treatment of financial transactions.

The Bill proposes that the Minister shall make regulations for tax treatment of supplies made in Islamic financial transactions.

These regulations will give guidelines in regard to taxation of Islamic financial transactions.

Provision of tax incentives to investors

The Bill proposes to provide tax incentives to supplies of various construction materials, services, machinery and equipment for developers of industrial parks or free zone who meet various specified criteria by exempting these supplies from VAT. This incentive also extends to the following upon meeting certain criteria:

- Supplies to a hotel or tourism facility developer whose investment capital is USD 15 million with a room capacity exceeding one hundred guests;
- Supplies to a facility developer who develops a hospital at the level of a national referral hospital with capacity to provide specialised medical care whose investment capital is at least USD 10 million; and
- The supply of movie production.

The above incentives are a welcome move in spurring industrial growth in Uganda and are in line with the exemptions provided for under the Income tax and Ex.

Excise Duty (Amendment) Bill 2018

Due date for payment of excise duty

The Bill proposes to introduce time of supply rules for excise duty. It proposes that a person providing an excisable service becomes liable to pay excise duty on that service on the earlier of the following:

a) The date on which the performance of the service is completed;

b) The date on which payment for the service is made; and

c) The date on which an invoice is issued.

These rules are essentially the same as the general time of supply rules in section 14 of the VAT Act relating to the "time of supply". However, these rules cannot be applied to the Telecom services because of the different excise duty rates that apply to airtime.

It may not be practical for the Telecom companies to pay excise duty at the "Point of Sale" (POS) because at the POS it is not yet known what the airtime is going to be used for (e.g. whether for voice calls or data).

Currently Telecom companies are accounting for excise duty based on actual usage as it is only at this point that they would know whether the airtime was used to make a voice call (excise duty is 12%), or used for Value Added Services (excise duty is 20%) or used for internet access / data (excise duty is nil).

Remission of excise duty on export of excisable goods

The Bill has introduced an amendment that proposes that, "the Commissioner may, if satisfied that the excisable goods have been exported, remit the excise duty payable on those goods".

However, according to section 4(3) of the Excise Duty Act, 2014, excise duty on manufactured goods is payable when the manufactured goods are removed from the manufacturer's premises.

It remains unclear at what point the duty to be remitted i.e. is it at the time of removing the goods from the manufacturer's premises for export, or after the goods have been exported out of Uganda?

Introduction of penalties and interest in the Excise Duty Act, 2014

The Bill proposes to introduce penalties and interest on the following;

- Failure to apply for a licence - A penalty equal to the duty payable for the period when the person producing excisable goods or services remains without a valid license;
- Failure to furnish a return in time-A penalty amounting to the higher of two hundred thousand shillings or a two percent compounded interest charge for the period for which the return remains outstanding.
- Failure to pay excise duty in time – Interest on the unpaid duty at a rate of two percent per month, compounded, for the period the duty remains outstanding.
- Failure to maintain proper records- A penalty equal to the higher of the amount of duty payable for that period or UGX 2 million.

While penalties for failure to furnish a return in time and failure to maintain proper records were provided for in the TPCA, the penalties on failure to apply for a licence and interest on failure to pay excise duty are new additions to the Excise Duty Act, 2014.

It is worth noting that the repealed Excise Duty Act, 2012 provided for simple interest on late payment of excise duty.

In our view, the introduction of interest on late payment of excise duty with effect from 1 July 2018 implies that excise duty assessed between 1 July 2014 and 30 June 2018 should not be subject to interest.

Proposed Amendments to Schedule 2 of the Excise Duty Act, 2014

Telecommunication services

a) Airtime on mobile cellular, landlines and public pay phones

The Bill proposes to increase the excise duty rate on land lines from 5% to 12%. We understand that the increment is purposed towards harmonising excise duty applied on airtime used for both landlines and mobile phones as a way of bringing about equality in the Telecom industry.

b) Introduction of excise duty on Over the Top services

The Bill proposes to introduce excise duty on over the top services ("OTT") at a rate of UGX 200 per user per day of access. The Bill defines OTT services to mean "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."

The definition of the OTT services excludes use of the internet to access educational or research sites prescribed by the Minister in the Gazette. However, it remains unclear how the telecom companies will be expected to distinguish data used for say accessing social media platforms like WhatsApp from that used to access educational websites.

Furthermore, the Telecoms may have no mechanism for charging the proposed UGX 200 once the user converts the purchased airtime into data. In practice, some of the bundles that users load to grant them access to internet platforms cost as low as UGX 100 per day. A fixed rate of UGX 200 per day would be a disproportionate level of taxation in such a case and this cost may not be passed on to the specific customer. Section 15 of the Excise Duty Act requires the price on excisable service to include excise duty and it is not feasible to include a UGX 200 duty in a UGX 100 bundle.

Furthermore, a customer may purchase and use more than one bundle in a single day and therefore could end up paying multiple amounts of UGX 200 for one day's access.

This new duty requires significant additional research and consultation with the Telecom sector before it can be properly implemented and made workable in practice.

c) Increase in excise duty on mobile money charges and introduction of Excise duty on mobile money transactions

The Bill proposes to introduce excise duty on mobile money transactions on receiving, payments and withdrawals at a rate of 1% of the transaction value.

Section 4 of the Excise Duty Act 2014 imposes excise duty on excisable goods and excisable services. The service of providing mobile money transfers or withdrawals is already subject to excise duty at a rate of 10% (proposed to be increased to 15%).

By contrast, the new 1% duty will apply to the transaction value, and not on the provision of any service. We are of the view that the new duty is effectively a form of income or asset tax as it is essentially a tax on the funds of the customer who decides to use the mobile money service. The tax will apply to the customer over and above the mobile money charges that the telecom company will charge the customer for using the mobile money service.

We believe this 1% "income tax" on money transacted on mobile money is inequitable and very punitive to the citizens of Uganda who have embraced mobile money platforms as a means to effect the movement of funds in their day to day business and private transactions. The widespread adoption of mobile money has helped to improve financial inclusion in Uganda and moved Uganda from a physical cash based economy.

The new duty is also discriminatory because it does not apply to cash or bank transactions. It poses a serious risk of distorting economic behaviour and driving many unbanked citizens back to the old days of transacting in cash.

Exemptions from excise duty

The Bill provides for exemption of the following;

- Construction materials for development of industrial parks or free zones by a developer whose investment is at least USD 200 million.
- Construction materials of factory or warehouse available on the local market, locally produced raw materials and inputs to an operator within the industrial park, free zone, single factory or other business outside the industrial park or free zone upon meeting of specific criteria

- Locally produced materials for construction of premises and other infrastructure of a hotel or tourism developer whose investment capital is at least fifteen million United States Dollars, and of a room capacity exceeding one hundred guests
- Furnishings and fittings or locally produced materials for construction of premises and other infrastructure of a hospital facility developer whose minimum investment capital is at least ten million United States Dollars and who develops a hospital at the level of a national referral hospital with capacity to provide specialized medical care.

Our interpretation of the above proposals is that excisable materials such as cement and furniture locally sourced and for use in the above mentioned projects will be exempt from excise duty.

Detailed amendments to the Second Schedule of the Excise Duty Act, 2014

Paragraph	Dutiable Good or Service	FY18 Rates	Proposed New Rates FY19
Beer			**Insertion of 2(d) in the schedule**
2(d)	Opaque beer	N/A	30% or Ushs 230 per litre, whichever is higher
Spirits			**Substituting item 3 of the schedule**
3(a)	Undenatured spirits made from locally produced raw materials	60%	60% or Ushs 2000 per litre, whichever is higher
3(b)	Undenatured spirits made from imported raw materials	UGX 100% or Ushs 2500 per liter, whichever is higher	100% or Ushs 2500 per litre, whichever is higher
3(c)	Ready to drink spirits	80%	80% or Ushs 1300 per litre, whichever is higher
Wine			**Substituting item 4 of schedule 2**
4(a)	Wine made from locally produced raw materials	20%	20% or Ushs 2000, per litre, whichever is higher
4(b)	Other wine	60% or Ushs 6000 per liter, whichever is higher	80% or Ushs 8000, per litre, whichever is higher
Juice			**Insertion of item 5(c)**
5(c)	Powder for reconstitution to make juice or dilute- to - taste drinks, excluding pulp;	N/A	15% of the value
Telecom Services			**Substituting item 13 of schedule 2**
13(a)	Airtime on mobile cellular, landlines and public pay phones	5%	12% of the fee charged
13(b)	Over the top services	N/A	Ushs 200 per user per day of access
13(c)	Internet data	Nil	Nil

Paragraph	Dutiable Good or Service	FY18 Rates	Proposed New Rates FY19
13(d)	Money transfer or withdrawal services, including transfers and withdrawal services by operators licensed or permitted to provide communications or money transfers or withdrawals but not including transfers and withdrawal services provided by banks	10% of the fees charged	15% of the fees charged;
13(e)	Value added services	20%	20%
13(f)	Mobile money transactions on receiving, payments and withdrawals	N/A	1% of the value of the transaction;
13(g)	Incoming international calls, except calls from the Republic of Kenya, the Republic of Rwanda and the Republic of South Sudan	USD 0.09 per minute	USD 0.09 per minute
14	Ledger fees, ATM fees, withdrawal fees and periodic charges and other transaction and non-transaction charges, excluding loan related charges periodically charged by financial institutions	10% of the fees charged	15% of fees charged
	Others		**Insertion of items 18 to 23**
18	Cooking oil	N/A	Ushs 200 per litre
19	Motorcycles; at first registration	N/A	Ushs 200,000;

The Tax Procedures Code (Amendment) Bill, 2018

Filing of tax returns under the Lotteries and Gaming Act

The Bill proposes to amend section 16(8) that provides for the time frame to file a return under the Lotteries and Gaming Act. Currently, the Commissioner requires a person to file a return in respect to any tax imposed under the Act by the fifteenth day of the month following the month in which the tax was due. However, section 48(2) gives the Minister powers to determine the amount of tax levied, the intervals and the time within which the tax shall be paid.

In accordance with the above powers, the Bill proposes that persons liable shall furnish a weekly return, by Wednesday of the following week and in addition, file a monthly return, by the fifteenth day of the following month. The principal purpose of filing several tax returns is not known. However, it may be a case of the Government wanting more visibility for revenue collections in this sector.

Commitment by government to pay tax on behalf of taxpayers

The Bill introduces section 40(2a) where the Minister shall pay any tax due and payable by the Government arising from commitments made by the Government to pay tax on behalf of a person. Currently, the ITA gives the Minister powers to remit tax due. However, no provision obliges the Minister to pay tax due where the Government has committed to pay tax on behalf of a taxpayer.

This new provision therefore gives investors comfort on government undertakings in respect to its tax commitments.

However, we note that the term “Government” has not been defined. In practice, some of the investors have faced challenges from the URA in administering government’s commitments to pay tax on their behalf.

Waiver of taxes due by government

The Bill proposes to waive, all taxes due and unpaid by government except tax withheld by the Government as at 31 June 2018. In addition, the Bill proposes that the Minister shall publish in the Gazette and in a newspaper of national circulation, a list of all taxes waived. We welcome this gesture as it will promote transparency within the tax administration system.

Electronic receipting and invoicing

An electronic receipting and invoicing system has been introduced by the Bill. A taxpayer may issue an e-invoice or e-receipt, or employ an electronic fiscal device which shall be linked to a centralised invoicing and receipting system or a device authenticated by the URA. The Bill also proposes that the Commissioner shall by notice in the gazette specify taxpayers for whom the use of electronic receipting shall be mandatory.

In practice, we have seen the same electronic receipting devices and or systems introduced in Kenya and Rwanda in order to increase VAT collections and minimise risk of false VAT declarations.

However, we expect that the implementation of this system will be delayed to allow the training of users and any necessary configurations that may have to be done.

In our view, for this electronic receipting system to be effective, it should be mandatory for all registered taxpayers in order to close exploitation of any potential tax loopholes.

Penalties between UShs 6 million and UShs 8 million or the equivalent of tax due, whichever is higher, have been proposed to be imposed for any non-compliance with the amendment.

However, for a person who attempts to use a fraudulent invoicing system or device such person will have committed an offence and is liable, on conviction, to a term of imprisonment not exceeding three years or a fine not exceeding UShs 6 million.

The Stamps Duty (Amendment) Bill, 2018

The Bill introduces stamp duty on the execution of Islamic Financial Transactions. The term “Islamic Financial Transactions” has been defined to mean: “Shariah compliant financial services including Murabahah, Mudarabah, Musharakah, Ijara, Wakalah, Jualah, Sukuk and Takaful.” The applicable rates will be prescribed by the Minister of Finance by statutory instrument with Parliament approval.

The Bill proposes to amend Schedule 2 of the Stamp Duty Act by substituting for stamp duty of UShs 10,000 wherever it appears, with UShs 15,000.

The Stamp duty (Amendment) Act 2016 increased the specific rate of stamp duty from UShs 5,000 to 10,000. The proposed increment seems to be an intention by the Minister to gradually increase this rate to mirror the current economic times.

The Bill also introduces an exemption on stamp duty payable in respect of strategic investment projects for the following investor categories:

a) Developers of industrial parks or free zones whose investment capital is at least US$ 200 million;

b) An operator within an industrial park or free zone or an operator of a single factory or other business outside the industrial park;

c) Hotel or tourism facility whose investment capital is US$ 15 million with a room capacity exceeding one hundred guests; and

d) Hospital facility developer whose investment capital is at least US$ 10 million and who develops a hospital at the level of a national referral hospital with capacity to provide specialised medical care.

The exemption on strategic investment projects seems to follow the exemptions that have been given under other tax heads to encourage investments in these particular sectors.

The Lotteries and Gaming (Amendment) Bill, 2018

The Bill introduces section49 (2) which waives interest in excess of 100% of principal tax and penalties The amendment is consistent with the treatment of excess interest as has been provided for under other domestic tax legislations.

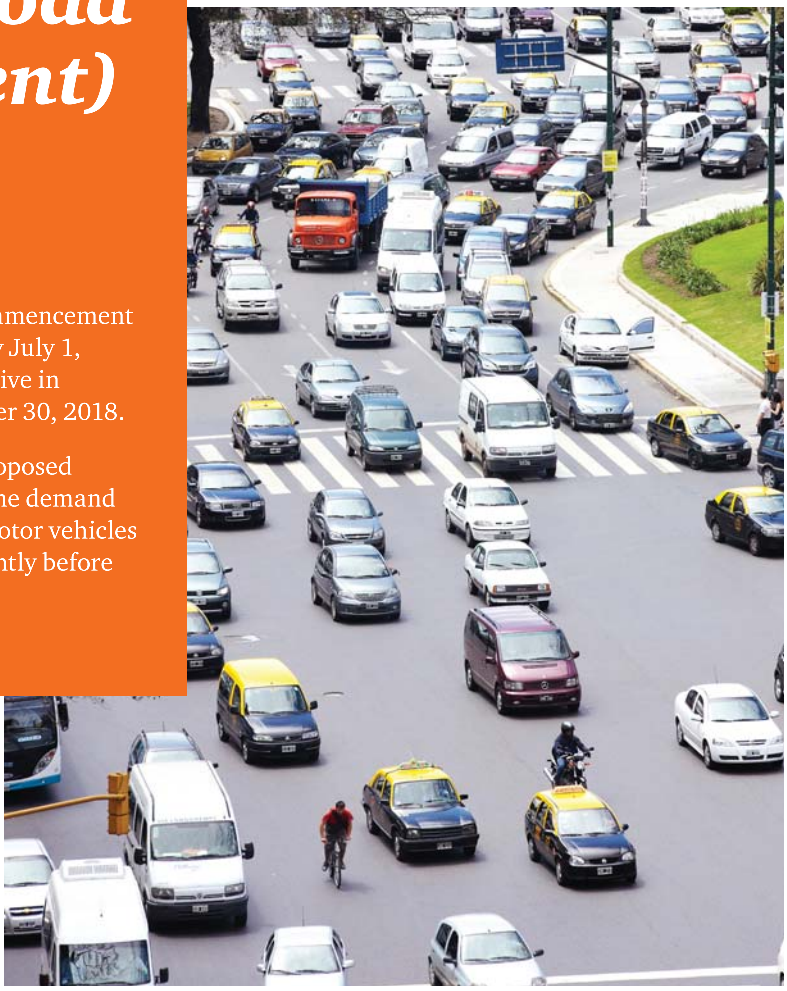
The Traffic and Road Safety (Amendment) Bill, 2018

A ban on the importation of passenger motor vehicles which are over 8 years from the date of manufacture.

The Bill proposes to ban the importation of passenger motor vehicles which are over 8 years from the date of manufacture.

However, the ban does not include motor vehicles that are in transit before commencement of the Act, (normally July 1, 2018) and which arrive in Uganda by September 30, 2018.

As a result of this proposed change, we expect the demand of used passenger motor vehicles to increase significantly before 30 September 2018.



Lets talk

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