

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

COMMENTS ON THE TAX (AMENDMENT) BILLS 2019/20

26 APRIL 2019

Comments by ICPAU

	ISSUE	OBSERVATION	COMMENT
INCOME TAX (AMENDMENT) BILL, 2019			
1.	Clause 2 Amendment of Section 2 of the Income Tax Act	<p>The Bill seeks to amend the Income Tax Act, to include a definition of a “beneficial owner” to mean a natural person.</p> <p>This is a relevant measure for purposes of section 88 which incorporates international treaties into the Ugandan law, as international agreements themselves do not actually give such clarity in an attempt to restrict on treaty shopping.</p>	We agree with this amendment.
2.	Clause 3 Amendment of section 5 of the principal Act	<p>The Bill introduces further ring-fencing of rental income such that companies earning rental income from more than one property shall account for the income and expenses and pay tax for each of the properties separately. The likely effects of the proposal are;</p> <p>(a) The property owners will no longer be able to offset tax losses</p>	<p>This measure is most likely to increase the compliance burden of the property owners. As such we propose to adopt any of the measures below otherwise URA will be expected to provide guidelines on how this will be applied in practice as it is not clear whether the separation of properties will be determined based on tenancy, legal title or physical location .</p> <p><u>Proposed Suggestions</u></p> <p>(a) We propose rental expense to be an allowable deduction for employees and mandate the employees to disclose their rental particulars as the employer makes their return. This will expand the identification of the rental tax base.</p>

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		<p>of one property against the profits of another property.</p> <p>(b) Where a company centrally manages costs related to the different properties, it may be hard to ensure apportionment of such costs.</p>	<p>(b) There is a need to address issues of under declaration of rental income and this could be done by predetermining the rental income earned from a specific type of property say by location.</p> <p>(c) A nominal stamp duty for every rental agreement can be introduced.</p>
3.	Clause 5 Amendment of section 25 of the principal Act.	<p>The Bill seeks to exclude financial institutions and insurance companies from the interest deduction limitation that was introduced last year which limits the amount of deductible interest in any year of income to 30% of EBIDA (Earnings Before Interest Depreciation and Amortization) for all debts owed by a taxpayer who is a member of a group.</p> <p>This is a welcome amendment for the financial institutions and insurance companies that have much higher debt-equity ratios and interest expenses.</p>	<p>However, we think that it is not enough to exclude only financial institutions and insurance companies as most other businesses in the Country operate on debt. We suggest that the 30% restriction on interest deductibility should be applied only on that debt from related parties in the spirit of what the <u>thin capitalization rules</u> used to apply. We thus propose an amendment to Clause 5 to read as follows;</p> <p><u>Proposed Amendment</u></p> <p>Clause 5 Amendment of section 25 of the principal Act.</p> <p>“The amount of deductible interest in respect of all debts owed by a taxpayer <i>who borrows within a group to which the taxpayer is a member</i>, other than a financial institution or a person carrying on insurance business, shall not exceed thirty percent of the tax earnings before interest, depreciation and amortization.”</p>
4.	Clause 6 Amendment of section 38 of principal Act.	<p>The Bill seeks to re-introduce the income tax requirement for a taxpayer who has carried forward assessed losses for a consecutive period of seven years of income at a rate of 0.5 percent on gross turnover</p>	<p>This amendment is most likely to impact businesses involved in large capital-intensive infrastructural projects. These businesses require large upfront capital investments and will only make profits long after commencement and this discourages investments of that nature which are usually long term.</p>

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		for every year of income in which the loss continues after the seventh year.	<p>Also for investments made in government securities where a withholding tax rate of 20% already applies, the tax rate may go up to 20.5% for those that have carried forward assessed losses.</p> <p>We propose for a selective application of this requirement to exclude such businesses mentioned above and for parastatals that provide public goods/ services for the clause to read as follows;</p> <p><u>Proposed Amendment</u></p> <p>Amendment of section 38 of principal Act</p> <p>5a - <i>“Except for large, capital-intensive infrastructure projects, a taxpayer who has carried forward assessed losses for a consecutive period of seven years of income shall pay a tax at a rate specified in Part XIII of Third Schedule.</i></p> <p><i>In this section a capital intensive infrastructure project include;</i></p> <p><i>(a) Pipelines,</i></p> <p><i>(b) Power infrastructure projects</i></p> <p><i>(c) Capital intensive industries.”</i></p>
5.	Clause 9 Amendment of section 135 of the principal Act	This bill introduces a requirement for one to have a TIN in order to obtain a license or any form of authorisation for purposes of conducting any business in Uganda.	<p>This proposal has the effect of widening the tax base. This clarity is welcome and the expectation is that all persons carrying on any trade/profession will be tax registered before obtaining any licence, including annual licence renewals.</p> <p><u>As further efforts to widen the tax base, let the requirement for a compulsory return for every taxpayer as provided for under section 92A of the ITA be activated.</u></p> <p>Our justification is that URA has automated, the tax regime is self assessment but it will highlight details of our economy where more resources can be generated.</p>

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	VAT (AMENDMENT) BILL, 2019		
1.	Clause 2 Amendment of section 1 of the principal Act	The Bill seeks to amend the Value Added Tax Act, to extend the definition of a “citizen” to a citizen of a Partner State of the East African Community.	<p>We are in support of this amendment, because there was no definition provided for purposes of tax law before. The definition is relevant for purposes of fulfilling commitments in the EAC treaty on equal treatment of goods, services and persons from Partner States and for determining eligibility of persons for tax benefits. This means that EAC citizens will also benefit from preferential benefits such as lower capital investment requirements and exemptions on specified items under the specific Acts.</p> <p><u>Concerns:</u></p> <p>The Minister responsible for Finance must establish whether the same will be reciprocated by the other Partner States.</p>
2.	Clause 3 Amendment of section 5 of the principal Act.	<p>The Bill seeks to re-introduce VAT withholding but at a lower rate of 6 percent of the taxable value and also provides exemptions for compliant tax payers. Other concerns are;</p> <ul style="list-style-type: none"> - Is the 6% computed on VAT payable or on taxable value - How will the credit be granted to the taxpayer for instances where the 6% income tax and 6% VAT is applicable - Timing mismatch on when tax is withheld and when a credit is granted and payment made. 	<p>The proposed exemption for compliant taxpayers should reduce the tax compliance burden and cash flow implications for the designated VAT withholding agents.</p> <p>However;</p> <ul style="list-style-type: none"> - The administrative burden will remain for the designated agents. - The Bill does not explicitly set out whether VAT withheld would be available to offset VAT liabilities of the person making the supply. <p><u>Proposed Amendment:</u></p> <p>We propose that the amount withheld shall be included as a part payment in the subsequent VAT return. We thus propose to insert a new clause 2c to read as follows:</p> <p><u>“The six per cent taxable value withheld shall be recognized as a payment in the subsequent VAT return of the taxpayer from whom the tax is withheld.”</u></p>

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3.	Clause 4 Insertion of section 73A in the principal Act	The Bill seeks to give the Minister of Finance, Planning and Economic Development powers to make regulations for the equivalent tax treatment of supplies made in the course of Islamic financial transactions.	This is a welcome provision as it will help clarify the application of the law to various Islamic financial transactions, as these differ from conventional financial transactions.
4.	Clause 7 Amendment of the Third Schedule to the principal Act	The Bill seeks to restrict zero-rating to drugs and medicines manufactured in Uganda.	<p>This means that suppliers of drugs and medicines manufactured in Uganda will be able to recover input VAT incurred.</p> <p>However, because the VAT exemption will now apply to imports and local sales of imported drugs and medicine, yet not all drugs & medicines are manufactured in Uganda, the unintended consequence will be that suppliers are most likely to pass on the cost to the poor unhealthy Ugandans. Thus Government must consider the social aspects of this proposal.</p> <p><u>Proposed Amendment</u></p> <p>We propose to extend the zero-rating to imported drugs & medicine not available in Uganda for the clause to read as follows;</p> <p><i>“the supply of drugs and medicines manufactured in Uganda and import of drugs and medicines with no active manufacture in Uganda.”</i></p>
THE EXCISE DUTY (AMENDMENT) BILL, 2019			
1.	Clause 5 Amendment of section 15A of the principal Act	The Bill seeks to introduce a uniform interest penalty of 2% per month, compounded, on late payment of all excise duty.	We are in support of this amendment as the current Act only provides for interest on unpaid duty in relation to manufactured or imported goods, with no penalty applying to excise duty on services.

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	TAX PROCEDURES CODE (AMENDMENT) BILL, 2019		
1.	Amendment of section 66 of the Principal Act	The intended amendment only recognizes an offence. It would be good to encourage taxpayers to self-check their tax operations with no penalty.	<p>We propose amend the proposed clause (1a) to include errors discovered during self-check for the clause to read as follows.</p> <p>“Where a person has committed an offence under a tax law other than section 63 of this Act <i>or an error in a tax return</i> and that person voluntarily discloses the commission of the offence <i>or the error</i> to the Commissioner, at any time prior to the commencement of court proceedings, the Commissioner may enter into an agreement with the offender to compound the offence <i>or overlook the error</i> if the offender agrees to pay to the Commissioner the outstanding unpaid tax and that person shall not be required to pay any interest or fine due.”</p> <p>Justification</p> <p>This will help the tax system to have an on-going amnesty for offences and errors for all taxpayers who desire to do the right thing.</p>