

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

COMMENTS ON THE NSSF (AMENDMENT) BILL, 2019

AUGUST 2019

Comments by ICPAU

BILL CLAUSE	ISSUE	OBSERVATION	COMMENT
THE NSSF (AMENDMENT) BILL 2019			
2	Interpretation Amendment of section 2(d)(k)	<p style="text-align: center;"><u>Defining the Employer</u></p> <p>Clause 2(d) amends section 1(k) defining the term “employer”.</p> <p>Although the above clause is intended to widen the scope of the definition of an employer, it does not clearly define who an employer actually is, and instead creates more ambiguity;</p> <ol style="list-style-type: none"> 1. It just lists different types of entities/businesses who may or may not have employees; 2. In cases of uncertainty the “first-mentioned person”, i.e. the recipient of the employees, is the employer not the “manager”, i.e. the supplier of the employees. 3. The list of persons who are included as an employer does not specifically refer to individuals (conducting business or 	<p><u>Our Proposal</u></p> <p>We propose that;</p> <ol style="list-style-type: none"> i The definition of employer should be clarified to mean any person who engages an employee. ii There is a need to specifically clarify (via the definition of employer or eligible employee, excepted employment, or otherwise) whether or not the following persons are subject to the NSSF Act: <ul style="list-style-type: none"> • Persons/employers in the informal sector; • Persons who hire casual labourers on a short-term basis (say less than three months); and non-business individuals who employ domestic workers in their residential premises. <p><u>Justification</u></p> <p>To provide clarity on who the employer, employee in regard to NSSF.</p>

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		<p>otherwise, other than when acting as a trustee of an incorporated trust) and this may imply that individuals are excluded.</p>	
3	<p>Amendment of section 3 of the principal Act</p>	<p><u>Board of Directors</u></p> <p>The clause seeks to ensure that workers and employers have permanent slots on the NSSF Board as opposed to the current arrangement where the Minister may or may not appoint such representatives on the board.</p> <p>The ILO Convention 102 recommends a tripartite arrangement in the constitution of the Board, where representatives of the persons protected participate in the management or associate with key decisions of the Fund.</p>	<p><u>Our Proposal</u></p> <p>We are in support of this provision, and further propose that the appointed members of the Board be allowed to select a Chairperson from amongst themselves.</p> <p><u>Justification</u></p> <p>With the amendment, the requirement of a tripartite arrangement in the constitution of the Board will be codified and not just left to the will of the Minister.</p>
8	<p>Amendment of section 14 of principal Act</p>	<p><u>Collection from Third Parties</u></p> <p>The proposed amendment seeks to empower the Fund to recover from a third party any sum owed to a defaulting contributing employer to cover any contribution, penalty or interest due under the Act.</p> <p>We wish to note that the Bill only creates an obligation to recover from the third party but no consequences or clear enforcement mechanisms in case the third party refuses or</p>	<p><u>Our Proposal</u></p> <p>We propose to insert immediately after the current amendment to section 14 of the principal Act the following subsections:</p> <p><i>Section 14(4)-“Without prejudice to subsection (3), the Fund may recover any amount due under this Act by an agency notice requiring any third party owing or holding money for or on behalf of the defaulting contributing employer to pay the money to the Fund”.</i></p> <p><i>Section 14(5) -“For the purposes of subsection (4), a third</i></p>

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		<p>fails to comply with the requirement to remit Funds owed to the defaulting contributing employer.</p>	<p><i>party making a payment to the Fund in accordance with a notice issued by the Fund shall be taken as acting under the authority of the defaulting contributing employer liable to pay the amount due under this Act and is absolved in respect of the amount paid”.</i></p> <p><u>Justification</u></p> <p>To close the loophole where the Fund may fail to practically implement the provisions of the Act requiring third parties to remit monies they owe to a defaulting contributing employer.</p>
9	<p>Amendment of section 19 of principal Act</p>	<p><u>Description of Benefits</u></p> <p>We propose to include in the Bill a provision that allows lump sum and annuity arrangements to members.</p> <p>Evidence from research carried out by the Fund indicates that over 85% of the members use up their savings in the first few years and then retire in destitution.</p> <p>These findings are indicative of the need for the Fund to begin transitioning into a Pension scheme - where contributors have a choice to receive a certain percentage of contributions on retirement and then receive life-time pensions thereafter instead of the once for all lump sum payment.</p>	<p><u>Our Proposal</u></p> <p>We thus propose to insert subsection (7) immediately after section 19(6) for the section to read as follows:</p> <p><i>Section 19 (7)(a) “Where a member qualifies for any of the benefits under section 19, he or she shall be paid a lump sum of 50% of their contribution and an annuity as per arrangements approved by the Minister.</i></p> <p><u>Justification</u></p> <p>To provide for annuities.</p>
10	<p>Insertion of section</p>	<p><u>Mid-term Access</u></p>	<p><u>Our Proposal</u></p>

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	24A to principal Act	<p>The clause seeks to provide for mid-term access for voluntary contributors to the Fund.</p> <p>However, since the savings are intended to better the lives of savers, there is need to consider limited mid-term access for <u>both mandatory and voluntary contributors</u>, as opposed to only voluntary contributors.</p> <p>Limited access should be guided, for example, by limiting access to a certain percentage of accumulated contributions and interest, for qualifying contributors such as those who have saved with the Fund for a certain period, and the accessed funds should strictly be used for specific purposes as may be prescribed (for example to further the contributor's or child's education, deal with short term unemployment situations, acquire or construct an own residence or any other purpose as may be prescribed).</p>	<p>We suggest to amend clause 24A to be redrafted to read as follows;</p> <p><i>Section 24A(1) "A member who has made contributions to the Fund <u>for at least 10 years from the coming into force of this Act and he or she is above 45 years of age</u> shall be allowed mid-term access to his or her benefits on such terms and conditions and in the manner prescribed by the regulation"</i></p> <p><i>Section 24A(2) "Mid-term access to benefits shall be allowed only up to 50% of the accumulated contributions and interest".</i></p> <p><u>Justification</u></p> <p>The spirit of mid-term access is to help a saver "firefight" or correct their financial mistakes midway before they finally access the remaining funds at withdraw years before it is too late.</p>
11	Insertion of sub-section 29(5) in the principal Act	<p><u>Annual and Supplementary Budget</u></p> <p>The Bill introduces a clause requiring the Minister to prescribe a threshold of expenditure by the Fund, prior to approval of the annual budget.</p> <p>We believe that if the Minister has already appointed a Board and management</p>	<p><u>Our Proposal</u></p> <p>We propose that the role of the Minister should be limited to appointments of the Board and the heads of management; and putting in place regulations. <i>We, therefore, suggest deletion of <u>clause 11</u> that intends to insert a new section 29(5).</i></p> <p><u>Justification</u></p>

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		(Managing Director and Deputy), then the role of approving the Fund’s annual budget should be left to the Board.	<ul style="list-style-type: none"> • To improve on corporate governance. • To avoid unnecessary delays in implementing the Fund’s activities.
12	Substitution of section 30 of the principal Act	<p><u>Lending to Government</u></p> <p>The Bill seeks to allow the Board to use in-house expertise or fund managers in investment, which investment may also include lending to government. It is not clear why the Bill has to specifically make reference to “lending to government” when the current laws already permit the NSSF to invest in government securities (a form of lending to government) through the open market.</p> <p>The Uganda Retirement Benefits Regulatory Authority (URBRA), NSSF’s regulator under the URBRA Act, restricts and actually forbids funds of a retirement benefits scheme to be used to make direct or indirect loans to any person (See Sec 68).</p> <p>We believe that any other investment decisions should be based on prudent procedures as guided by the URBRA Act.</p>	<p><u>Our Proposal</u></p> <p><i>We thus suggest to <u>delete</u> the phrase “<u>which may include lending to the Government</u>” such that the proposed amendment reads as follows;</i></p> <p><i>“(2) Notwithstanding the provision of any other law, the Board may use in-house expertise or fund managers in the investments under subsection (1).”</i></p> <p><u>Justification</u></p> <p>We find no compelling justification for inclusion within proposed amendment that requirement given that without it, the Fund already has a framework of lending to Government, through fiscal instruments like treasury bills and bonds.</p>
19.	Amendment of section 38 of the	<p><u>Exemption from Income Tax</u></p> <p>Proposed amendment 38(1) seeks to exempt</p>	<p><u>Our proposal</u></p> <p>We thus propose to amend the proposed clause, for the</p>

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	<p>principal Act-38(1)</p>	<p>member contributions not exceeding 30% of income from tax.</p> <p>The implication of the above is that where a member contributes above the exemption threshold of 30%, the excess as provided for by the Bill is subject to PAYE at the point a member makes a contribution to NSSF.</p> <p>Under the proposed model of taxing benefits, Section 38 has no exemption for the member’s contribution above 30%. There is need to specifically exempt this excess from taxation at the point the member withdraws the benefit to avoid double taxation as the same will have been exposed to tax at contribution.</p> <p>Furthermore, the term “income” has not been defined by the Bill and neither is it defined in the current NSSF Act, Cap 222. Under the Income Tax Act, income of an employee includes both cash and non-cash benefits. However, social security contribution is only applied on the gross cash wages as per the current NSSF Act. To avoid this confusion, our proposal is that the 30% limit should be in reference to “gross cash wages” instead of “income”.</p>	<p>section to read as follows;</p> <p><i>“Section 38(1)(a) Notwithstanding the provisions of any other law, all member contributions not exceeding 30% of <u>gross cash wages</u> of the member shall be exempt from tax.”</i></p> <p><i>“Section 38(1)(b) All member contributions exceeding 30% of gross cash wages shall be exempt from tax at the point of payment to the member.”</i></p> <p>OR</p> <p>In the alternative, set a tax free threshold say Ushs 80 million given that majority of members earn low wages and need a livelihood at old age. The proposed exemption under the amendment may be re-drafted to read as;</p> <p><i>“Section 38 (1)(b) Notwithstanding the provisions of any other law, all member contributions not exceeding <u>three thousand currency points</u> shall be exempt from tax”.</i></p> <p><u>Justification</u></p> <ul style="list-style-type: none"> • To avoid double taxation as any amounts in excess of 30% of a member’s gross cash wages shall have been taxed at the time of making of the contributions. • In a study by the NSSF, it was noted that only 7% of the NSSF members have accumulated benefits above Ushs 50 million. The cost of living is ever growing and there is little a member with low wages can do with benefits subjected to tax as high as 30% or 40% a reasonable threshold of the benefits accumulated should be shielded

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			<p>from tax as a way of ensuring equity and spreading tax effects to those with benefits above a given threshold. Modern economists argue that ability to pay principle calls for progressive tax, that is, the rate of taxes increases as income (tax base) rises.</p>
	<p>Amendment of section 38 of the principal Act - 38(2)</p>	<p style="text-align: center;"><u>Exemption from Tax</u></p> <p>Whereas the Bill proposes to maintain the exemption of the employer’s contribution from tax at the point of remitting the contribution to NSSF, it does not provide that this contribution will also be exempt from tax at the point a member is claiming benefits from the NSSF.</p> <p>In the current law, the employer’s contribution is exempt from income tax at the point of contribution and at the point a member accesses this benefit.</p> <p>Our view is that the Bill should be amended to also provide that the employer’s contribution will not be taxed at the point of receiving benefits from NSSF in the spirit of ensuring old age social security.</p> <p>Taxation should be on the proceeds (income</p>	<p><u>Our proposal</u></p> <p>We propose to amend proposed section 38(2) under clause 19 for the amendment to read as follows:</p> <p><i>Section 38(2) “All employer contributions to the Fund shall be exempt from tax <u>at the point of contribution and when payment is made to the member</u>”.</i></p> <p><u>Justification</u></p> <p>The tax treatment of employer contributions, particularly employers in the private sector whose income is subject to income tax has several advantages. It eases cost of doing business for employers since the contribution is an allowable expense. Additionally, it may encourage employers to contribute towards retirement benefit arrangements over and above the mandatory arrangements which contributes to domestic savings mobilisation. Some scholars attribute growth in pension plans in other jurisdictions, to among other factors, favourable tax treatment of pensions.¹</p>

¹ For a discussion of tax effect on pension policy, see James L. Bicklser and Andrew H. Chen (1985), The Integration of Insurance and Taxes on Corporate Pension Strategy, 40(3) Journal of Finance, 943-955 at 948-949.

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		generated) and not the seeds (contributions).	
	<p>Amendment of section 38 of the principal Act - 38(4)</p>	<p>The Bill proposes to exempt the contributions and investment income of the Fund from tax. It is proposed that taxation should only arise at the point a member accesses the benefits from NSSF. The tax exemption only arises when a member is 60 years of age or more, physically or mentally incapacitated and/or in circumstances where a payment is being made to the beneficiaries of a deceased member.</p> <p>Considering that the life expectancy of Uganda is estimated at 58.5 years and the underlying purpose of the benefits being social protection at old age, there is need to improve the taxation structure of the benefits for members who are retiring or retired between 50 and 59 years.</p> <p>In addition, the age bracket of 50 to 59 years is a difficult one for majority of people in Uganda in terms of health and ability to continue in employment or find a new job. This is probably one of the reasons why the current law permits someone who is at least 50 years to access their benefits upon retirement from regular employment.</p>	<p><u>Our Proposal</u></p> <p>We thus propose that the amendment be re-drafted to read as follows:</p> <p><i>“Section 38 (4) Member benefits shall be taxed at the point of payment to the member, except in the case of death or invalidity; and taxation shall be at the prevailing Tax rate applicable to interest <u>onGovernment securities</u> at the time of payment of the benefits”.</i></p> <p><u>Justification:</u></p> <p>Since income tax rates have been going up over time (with the top rate having been increased from 30% to 40% in 2012), there is need to shield member’s benefits from high income tax rates that may be enacted for various fiscal reasons. NSSF invests majority of the members’ contributions in government securities with a 20% tax rate as a final tax, the tax rate on government securities should be used as a benchmark rate to tax the benefits as this will provide some assurance on the reasonableness of the would be prevailing rate in the future.</p>

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		<p>The Bill indicates that benefits will be taxed at the prevailing income tax rates at the time of withdrawing the benefits. This seems too speculative and exposes one's life time savings to economic vagaries.</p> <p>Due to the uncertainty of future tax rates, it is possible that at the time of payment the tax rates may have significantly increased which puts the member in a worse-off position.</p> <p>Benefits paid in a lump sum may push the member onto a higher tax bracket (e.g. 40%) compared to the tax rate at which the contributions would otherwise have been taxed (e.g. 30%); and that</p> <p>The employer's 10% standard contribution will be subject to tax yet it is not being taxed under the current rules (either on contribution or payout). This could easily outweigh the benefits of exempting the member contributions and the NSSF investment income, especially if the Fund's investment income allocated to members is not substantially increased as a result.</p> <p>The Bill should be amended to specify the income tax rate applicable on the benefits instead of referencing the rate to the Income Tax Act.</p>	

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	<p>Amendment of section 38 of the principal Act - Insertion of 38(4)A</p>	<p>The Bill also proposes to tax members' benefits at the point of payment. If passed into law, it will essentially amend the Income Tax Act. Under the Income Tax Act, only employers have an obligation to withhold tax from employment income. Given that the timing of taxation is shifting to withdrawal of benefits, employers will obviously not be in position to withhold tax on the benefits. Currently, the NSSF Bill, the NSSF Act and the Income Tax Act do not mandate the NSSF to withhold tax on a member's benefits.</p> <p>The Bill should therefore be revisited to mandate NSSF to withhold the tax and remit it to Uganda Revenue Authority by the fifteenth (15th) day of the month following the month the benefit was paid.</p>	<p><u>Our Proposal</u></p> <p>We thus propose to insert immediately after the proposed clause 38(4); clause 38(4)A that reads as follows:</p> <p><i>“Section 38(4)A - The Fund shall withhold tax from a payment made to a member at the point of payment and shall remit the same to Uganda Revenue Authority by the fifteenth day of the month following the month the benefit was paid.”</i></p> <p><u>Justification</u></p> <p>To provide for the mandate to withhold tax at the time of making a payment to a member.</p>
	<p>Amendment of section 38 of the principal Act - 38(5)</p>	<p>As a transition measure, the Bill proposes to amend Section 38 to provide that benefits that accrue to a member before coming into force of the Bill will not be taxable.</p> <p>This is a welcome gesture, as these benefits have already suffered tax. However, the Bill is silent in regard to the interest benefit that will accrue on this opening balance after the</p>	<p><u>Our Proposal</u></p> <p>We therefore suggest that proposed amendment be re-drafted to read as follows;</p> <p><i>Section 38(5) “Subsection (4) shall not apply to benefits arising out of contributions made to the Fund before the coming into force of this Act. <u>For avoidance of doubt any interest benefit arising from contributions made to the Fund before the coming into force of this Act shall be</u></i></p>

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		Bill comes into force. The Bill should clearly specify that the corresponding interest earned on this opening balance going forward will be exempt from tax.	<u>exempt from income tax.</u> <u>Justification</u> To ensure that the interest from the old Fund framework should not be exposed to tax as that portion of the funds has essentially not changed character.
	Other Recommended Proposals to the Principal Act		
	Section 46 of the Principal Act - Jurisdiction of magistrates.	<p>Section 46 of the principal Act provides for institution of all criminal and civil proceedings under the Act any inspector or other public officer of the fund in a magistrate's court.</p> <p>It is however, noted that the pecuniary jurisdiction of magistrates' courts as per the Magistrates Courts Amendment Act 2007 is restricted to a subject matter of not more than Ugx. 500,000 for Grade II Magistrate courts and a subject matter of not more than Ugx 20 million and Ugx. 50 million for Grade I and Chief Magistrates Courts respectively. Given the veracity of most claims under the NSSF Act, there is need to amend this section of the law to avoid lengthy litigations.</p>	<p><u>Our Proposal</u></p> <p>1. We propose to amend section 46 of the principal Act for the amendment to read as follows: <i>Section 46 - Institution and conduct of cases. "All criminal and civil proceedings under this Act may, without prejudice to any other power in that behalf, be instituted by any inspector or other public officer of the Fund in <u>acourt of competent jurisdiction.</u>"</i></p> <p>2. We propose <u>deletion of the proceeding section 47.</u></p> <p><u>Justification</u></p> <p>(1) To provide for institution of issues arising from non-compliance with this Act to the appropriate court. (2) And since competence of jurisdiction of any court is adjudged as per the pecuniary and geographical dictates, the Magistrates Courts Amendment Act and the Judicature Act will then give guidance.</p>
	Expand social	Government hopes to implement the National	<u>Our Proposal</u>

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	<p>security coverage through quality and affordable health care</p>	<p>Health Insurance (NHI) scheme. Health care is a social good which should not largely be profit-driven. Left in a profit driven form, both public sector & private sector players will deliver health care to this country at a very high cost and with less coverage, thus worsening the old age social security.</p>	<p>We propose that government considers providing social security coverage of a health nature by using a <u>cheaper and more effective approach of collectively improving health infrastructure for all.</u></p> <p>The proposed alternative should have the following salient features;</p> <p>a) Focuses on improving the existing healthcare delivery system which consists of both the delivery channels and the actual health care service in order to be able to reach out to the less privileged and poorest people in the rural villages, rather than focusing on financing medical cost on a per service basis.</p> <p>With over 72% of Ugandans living within 5 km of a health care facility (Health Centres II, III & IV, the general hospitals, regional referral hospitals and the national facility); the implication is that improving and strengthening the already existing public health delivery system will ensure that more than 70% of Ugandans who live in the rural areas will have access to decent and affordable health care.</p> <p>b) Would save government the administration and operation costs of having to establish another Fund to manage its operations.</p> <p>c) Would greatly reduce costs of collection by utilizing the NSSF network and collection system, which is already extant, and Ugandans would not incur significant</p>

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			<p>additional costs of collection.</p> <p>d) To establish this social health care scheme, we propose an affordable contribution by both employers and employees of 1% each to be dedicated to improving health infrastructure. This will not over burden the already heavily taxed Ugandans.</p>
	<p>Move tax related matters to the Income Tax Act</p>	<p>We propose that all tax related matters in the NSSF Act be transferred to the Income Tax Act in line with the current practice.</p>	
	<p>Revise the age limit for accessing benefits</p>	<p>Revision of the age limit for accessing member savings. The current bill has not taken care of members' concerns regarding revision of the age of accessing savings to at least 50 years.</p>	