

COMMENTS ON THE TAX (AMENDMENT) BILLS, 2022 APRIL 2022

Comments by ICPAU

| | ISSUE | OBSERVATION | COMMENT |
|-----------------------------------|---|--|---|
| INCOME TAX (AMENDMENT) BILL, 2022 | | | |
| 1. | Clause 2 Amendment of section 2(ea) of principal Act | <p>Definition of ‘Beneficial Owner’ Section 2(ea) was introduced to define the term “beneficial owner”. The bill proposes to substitute for the definition of “beneficial owner”.</p> <p><u>Observations:</u> We observe that the proposed amendment nearly mirrors the definition of ‘Beneficial Owner’ as per the Financial Action Task Force (FATF) Recommendations. The proposed definition is relevant because reliefs under the international agreements (mainly double tax treaties) are only available if the claimant is the beneficial owner of the relevant income.</p> | <p><u>Our proposals</u> While this is a welcome amendment, we propose to enhance the same by adding the term ‘issued’ under subclause (ea)(a)(i), for the proposed clause to read as follows; (ae)(a) in relation to legal person includes— (i) <i>the natural person who either directly or indirectly holds at least ten percent of the issued shares or voting rights;</i></p> <p><u>Justification</u> (a) The amendment will help to align the definition with the OECD guidelines and FATF Recommendations. (b) To provide for clarity as shareholding that matters should relate to shares that are issued.</p> |

| | | | |
|----|--|--|---|
| 2. | Clause 4 Amendment of section 21 of principal Act | <p>Tax Incentives</p> <p>1. The bill proposes to provide for the extension of the tax holiday for Bujagali Hydro Power Project for another five years.</p> <p><u>Observations:</u></p> <p>We note that the Bujagali Hydro Power Project has enjoyed this exemption for the last 10 years. We are also cognizant of the fact that this proposal could have been considered based on the Country's aspirations as mapped out within the NDP III - to try and bring down the cost of electricity.</p> | <p><u>Our proposals</u></p> <p>We propose that Government implements a standard exemption policy, which can be followed through across all sectors such that the monitoring and evaluation of intended benefits for which the exemptions were granted against cost incurred is made possible. The other elements that should be included within the policy include eliminating the power of the executive and finance minister to grant discretionary exemptions; publishing exemptions annually; limiting income tax holidays to every 5 or 10 years, and setting up mechanisms for monitoring and evaluation.</p> <p><u>Justification</u></p> <p>The country has incurred a sizable loss of revenue through ill-designed exemptions and/or exclusions - the revenue directly lost from exemptions, but also there is revenue indirectly lost from the non-beneficiaries because of the unfair competition created in the marketplace.</p> |
| | | <p>2. The bill also proposes to grant incentives to a hospital facility developer.</p> <p>“(aj) the income of a hospital facility developer, whose investment capital is, for over a period of at least ten years from the date of commencement of business, at least United States Dollars five million”</p> <p><u>Observations:</u></p> | <p><u>Our proposals</u></p> <p>We propose that the clause be amended for the subsection to read as follows:</p> <p><i>(ai) the income of a hospital facility, whose investment capital is, for a period of at least ten years from the date of commencement of business, at least United States Dollars five million for a foreign hospital facility or United States Dollars One million for a citizen hospital facility that has;</i></p> |

| | | | |
|----|--|--|---|
| | | <p>(a) We note some ambiguity in the proposal, and wonder whether it is the intention of the drafters to exempt the income of the hospital facility developer, and not the income of the hospital facility. This may be contrary to the known principle regarding corporate personality. We believe that the exemption should be targeting the income of the hospital facility and not the developer.</p> <p>(b) Although hospital facilities may be set up in a way of supporting and complimenting government effort to provision of social services, in liberalized economy like Uganda, we find that these hospitals have a tendency of being profit driven. We thus believe, that for such facilities to benefit from any tax incentives, they should at least meet certain minimum requirements in return say in form of level of employment opportunities, extent of use of locally available materials or otherwise.</p> | <p><i>(a) capacity to source at least fifty percent of the locally produced raw materials, subject to availability; and</i> <i>(b) capacity to employ 75% citizens.</i></p> <p>For the purposes of this section, “a foreign hospital facility” means—</p> <p><i>(a) in the case of a corporate body, a corporate body in which the controlling interest lies with noncitizens;</i> <i>(b) in the case of bodies where shares are not applicable, where the body’s decision-making lies with noncitizens;</i> <i>(c) a company in which the shares are held in trust for noncitizens;</i> <i>(d) a company incorporated in Uganda whose articles of association do not contain a provision restricting transfer or issue of shares to noncitizens.”</i></p> <p><u>Justification</u></p> <p>To provide the required clarity, but also ensure that there is a minimum requirement for anybody that wishes to enjoy the resultant tax incentives since it may be impossible for the government to regulate the objectives of the facility.</p> |
| 3. | Clauses 3 & 5 Amendment of sections 5 & 22 of principal Act and Clause 12 | <p>Rental Tax Amendments</p> <p>1. The bill proposes to align sections 5 and 22, by substituting for paragraph 5 (c) the following— <i>“(c) expenditures and loses incurred by a person, other than an individual or partnership, in the production of rent shall</i></p> | <p><u>Our proposal</u></p> <p>(1) We recommend that a proposal that re-introduces non taxable thresholds of the gross rental income of an individual be introduced by amending the proposed clause 12 which seeks to amend part VI</p> |

| | | | |
|--|---|---|---|
| | <p>amendment of the Third Schedule</p> | <p><i>be allowed as a deduction for any year of income only as provided for in section 22 (1) (c);</i></p> <p><u>Observations:</u></p> <p>We take note that the proposals have been brought to align sections 5 and 22, where currently the Act allows normal deductions under Section 5 (3) (c) but also gives the 75 per cent of the rental income as expenditures and losses incurred by a person in the production of such income.</p> <p>However, we are concerned with the tax policy direction around rental tax that is ever - changing which creates uncertainty and hence affects the level of tax awareness and tax compliance by land lords. The Constant changes also affect investment in real state, yet there is a housing gap in the country. The national development plan should be investment driven and not tax driven. The reduction of the rental tax rate for individual land lords to 12% maybe welcome. However, the removal of all tax deductions for individual land lords may be unfair to many individual land lords that incur interest on loans used to construct the property and any other rental - related expenditures. These proposals will re - introduce differences in tax treatment between individual land lords and corporate land lords - taxable at different rates, etc.</p> | <p>of the Third schedule for the amendment to read as follows:</p> <p><i>“The tax rate applicable to an individual for purposes of section 6 (2) is 12% of the gross rental income <u>in excess of shs.2,820,000.</u>”</i></p> <p><u>Justification</u></p> <p>Since the proposal wipes out all possible expenditures and loses that would be applicable to an individual by way of excluding an individual or partnership within the proposed provisions under clause 3 and 5 which seek to amend sections 5 and 22 of the ITA respectively, and individual who invests in rental business should be granted some form of deductions by way of introducing a nontaxable threshold of the gross rental income as it used to be in the past.</p> <p><u>Our Proposal</u></p> <p>(2) We recommend that the proposal seeking to repeal paragraph (ca), which provides for deductions of interest on a mortgage from a financial institution as expenditure incurred by an individual to acquire or construct premises that generate rental income <u>should be dropped.</u></p> <p><u>Justification</u></p> <p>We continuously observe a dire need for housing in this country. The contribution to closing the housing gap can be made by all persons. Therefore, for those individuals who use borrowed funds to set up housing projects should at least be granted an allowable deduction of the interest cost in respect to the borrowed funds. This is proposed in the spirit that</p> |
|--|---|---|---|

| | | | |
|--|--|---|--|
| | | | <p>unlike other persons individuals and partnerships are not given a free allowance for expenditures and losses incurred in generation of the rental income, yet even the proposed threshold as cited above may not fully cover the interest expense associated with borrowed for real estate development.</p> <p>The definition of a ‘financial institution’ as provided for under the Financial Institutions Act, 2004 (as amended), should be sufficient to provide guidance to the effect that the mortgages being referred to herein, should be obtained from companies carrying on or conducting financial institutions business in Uganda. This would prevent any purported funds obtained outside the Country for which an individual wishes to invest in real estate to capitalise on the proposed allowable deduction.</p> |
| | | <p>2. The bill seeks to provide for a ceiling on deductible expenses on rental income for non-individuals.</p> <p><i>“(1a) Where the expenditure and losses incurred by a person other than an individual or partnership in the production of rental income, exceeds fifty percent of the rental income, the allowable deduction shall be fifty percent of the rental income for that year of income and any excess of the expenditure and losses shall be carried forward to the subsequent year of income.”</i></p> <p><u>Observations:</u></p> <p>We note that the carrying of 50 percent expenses not utilized to the subsequent year is unfair because if the company only deals in rental income, then this will conflict with the accounting principles of claiming expenses in the year that they were incurred and hence contradictory to provisions of s. 42 of the ITA.</p> | <p><u>Our proposals</u></p> <p>We propose that the <u>amendment be dropped</u> and all the allowable expenditure and losses incurred by a person in the production of rental income be allowed as a deduction in the year in which they are incurred.</p> <p><u>Justification</u></p> <p>To provide for simplicity in application of tax principles.</p> |

THE EXCISE (AMENDMENT) BILL, 2022

| | | | | | |
|---|---|---|---|---|---|
| 1. | Amendment of the Excise Duty Act, 2014 | <p>Definitions</p> <p>The Bill introduces definitions for the terms “fruit juice” and “vegetable juice” as follows: <i>“fruit juice” means unfermented liquid extracted from the edible part of a fresh fruit whether the extracted liquid is diluted or not;”</i> <i>“vegetable juice” means unfermented liquid extracted from the edible part of a vegetable whether the extracted liquid is diluted or not;”</i></p> <p><u>Observations</u></p> <p>We note that these definitions contradict the known definition of Juice. We know that an extract from fruits/ vegetables if not diluted is called Pulp.</p> | <p><u>Our proposal</u></p> <p>We propose the following definitions:</p> <ul style="list-style-type: none">• “fruit juice” means unfermented liquid extracted from the edible part of a fresh fruit, <i>which has been diluted;</i>”;• “vegetable juice” means unfermented liquid extracted from the edible part of a vegetable, <i>which has been diluted.</i> <p><u>Justification</u></p> <p>What distinguishes fruit juice from pulp is the element of dilution. While the pulp in any fruit are generally pieces of insoluble material that hold down the juices, juice becomes juice upon dilution. We do not believe that the drafter’s intention is to bring the ‘pulp’ content within the realm of taxation as dealing in pulp does not only make no economic sense but it is equally not health.</p> | | |
| 2. | Amendment of Schedule 2 of Principal Act | <p>Excise duty/ Rate of excise duty</p> <p>The bill proposes the following amendments for fruit juice and vegetable juice:</p> <table><tr><td>‘fruit juice and vegetable juice, except juice made from at least 30% pulp or at least 30% juice by weight or volume of the total composition of the drink from fruits and vegetables locally grown’.</td><td>12% or shs. 250 per litre, whichever is higher.</td></tr></table> <p><u>Observations</u></p> | ‘fruit juice and vegetable juice, except juice made from at least 30% pulp or at least 30% juice by weight or volume of the total composition of the drink from fruits and vegetables locally grown’. | 12% or shs. 250 per litre, whichever is higher. | <p><u>Our proposals</u></p> <p>We propose the following:</p> <p>a. To change the wording of the clause to: <i>“fruit juice and vegetable juice, except juice made from at least 10% pulp or at least 10% juice by weight or volume of the total composition of the drink from fruits and vegetables locally grown”.</i></p> <p>b. The following duty/rates; <i>‘10% or shs 150 per litre for fruit juice and vegetable juice’</i></p> <p><u>Justification</u></p> |
| ‘fruit juice and vegetable juice, except juice made from at least 30% pulp or at least 30% juice by weight or volume of the total composition of the drink from fruits and vegetables locally grown’. | 12% or shs. 250 per litre, whichever is higher. | | | | |

| | | | |
|---|---|---|---|
| | | <p>(a) The challenge with the above proposed clause is that Pulp making 30% of the full drink does not make the said juice commercially viable as it will be thick nectar rather than Juice.</p> <p>The intention of the current law was to encourage BUBU, where juice manufacturers would procure locally grown fruits and vegetables or pulp made from locally grown fruits and vegetables. Reducing the pulp quantity for purposes of tax, does not only make economic sense but enhances health and nutrition as the exemption (a shift from 30% pulp to 10% pulp) widens to recognize more producers.</p> <p>(b) The process of making juice may require blending locally sourced pulp with imported pulp. We think this new amendment is contradicting the BUBU policy and will discourage investment in the area and kill local entrepreneurs who are coming into this area. This will further discourage the import substitution policy.</p> | <p>a. UNBS defines fruit juice to be holding 5% of pulp.</p> <p>b. These activities provide forward and backward linkages to the agriculture sector, creating value addition and feeding into government's BUBU policy. Also coming from the COVID-19 effects that are still lingering, the economy has not been moving. So where government is not able to subsidize, taxes should not be too high.</p> |
| THE VALUE ADDED TAX (AMENDMENT) BILL, 2022 | | | |
| 1. | Amendment of the Second Schedule to the principal Act | <p>Removal of the VAT exemption on cotton seed cakes</p> <p>We observe that the proposal seeks to amend the Second Schedule to the VAT Act by repealing subparagraph (fff) of paragraph 1. However, the removal of the VAT exemption on cotton seed cakes to make it subject to VAT at 18% will adversely affect the animal agriculture sub-sector. Remember, Paragraph 1, subparagraph (qa) of the exempt schedule includes the supply of animal feeds and premixes; within the exempt supplies. This implies that if subparagraph (fff) is successfully repealed, supplies of animal feeds will not be able to even claim their input VAT thereby creating an additional cost.</p> | <p><u>Our proposal</u></p> <p>We propose that this particular proposal be dropped.</p> <p><u>Justification</u></p> <p>The proposal will make imported feeds cheaper than locally made animal feeds, if the supply of cotton seed cakes is brought under the standard rate while the supply of animal feeds and premixes is retained under the exempt regime. The producers of animal feeds will not be able to claim the input VAT.</p> |

OTHER ADMINISTRATIVE CONCERNS - TAX PROCEDURES CODE ACT (TPCA)

| | | | |
|---|--|--|---|
| 1 | Amendment of section 33 of principal Act | <p>Enforcement Measures</p> <p><i>Closure of Business</i></p> <p>The bill seeks to provide for temporary closure of business until compliance with the requirements of electronic receipting and invoicing or tax stamps by amending <i>section 33 of the principal Act as follows—</i></p> <p><i>(a) in subsection (1) by inserting immediately after the word “payable” the words “fails to comply with the requirements of electronic receipting and invoicing or tax stamps”;</i></p> <p><i>(b) in subsection (2) by inserting immediately after the word “due” the words “fails to comply with the requirements of electronic receipting and invoicing or tax stamps”;</i></p> <p><u>Observations:</u></p> <p>We note that having the enforcement tool in place is good. There is a big knowledge gap on EFRIS and digital stamps, as well as infrastructural challenges that have added to the compliance burden of taxpayers. Section 33 of the TPCA in its state will simply add to the confusion when implementing these proposals. For example, temporary closure is not defined anywhere in the Act, also when someone’s office has been closed how are they expected to carry on the implementation e.t.c</p> | <p><u>Our proposal</u></p> <p>We propose that Government:</p> <ol style="list-style-type: none"> adopts a piecemeal strategy - a segmented/ sectoral approach rather than going for everybody, so that even enforcement becomes easy. introduces a support system for these tax payers during the periods of closure to enable them come on board. Such incentives to attract these tax payers to embrace the new tax system may include: <ul style="list-style-type: none"> Conducting more rigorous tax education - providing in-depth engagement with these taxpayers and educating them about how EFRIS and the tax stamps work and why it matters. Availing Electronic Fiscal Devices to taxpayers freely or at a subsidized cost. Introduces a rebate of 1% on tax collected using EFRIS, or 10% allowable deductions if one gets on to the system. <p><u>Justification</u></p> <p>To drive compliance and avoid any further social discomfort.</p> |
|---|--|--|---|