



## PROPOSED AMENDMENTS TO THE TAX LEGISLATION IN UGANDA - TAX AMENDMENT (BILLS), 2020

### INTRODUCTION

The Hon. Minister of Finance, Planning and Economic Development presented to Parliament the Tax Amendment Bills 2020 on 31<sup>st</sup> March 2020 with proposed changes to Income Tax, Value Added Tax, Excise Duty and Stamp Duty. We summarize the key proposed changes in this Alert.

### INCOME TAX (AMENDMENT) BILL, 2020

#### Business Income:

- a) *Minimum tax payable by a loss making person*

The Bill proposes to introduce a minimum tax rate of 0.5% of the gross turnover after the sixth year for a taxpayer who declares losses for five consecutive years or whose declared tax liability for a consecutive period of five years of income is an arithmetic average of less than 0.5% of the gross income. This means that a taxpayer who declares tax losses for a consecutive period of five years or a taxpayer who declares taxes but whose tax is an average of 0.5% of the gross income for the preceding five years will in both cases be subject to tax liability at the tax rate of 0.5% of the gross turnover after the sixth year. The Government has previously tried to impose income tax on entities that consecutively declare tax losses

but all these proposals have been previously rejected by Parliament.

The implications of this proposed amendment are that it imposes a tax on the gross turnover as opposed to the profit of the company which is contrary to basic tax principles on tax being charged against profits and not turnover. The rationale against charging tax on turnover is that some income that is part of the annual turnover could have been taxed before. This proposed amendment therefore exposes the taxpayer to double taxation in this regard.

If the proposed amendment is passed as is, it will affect foreign direct investment in Uganda as well capital intensive businesses that intend to make a profit after five years.

#### Rental Income:

- b) *Increase in Rental Tax*

The Bill proposes an increase in the rental tax rate for individuals from 20% to 30%. This means that individuals that earn rental income from buildings will be required to pay rental tax of 30% on the rental income which is the same rate paid by companies.

- c) *Rental tax charged against an individual partner where the taxable person is a partnership.*

The Bill creates distinction for rental tax purposes between a partner and a partnership. It proposes to tax an individual partner where the taxable entity is a partnership. It introduces rental tax against the individual partner. Previously the tax was imposed against income derived by the partnership.

- d) *Deductible expenditures and losses for rental income*

The Bill proposes that expenditure and loss incurred by a person in production of rent is an allowable deduction capped at 50%. This means that taxpayers will be entitled to deduct 50% of the gross rental income to cater for expenditures and losses incurred in the production of rental income.

The current position of the law is that companies are allowed to deduct all expenditures and loss incurred in the production of rental income whereas deductions of an individual in this regard are capped at 20% of the expenditure and loss incurred in the production of rental income.

The proposed amendment therefore levels the playing field for both companies and individuals with allowable deductions for loss and expenditure capped at 50%. In addition, the 50% deduction may actually reduce the tax liability for landlords with minimal rental expenses.

- e) *Requirement to account for income and expenses of each building separately*

The Bill introduces the requirement for a person who earns rental income from more than one building to make an independent account for the income and expenses on each of the buildings. Currently, rental income and

expenses from several buildings owned by the same person are aggregated while accounting for rental tax.

The amendment accordingly splits property ownership for rental tax purposes and enjoins the owner of different properties to account for each of them independently and pay rental tax at the rate of 30% for each building.

#### **Mortgages:**

- f) *Interest on a mortgage from a financial institution*

The Bill disqualifies from being a deductible expense interest paid on a borrowing by an individual to a financial institution for purposes of constructing or acquiring property that generates rental income.

The implication of this proposed amendment is that an individual taxpayer shall no longer be entitled to treat interest paid on a loan in respect of acquisition or construction of a property that generates rental income as an allowable deduction.

#### **Conveyances:**

- g) *WHT on purchase of land*

The proposed amendment creates a requirement for a resident person who purchases land (other than land which is a business asset) from a resident person to withhold tax at the rate of 0.5% of the purchase price.

This means that where an ordinary Ugandan, not in the business of buying and selling land, purchases land from a resident person he/she must withhold 0.5% of the purchase price.

The proposed amendment however contradicts Section 21(K) of the Income Tax Act that exempts from tax capital gains made on the sale of land which is not a business asset.

### Insurance:

#### *h) WHT on commission paid to Insurance Agents*

The Bill introduces a requirement for an insurance service provider who pays a commission to an insurance agent to withhold tax at the rate of 10% on the gross payment.

The implication of this proposed change is that all commission payments to insurance agents by insurance services providers are subject to withholding tax at the rate of 10% on the gross payment.

This change was perhaps triggered by a recent decision by the High Court that adjudged some insurance agents as non employees of insurance service providers for tax purposes. The proposed amendment therefore comes in to plug this gap and create a uniform tax regime for all commission payments by the insurance service provider to an insurance agent.

### Agro business:

#### *i) WHT on agricultural supplies*

The proposed amendment re-introduces withholding tax at the rate of 6% on all agricultural supplies whose value exceeds Ug. Shs. 1,000,000/=.

This is viewed as a reincarnation of the previous 1% withholding tax for agricultural supplies that was scrapped in 2019.

The ramification of this amendment is that if passed it shall enjoin all designated Withholding Tax Agents to withhold tax at the rate of 6% of the total payments for any agricultural supply whose value exceeds Ug. Shs. 1,000,000/=.

## **VALUE ADDED TAX (AMENDMENT) BILL, 2020**

### Manufacturers:

#### *a) Claim of input VAT by Manufacturers*

The Bill proposes that a manufacturer will be entitled to claim input VAT incurred in a period of 12 months prior to registering for VAT. Currently, a person is allowed to claim for input VAT which is incurred not more than 6 months prior to the person registering for VAT.

Unlike other taxpayers that are entitled to claim input VAT for the period of only 6 months prior to VAT registration, manufacturers will be given a longer retrospective period to claim input VAT incurred 12 months prior to the date of registering for VAT.

### Tax credits by property owners:

#### *b) Owners of commercial buildings*

An owner of more than one commercial building shall account for tax for each commercial building separately and shall not claim tax credits on input tax expended for purchases in the construction of an incomplete building against the tax collected from a completed commercial building.

This means that owners of more than one commercial building will be required to account for tax for each commercial building separately as opposed to the current practice of lumping up the revenues from different commercial buildings. The owners will also be prohibited from claiming tax credits on inputs used in the construction of incomplete buildings against the tax collected from completed commercial buildings. This amendment is aimed at enabling the taxman to collect more rental income and also reduce tax leakages.

### **Tax credits and e-invoicing:**

#### *c) Input VAT from designated supplier using e-invoicing*

A taxable person who is allowed a tax credit on purchase of goods and services from suppliers designated to use the e-invoicing system will only be allowed to claim a tax credit on expenses supported by e-invoices or e-receipts.

This restriction will encourage the use of the e-invoicing system which is meant to reduce tax leakages.

### **VAT Refunds:**

#### *d) Taxable supplies in stock or stock in transit*

If taxable supplies in stock or stock in transit is lost, destroyed or affected by *force majeure* or an accident, the Bill sets a time limit of 3 months from the date of loss to claim a tax credit in relation to the lost stock. After this period, the taxpayer will be required to apply for a VAT refund within a 1 month.

Currently, the VAT Act permits the Commissioner General to grant a refund or allow credit for input tax paid on taxable supplies in stock or stock in transit that are lost due to theft, fire, accident or force majeure and where input tax has already been paid on those goods, provided there is evidence that the goods are lost or destroyed and cannot be recovered.

### **Exemption:**

#### *e) VAT exempt Institutions and Supplies*

The Bill proposes to exempt the Islamic Development Bank from VAT and to widen the list of exempt supplies to include the supply of digital stamps for purposes implementing tax verification, quality and safety system; accommodation in tourist hotels and lodges located up-country; liquefied gas; processed

milk; imported services specifically software and equipment installation services to manufactures, services incidental to tele-medical services and royalties paid in respect of agricultural technologies.

### **STAMP DUTY (AMENDMENT) BILL, 2020**

#### **Professionals licenses:**

#### *a) Stamp duty on professional licenses or certificates*

The Bill introduces stamp duty of Ug. Shs. 100,000 on professional licenses or certificates. This amendment seeks to widen the tax net and will affect professionals in various industries including the legal profession, medical practitioners, insurance, among others.

#### **Stamp duty exemption on investment projects:**

#### *b) Stamp Duty on Investment Projects*

The Bill provides that companies involved in strategic investment projects which source at least 50% of locally produced raw materials and also employ a minimum of 100 citizens will be entitled to stamp duty exemption on any instrument executed by the company.

### **EXCISE DUTY (AMENDMENT) BILL, 2020**

#### **Increase in excise duty:**

The Bill proposes to increase the excise duty rates payable on various goods including cigarettes, alcoholic and non-alcoholic beverages, fuel, motorcycles at first registration, so as to increase the revenue collected from these goods.

**Reduced threshold to qualify for nil excise duty by strategic investors:**

The Bill also proposes to reduce the threshold required by operators within an industrial park, free zone or single factory, to qualify for nil excise duty on construction materials of a factory or warehouse from 70% to 50% of the raw materials used being sourced locally.

This proposal if passed will enable more operators within an industrial park, free zone or single factory to enjoy the nil excise duty since the threshold for sourcing raw materials locally has been lowered.

## KEY CONTACTS

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