



AMENDMENTS TO UGANDAN TAX LEGISLATION IN 2021

INTRODUCTION

The Tax Amendment Bills, 2021 that were assented to by the President on 29th May 2021 came into force on 1st July 2021. The amendments are geared toward improving tax administration, reducing tax leakages, and enhancing revenues collected by the Tax Authority.

The purpose of this Alert, as set out below, is to summarize the key provisions of the amendments and their potential effect on taxpayers.

INCOME TAX

The Income Tax (Amendment) Act, 2021 introduces the following changes to The Income Tax Act (Cap 340).

1. Broadening the definition of who a beneficial owner is for purposes of limiting tax exemptions/reduced tax rates

Limitation of tax benefits on account of beneficial ownership

The Income Tax (Amendment) Act, 2021 (“Act”) has limited the benefit derived by taxpayers based on tax exemptions/reduced tax rates and other concessions flowing from double taxation agreements by redefining who qualifies to be a

beneficial owner.

The definition of a beneficial owner was amended to mean a natural person with final ownership or control of another person or a natural person on whose behalf a transaction is conducted, as well as a natural person who exercises control over a legal person. The Act also expands the definition of a beneficial owner in relation trusts and legal persons. In respect to trusts, a beneficial owner includes the settlor, trustee, protector, beneficiaries, and any other natural person exercising absolute control of the trust.

The definition reaffirms that a beneficial owner should be a natural person therefore any payments made to a person outside Uganda only qualify for treaty benefits in cases where the beneficial owner is a natural person (among other considerations).

2. Consideration

Constituents of consideration

The Act introduced a definition for the term “consideration” that includes the total amount in money or of payment in kind, paid or payable for the supply of goods, services or sale of land by any person, directly or indirectly, including any duties, levies, fees, and charges other than tax paid or

Payable on, or by reason of, the supply, reduced by any discounts or rebates allowed and accounted for at the time of the supply or sale.

This amendment is meant to provide parameters for payments that may be subject to income tax and is similar to the definition in the VAT Act with the exception that it introduces sale of land that is not canvassed in the latter Act. This amendment also creates clarity in respect to payments that are subject to income tax in instances of asset disposals.

3. Definition of an Exempt Organization

Exempt organizations' must not be profit oriented.

The Act provides that for religious, charitable, or educational institutions to qualify as Exempt Organizations, their objects should indicate that they are not for profit. This definition replaces one that referred to an Exempt Organization as a religious, charitable, or educational institution of a public character.

This amendment deals away with the ambiguity that was created by what amounts to public character and further aligns the law with the current position of the Uganda Revenue Authority ("URA") that for any institution to qualify as an Exempt Organization, it should be non-profit making. In addition, it is likely that more institutions will become eligible for exempt organization status since the criteria of a public character, which was harder to prove due to its subjective nature, is no longer a requirement.

4. Rental Income

Deductible expenses on rental income capped at 75%

The Act introduced a 75% cap as allowable deductible expenses on rental income across board.

The net effect of this amendment is that deductions for purposes of computation of rental tax for both individuals and corporate entities are now capped at 75% unlike before when deductions for individuals were capped at 20% while companies had no limit on deductions.

5. Changes in Capital Allowances

Reduction in depreciation rates for motor vehicles and other automobiles.

The Act reduces the classes of depreciable assets from four to three by merging class 2 and 3 which provide for automobiles and buses into one class. The effect of this change is that motor vehicles and other automobiles shall be subject to a tax depreciation rate of 20% and not 30% or 35% that was the case previously. This amendment prolongs the period within which one can get a full deduction of the related cost of investment.

Deferment of deduction for depreciation of assets that qualify for initial allowance.

The Act defers deductions for depreciation of assets that qualify for initial allowance to the next year of income.

Previously, a person who acquired assets (including industrial buildings) was entitled to two different types of deductions, namely initial allowance, and depreciation in the same year of income. The changes in the law take this right away and defer depreciation deductions to the next year of income following acquisition.

This means that taxpayers with depreciable assets that attract initial allowances shall not claim these deductions in the same year which effectively increases their tax liability for the year of acquisition of such assets.

6. Indexation of asset cost in determination of Capital Gains Tax ("CGT")

Inflationary gains shall not be subject to CGT

The Act introduced consumer price indexation of the cost base of assets if disposed of 12 months after acquisition.

If a gain or loss on disposal of an asset is subject to tax being a gain or loss, the cost base of the asset is to be calculated on the basis that each item of cost or expense included in the cost base shall be determined according to the following formula: $CB \times CPID/CPIA$

Where:

- CB is the amount of an item of cost or expense incurred determined in accordance with section 52 (2).
- CPID is the Consumer Price Index number published for the calendar month of sale.
- CPIA is the Consumer Price Index number published for the month immediately prior to the date on which the relevant item of cost or expense was incurred.

The indexation introduced by the above formula ensures that the cost base of disposed assets, which forms that basis when computing tax payable on sale of a non-depreciable asset, is aligned to the real value of the asset at the time of disposal.

Gains that are triggered by inflation shall thus not be reckoned in computation of CGT.

Non-recognition of gain or loss on disposals by registered Venture Capital Funds

Provided that 50% of the proceeds from disposal of an asset by a registered Venture Capital Fund are re-invested within the same year of income, there shall be no recognition of loss or gain for purposes of computation of CGT on the part of the related registered Venture Capital Fund.

This amendment effectively takes registered Venture Capital Funds out of the ambit of taxation for purposes of CGT provided that 50% of the proceeds from disposal of an asset of such an entity are re-invested in the same year

of the disposal. In so doing, this promotes growth in investment.

7. Double Taxation Agreements (“DTA”)

Mandatory Exchange of Information

The Act provides that in case a DTA provides for sharing of information, the Commissioner General of URA is to facilitate automatic exchange of such information.

The law now expressly provides for a duty on the part of the Commissioner General to provide information in relation to a taxpayer that is subject to a DTA.

The above provision clarifies how the URA will meet its obligations under the Organization of Economic Co-operation and Development Multilateral Convention on Mutual Administrative Assistance in Tax Matters and will also enable the URA collect more revenue based on the information obtained.

8. Due dates for payment of taxes

Tax payable by due date of self-assessment tax return

In case of taxpayers who are required to submit self-assessment income tax returns, taxes should be paid by the due date of filing such returns.

For default, advance and additional assessments, taxes should be paid within 45 days from the date of service of the notice of assessment.

These changes create strict timelines for payment of taxes on the basis of tax returns.

9. Tax refunds

Date of receipt of an application for a refund by URA is the date of Application

Taxpayers will be deemed to have applied for a refund on the date their application is received by the URA and where additional information is requested for by the URA, on the date on which the additional information is received. The URA

will be mandated to refund any taxes paid within a period of 6 months from receipt of an application for a refund.

The amendment clarifies when time starts to run in cases of tax refunds, which informs when interest would kick in for the taxpayer seeking to have such a refund made.

VALUE ADDED TAX

The Value Added Tax (Amendment) Act, 2021 introduces the following changes to the Value Added Tax Act (Cap 349).

1. Claim for input tax credit

Claim for input tax credit must be made within 6 months from the date of invoice.

Taxable persons eligible for input tax credit are now required to claim input tax credit within 6 months from the date of an invoice. This amendment caps the period within which a claim for input tax credit may be made.

Hitherto, a taxpayer would apply for input tax credit for purchases made for use in the taxpayer's business at any time.

This change in the law limits the time within which a taxpayer can make such an application to 6 months. To this end, a taxpayer who does not make an application for input tax credit within 6 months loses the right to make such claim after 6 months of the date of invoice.

2. Quarterly VAT Returns

Taxable person who supplies services to non-taxable persons to file quarterly VAT returns

Taxable persons are required to file VAT returns within 15 days at the end of 3 consecutive calendar months where services are supplied to non-taxable persons in Uganda in respect of: (i) immovable property in Uganda, (ii) radio or television broadcasting services received at an address in Uganda, (iii) electronic services

delivered to a person in Uganda at the time of supply, (iv) telecommunication services initiated by a person in Uganda other than by telecommunication service providers or persons roaming while temporarily in Uganda, and (v) where the supply is a transfer, assignment, or grant of a right to use a copyright, patent, trademark, or similar right in Uganda.

This amendment effectively enjoins non-residents supplying services to nontaxable persons to file VAT returns within 15 days at the end of 3 consecutive months.

3. Introduction of electronic receipts and invoices for VAT refunds

Non-taxable person can claim 5% of tax paid.

A non-taxable person, that is one that is not registered for VAT, who purchases goods or services from a taxable person and is issued with an electronic receipt of invoice worth UGX 5,000,000/= within a period of 30 consecutive days is entitled to a refund of 5% of taxes paid.

This amendment is geared to encourage use of electronic receipts and invoices.

4. Penal Tax

It does not matter that a false or misleading statement was made to URA

Currently, if a person knowingly or recklessly makes a false or misleading statement to URA or omits any matter or thing without which the statement is misleading in a material particular, and the person pays less tax than they would have, or claims a refund falsely, or submits a VAT return with an incorrect offset claim, that person is liable to pay penal tax equal to double the amount of the excess tax, refund, or claim.

The VAT Amendment Act repealed the words "knowingly or recklessly" therefore any person who furnishes URA with false or misleading information will be penalized regardless of whether they did so knowingly or recklessly.

5. Exempt Supplies

Services related to feasibility studies are now taxable.

The amendment qualifies for taxation of services in relation to feasibility studies and design, supply of locally produced material for construction of premises, supply of infrastructure, machinery not manufactured locally to a hotel or tourism facility developer. These services now attract VAT at a standard rate.

It exempts from supply of liquified gas and denatured fuel ethanol from cassava. The VAT Amendment Act also exempts from taxation supply of services to a manufacturer of locally produced materials for construction of factories or warehouse whose capital investment is USD 30 Million for a foreign investor and USD 5 million for a local Investor.

6. VAT exempt Institutions

The VAT Amendment Act exempts the African Export-Import Bank and International Union for Conservation of Nature from VAT and widens the list of exempt supplies to include the supply of liquefied gas and denatured fuel ethanol from cassava; and the supply of services to manufacturers with an investment capital of at least USD 30m for foreign investors and USD 5m for local investors, to conduct a feasibility study or undertake design and construction, who have capacity to use at least 70% of locally sourced raw materials subject to their availability and have capacity to employ at least 70% employees that are citizens earning an aggregate wage of at least 70% of the total wage bill.

Supply of leases aircraft and attendant spare parts now zero rated

The amendment qualifies supplies of leased aircrafts, aircraft engines, spare parts for aircrafts, air crafts maintenance equipment and repair services as zero rated supplies. These services were previously standard rated.

EXCISE DUTY

The Excise Duty (Amendment) Act, 2021 amends the Excise Duty Act, 2014 as follows:

1. Certificates of registration

Repeal of provisions pertaining to the renewal of certificate of registration

The certificates of registration issued by the URA to manufacturers, importers and providers of excisable goods and services no longer have a validity period of 12 months and these persons are no longer required to apply for the renewal of these certificates.

Therefore, once a certificate of registration is issued, it will be valid indefinitely unless revoked by the URA. This amendment reduces administrative costs that were involved in attending to the renewal of the certificate of registration.

2. Rebates

Excise duty paid on plastic packaging

The Commissioner of URA may remit or refund the excise duty paid if satisfied that a plastic product is either:

- a) for use in packaging products for export;
- b) for use in packaging medicaments; or
- c) is manufactured from recycled plastics which is equivalent to at least 20% of the raw material used.

3. Excise duty rates

Increase and reduction in tax rates

The Act has increased the excise duty rate payable on various goods including locally produced alcoholic beverages, alcoholic and non-alcoholic beverages, fuel, plastic products, and plastic granules to increase the revenue collected from these goods while it has reduced the rate payable on opaque beer to encourage its production.

The Act has also repealed the controversial excise duty that was imposed on over the top services and instead introduced a 12% excise duty on fees charged for internet data except for data used for providing medical and educational services. It however remains unclear how URA will ascertain the purpose for which data is loaded to distinguish the data that is taxable.

TAX PROCEDURES

The Tax Procedures Code (Amendment) Act, 2021 introduced the following changes to the Tax Procedures Code Act, 2014.

1. Tax decision

Express definition of what amounts to a tax decision for objection purposes;

The Act defines a tax decision to mean:

- a) a tax assessment;
- b) a decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction, or determination of the Commissioner other than:
 - i) a decision made in relation to a tax assessment;
 - ii) a decision to refuse, issue or revoke a practice note or private ruling or an omission to issue or revoke a practice note or private ruling;
 - iii) a decision or omission that affects a tax officer or employee or agent of URA; or
 - iv) the compoundment of an offence under any tax law.

2. Prohibition of issuing licenses to persons without Tax Identification Numbers (TINs)

Local authorities, Government institutions and regulatory bodies are prohibited from issuing licenses or any form of authorization necessary to conduct business in Uganda to persons who do not have TINs issued by the URA, or TINs

issued by foreign tax authorities with whom Uganda has a DTA with or an agreement for the exchange of information.

Whereas this provision makes it mandatory to obtain a TIN from the URA before engaging in any business that requires a license, foreign investors will also be able to engage in business since TINs issued by other tax authorities are now recognized.

3. Dispute resolution

Alternative dispute resolution mechanism for tax objections

The amendment introduces alternative dispute resolution in tax matters. Taxpayers dissatisfied with tax decisions as defined above will now be able to apply to the Commissioner to resolve the disputes using alternative dispute resolution procedures which are yet to be prescribed by the Minister.

This amendment is aimed at presenting taxpayers with more avenues of solving disputes with the URA and reducing the number of matters that end up at the Tax Appeals Tribunal.

TAX APPEALS

The Tax Appeals Tribunal (Amendment) Act, 2021 introduces the following changes to the Tax Appeals Tribunal Act (Cap. 345).

Appellate process

Appeals to Court of Appeal from decisions of High Court.

The Act provides that appeals may be made to the Court of Appeal from decisions of the High Court within 30 days of a party being notified of the High Court's decision or such further time as the Court of Appeal may allow. Such an appeal will only be on questions of law and the Court of Appeal will be required to declare its findings within 60 days from the date of filing the appeal.

Appeals to Supreme Court from decisions of the Court of Appeal

A party to proceedings before the Court of Appeal may, with leave of court, lodge an appeal to the Supreme Court with a Certificate of Court of Appeal, that the matter raises questions of law of great public importance or if the Supreme Court in its overall duty to see that justice is done, considers that the appeal should be heard.

The Supreme is required to inquire and determine the appeal expeditiously and declare its findings within 30 days from the date of filing the appeal.

Previously, the Tax Appeals Tribunal Act only provided for appeals to the High Court and was silent on subsequent appeals. As a result, court was tasked with determining whether the Court of Appeal had appellate jurisdiction in tax matters (Housing Finance Bank Ltd V. URA Civil Appeal No. 22 of 2012). It is now clear that appeals can be made to the Supreme Court if the requisite conditions are met thereby affording taxpayers with more dispute resolution avenues.

STAMP DUTY

The Stamp Duty Act, 2014 was amended by the Stamp Duty (Amendment) Act, 2021 as follows:

Investment incentives for manufacturers

Exemption from stamp duty

The Act has widened the categories of manufacturers who are exempt from paying stamp duty on various instruments to include new manufacturers with an investment capital of at least USD 50m, who subject to availability, have capacity to use at least 70% of locally sourced raw materials and to employ at least 70% employees that are citizens earning an aggregate wage of at least 70% of the total wage bill.

Existing manufacturers who make an additional

investment of USD 50m and meet the criteria above will also be exempt from paying stamp duty on debentures, further charges, leases of land, increases in share capital, transfer of land and on agreements to provide services of conducting feasibility studies or developing designs for construction.

MINING

The Mining Act, 2003 was amended by the Mining (Amendment) Act, 2021 as follows:

Levy on processed and unprocessed gold

Introduction of a levy of 5% of the value of a kilogram on processed gold exported out of Uganda and 10% on unprocessed gold exported out of Uganda.

The effect of the above tax amendment is effectively taxation of exported processed and unprocessed gold to generate more revenue considering gold is one of Uganda's biggest exports.

FISH

The Fish (Amendment) Act, 2021 amended the Fish Act (Cap 197) as follows:

Levy on fish maw

Introduction of a levy on fish maw at a rate of 8% of the total value of fish maw being exported outside Uganda. The levy is payable to the URA by the exporter at the time the fish maw is exported outside Uganda.

TOBACCO

The Tobacco Control Act, 2015 was amended by the Tobacco Control (Amendment) Act, 2021 as follows:

Levy on leaf tobacco

A levy on leaf tobacco was introduced at a rate of USD 0.8 per kilogram of leaf tobacco exported out of Uganda. The levy is payable to the URA by the exporter of the leaf tobacco at the time of export.

KEY CONTACTS: Should you require any more information, please do not hesitate to contact:



Timothy Masembe Kanyerezi
Partner

masembe@ug.africalegalnetwork.com



Isaac Walukagga
Partner

Walukagga@ug.africalegalnetwork.com



Flavia Suubo
Associate

Suubo@ug.Africalegalnetwork.com

ALGERIA | BOTSWANA | ETHIOPIA | GUINEA | KENYA | MADAGASCAR | MALAWI | MAURITIUS | MOROCCO | MOZAMBIQUE | NIGERIA | RWANDA | SUDAN | TANZANIA | UGANDA | ZAMBIA
ASSOCIATE FIRM IN SOUTH AFRICA | REGIONAL OFFICE IN UAE
www.africalegalnetwork.com

Disclaimer: The content of this alert is intended to be of general use only and should not be relied upon without seeking specific legal advice on any matter.