

Tax & Legal Alert
April 2023



Keeping you in the loop Tax Amendment Bills, 2023

This publication highlights the tax and other measures proposed as per the 2023/24 Amendment Bills. This publication constitutes only a brief guide and is not intended to be a comprehensive summary of the tax law and practice. This publication summarizes our analysis of the proposed amendments bills and their impact of the following:

1. The Income Tax (Amendment) Bill, 2023;
2. The Value Added Tax (Amendment) Bill, 2023;
3. The Excise Duty (Amendment) Bill, 2023; and
4. The Tax Procedures Code (Amendment) Bill, 2023.

The Bills are currently before Parliament and, subject to any changes that may be passed, will take effect after assent by the President on 1 July 2023.

We have additionally included noteworthy cases in the last year that impact the interpretation of the tax provisions or establish practice as well as the long-awaited regulations meant to guide how the Alternative Dispute Resolution (ADR) by Uganda Revenue Authority (URA) is to be conducted.

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Income Tax (IT)

Capping of interest on unpaid tax

The measure

Repeal of the provision under the Income Tax Act (ITA) waiving any penal tax and interest due and payable by 30th June 2017 in excess of the aggregate of the principal tax.

Who will be affected

Persons with unpaid tax for the above period.

Our view

Although being repealed under the ITA, this provision is then being proposed to be included in the Tax Procedures Code Act (TPCA) which would then align to the repeal of a similar provision under the other tax laws. This is simply to consolidate this provision in the TPCA which covers all domestic taxes.

Extension of list of exempt institutions

The measure

ZEP-RE (PTA reinsurance Company) has been added to Listed Institutions under the First Schedule whose income is exempt from tax.

Who will be affected

ZEP-RE (PTA reinsurance Company)

Our view

This list mainly comprises Development Partners and Funding Agencies of different countries that support or provide funding for priority initiatives/ sectors/Projects under the Government of Uganda's National Development Plan.

ZEP-RE (PTA reinsurance Company) is seen as a strategic partner in the reinsurance sector in Uganda.

Note: This exemption has also been extended to the VAT Law by listing ZEP-RE under the First schedule to the VAT Act as a Public International organisation.



Corporate Income Tax (CIT)

Capping of carryforward of losses

The measure

A taxpayer who after a period of five years of income carries forward assessed losses shall only be allowed a deduction of fifty percent (50%) of the loss carried forward.

Who will be affected

Loss making entities.

Our view

This has for long been a thorn in the flesh that the URA has tried unsuccessfully in previous years to get rid of or at the very least rectify. Proposals in 2019 and 2020 which sought to introduce a minimum turnover tax for loss making entities did not pass into law.

The above is therefore a modification which then seeks to have potentially profitable businesses utilise their losses or gradually lose the ability to carry them forward. As a standalone provision, this may not necessarily yield the intended tax trigger. However, viewed in light of changes such as the one in previous years reducing the tax depreciation class rates to three (3) from four (4) classes coupled with the proposed repeal of initial allowance provisions, this could result in losses being utilised faster depending on the operations of an entity.

There will be some unintended consequences which could impact investment for certain capital-intensive projects such as infrastructure projects. Without deductions such as initial allowance and the ability to carry forward losses past a certain realistic break-even period, the return on investment may take longer or be eroded entirely.

Repeal of Initial Allowance provisions

The Measure

Removal of initial allowance (IA) deduction for qualifying plant and machinery (50%) and industrial buildings (20%) as well as recently introduced deferral of tax depreciation for assets qualifying for IA.

Who will be affected

All taxpayers purchasing assets qualifying for Initial Allowance.

Our view

This is most likely intended to counter the allowable tax depreciation expense for taxpayers with significant capex which in turn reduces the taxable income on which corporation tax is computed. This started with the introduction of the deferment of tax depreciation under the different asset classes in cases where an asset qualified for initial allowances which most likely did not have the desired effect and now being proposed to be removed completely.

This provision has allowed investors recoup the cost of their investment earlier as a result of the deductions granted without having to pay tax at the same time.



Tax treatment of asset disposals

The measure

A number of measures are being proposed meant to streamline how gains from disposal of any asset (depreciable, held for sale or otherwise) are taxed.

Changes specific to capital gains provisions

- Amendment of definition of a royalty to exclude any gain on the disposal of rights under the same.
- Amendment of business income composition to remove gains and losses on disposal of assets or a business asset.
- Repeal of paragraph under the business income definition and deductible expenses provision that exclude trading stock or depreciable asset as a business asset.
- Amendment of what constitutes employment income to remove a gain from a disposal of a right or option to acquire shares under an employee share acquisition scheme.
- Repeal of exemption accorded to non-business capital gain other than the sale of shares in a private limited liability company or a commercial building.
- Exclusion of losses on disposal of business assets as an allowable deduction in determination of taxable income.
- Elimination of disposal of industrial or intellectual property used in Uganda from meaning of royalties in determination of income sourced in Uganda.
- Introduction of disposal of industrial or intellectual property used in Uganda as a standard alone source of income rather than as a royalty.
- Repeal of provisions relating to:
 - *determination of gain or loss on disposal of business assets (assets not being depreciable assets)*
 - *Indexation of cost base of a business asset being disposed of after twelve (12) months from purchase*
 - *Instances where no gain or loss is to be recognised where a disposal of a business asset occurs*
- Amendment to rollover relief provisions in case of liquidations to exclude a cancellation of shares held by a legal resident shareholder in a liquidated company from withholding tax applicable in case of a disposal of an asset to a resident .

Changes affecting depreciable assets

- Determination of tax written down values of a pool of assets for any particular year to exclude the disposal proceeds for assets in that pool.
- Repeal of provisions relating to:
 - *Creation of a balancing charge (profit on disposal of depreciable assets in a pool).*
 - *Apportionment of consideration in respect to a disposal of a passenger vehicle whose original cost was above UGX 60m between depreciable and non-depreciable asset.*
 - *Calculation of gain or loss on disposal of depreciable assets.*

Who will be affected

A person disposing of any asset.

Our View

The Authorities have struggled with collection of tax on disposal of capital assets and in our view these changes are intended to streamline and make this administratively easier for them to identify and enforce. This also presumably guarantees tax on all disposals of assets which widens the base.

Ultimately these changes in their entirety remove the distinction between a capital asset and other kind of assets that one may dispose of. What is interesting is that by removing the mechanism for removing consideration/disposal proceeds from an asset pool with respect to depreciable assets, this potentially means that although a person may dispose of assets, these continue to be depreciated for tax on the understanding that they have not been eliminated from the pool.

Although this definitely simplifies the process for URA, consideration should be given to excluding disposals between individuals or made by individuals except perhaps those on which stamp duty is payable e.g. immovable property. In that case the mechanism for collecting the tax would be the same as what is done for collecting the stamp duty.

Additionally, this should have specifically excluded disposals of securities traded on the securities exchange.



Extension of interest capping exemption to other financial institutions

The measure

The 30% of EBITDA interest capping exemption in instances where a person who is a member of a Group has interest bearing debt (regardless of whether this is owed to 3rd parties) is being extended to other categories of financial institutions.

Who will be affected

Microfinance deposit taking and Tier 4 micro-finance institutions.

Our view

This should be a welcome measure for the players above given that there has always been ambiguity over whether they are financial institutions under the definition and therefore entitled to take benefit of the exemption. Additionally, debt, whether from related or 3rd parties is a significant aspect of being able to operate within this sector.

Petroleum/ Mining operations

Removal of conflicting definition of Petroleum Agreement under the ITA

The measure

The definition under section 2 of the Income Tax Act of a Petroleum Agreement to mean "an agreement for the grant of a licence for petroleum exploration, development and production between the Government and a contractor" is proposed to be repealed.

Who will be affected

Players in the Oil & Gas sector.

Our view

This is meant to remove confusion created by the narrow interpretation under section 2 above which is not aligned to the more inclusive definition under Part IXA which deals with taxation of Petroleum Operations..

That section defines "petroleum agreement", to mean an agreement entered into by the Government of Uganda with another person in accordance with the Petroleum (Exploration, Development and Production) Act, 2013, or the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act 2013.

It therefore covers operations related to the Refinery and EACOP among others.

Amendment of definition of what constitutes mining/petroleum expenditure

The measure

Amendment to what is not treated as "mining exploration expenditure", "mining extraction expenditure", "petroleum exploration expenditure", or "petroleum development expenditure" to extend to anything under section 22 of the Income Tax generally rather than to just expenditure of a domestic or private nature.

Who will be affected

Taxpayers carrying out petroleum and mining operations.

Our view

This is to align the taxation of petroleum and mining operations which have specific provisions to the amendments that are being proposed to apply to other businesses that are taxed under the general provisions specifically amendments made to taxation of business assets.

Amendment to determination of cost base of Petroleum Development Expenditure acquired as an intangible asset

The measure

For petroleum development expenditure incurred before commencement of commercial production, recognition of amortisation of intangible asset over useful life as one of the ways such expenditure could be depreciated aside from the reducing balance method (as pool assets) or straight-line basis over useful life but capped to six years.

Who will be affected

Persons carrying out petroleum operations.

Our view

This is to align the treatment of certain intangible assets for petroleum operations to treatment accorded to other businesses.

Amendment to conditions for a farm-out

The measure

Amendment of provisions relating to a farm-out to remove the words "*the whole or*" in respect to a transfer of an interest in a mining or petroleum right.

Our view

This is to rectify an amendment introduced to what was meant by a farm-out 2018.

Clarity on due date of returns to be filed by a licence

The measure

It is proposed to amend section 89(O)1(a) of the ITA which deals with the monthly returns that licencees need to file seven (7) days after the end of each month.

Our view

This is meant to provide clarity on when the returns referred to are due as opposed to linking them to a quarterly provisional payment due date which is not necessarily related to the return. Instead, the return due date is in reference to the provisions on collection of taxes due by licencees as a whole.

Withholding Tax (WHT)

Withholding tax on disposal of an asset

The measure

A person who purchases an asset situated in Uganda shall withhold tax on the gross amount of the payment, at a rate of 5%. The withholding tax is a final tax. This withholding tax will not apply to:

- Transfer of assets between spouses;
- Transfer of assets between a former spouse as part of a divorce settlement or bona fide separation agreement;
- An involuntary disposal of an asset to the extent to which the proceeds of the disposal are reinvested in an asset of a like kind within one year of the disposal;
- Transmission of an asset forming the estate of the deceased taxpayer to a trustee or beneficiary; or
- Sale of the investment interest of a registered venture capital fund, if at least fifty percent (50%) of the proceeds on sale is reinvested within the year of income.

In addition, the word “asset” has been defined to mean a resource with economic value that is expected to provide a future benefit to its holder but does not include trading stock.”

Who will be affected

Anyone disposing of any asset in Uganda regardless of their residence.

Our view

This is an all-inclusive provision for capturing and taxing any kind of asset disposal be it for business or not. Currently, tax on disposals applies if either the disposal is a capital asset (e.g., shares, land, commercial property) or for depreciable assets for a business through the adjustment of the wear and tear allowances claimable by the individual. The tax in either case is on the gains determined by taking into account the acquisition cost and the selling price.

As the tax is a final tax, for businesses in Uganda that do dispose of assets, there is no opportunity to claim a credit as is currently the case with the 6% applied to residents when they dispose of a business asset.

There is also no provision for a resident person being exempt by reason of being regularly compliant. This means that a business that disposes of old furniture/ fittings could potentially have a withholding tax applied of 5% to any payment to them.

An extra burden is being passed on to purchasers, not just in respect to collecting and accounting for the tax withheld but also with regard to the true cost of an item. The tendency especially for transactions with individuals is for the seller to simply adjust the price upwards to guarantee receipt of the agreed purchase price.

There are still aspects that remain unclear especially if these provisions are passed. As an example, section 79 which deals with when income is sourced in Uganda still triggers income in Uganda for an indirect transfer of shares which outside of a re-organisation then makes this income taxable. However, transactions between related parties cannot typically be classified as purchases.

Property Income

Amendment to definition of Property Income

The measures

Section 19 which deals with income that neither falls under the category of business income or employment income has been amended as follows:

- a) Exclude winnings derived from sports and pool betting the word “gaming” from this provision; and
- b) Including profits paid or credited (not distributed) to a participant of a collective investment scheme as property income to be taxed as follows:

Contribution made to a collective investment scheme	Rate of tax (%) of total profit paid to the participant
Contribution of a participant to collective investment scheme not exceeding one hundred million shillings.	5%
Contribution by a participant of a collective investment scheme exceeding one hundred million shillings.	15%

At the same time, the exemption applicable to collective investment schemes in section 21 has been limited to income to which the above changes do not apply.

Mechanism for the collection of the tax

The tax is to be collected as a withholding tax by person either making out the payment or crediting the account of a participant and is a final tax.

In addition, any participant whose aggregate contributions (to different collective investment schemes) including any undistributed profits is above UGX 100 million within 1 July to 30 June of each year, is also required to file a return and pay tax at 15%. However, in that case the tax withheld by the collective investment scheme (s) on the same income becomes creditable.

Who will be affected

Persons investing in Collective Investment Schemes (Unit Trusts).

Property Income cont'd

Our view

This proposal on the one hand is surprising because of the nature of income it targets, while on the other hand offering little surprise given URA's current aggressive approach to tax collection regardless of the negative ripple effect. Uganda has seen an increase in investments in Unit Trusts. This may have an impact on people's appetite to putting their savings in Unit Trusts.

That said, this provision may also be seen as streamlining the tax on income received by participants on the understanding that currently this is taxable but retaining its nature i.e., interest or dividend or gain on disposal of investments etc.

3Digital Services Tax (DST)

Introduction of a digital tax on non-residents

The measure

Introduction of a tax on every non-resident person deriving income from providing digital services in Uganda to a customer in Uganda at a rate of 5% and it is a final tax.

A digital service is provided to a customer in Uganda if it is delivered over the internet, electronic network or an online platform.

"Digital services" includes among others:

- online advertising services;
- data services;
- services delivered through an online marketplace or intermediation platform, including an accommodation online marketplace, a vehicle hire online marketplace and any other transport online marketplace;
- digital content services, including accessing and downloading of digital content;
- online gaming services;
- cloud computing services
- data ware housing;
- services, other than those services in this subsection, delivered through a social media platform or an internet search engine; and
- any other digital services as the Minister may prescribe by statutory instrument made under this Act.

In addition to the introduction of this tax, an amendment has also been made to include this as a tax that is a final tax in Uganda in the same way other taxes on non-residents are.

Who will be affected

Non-resident providing digital services to a customer in Uganda.

Our view

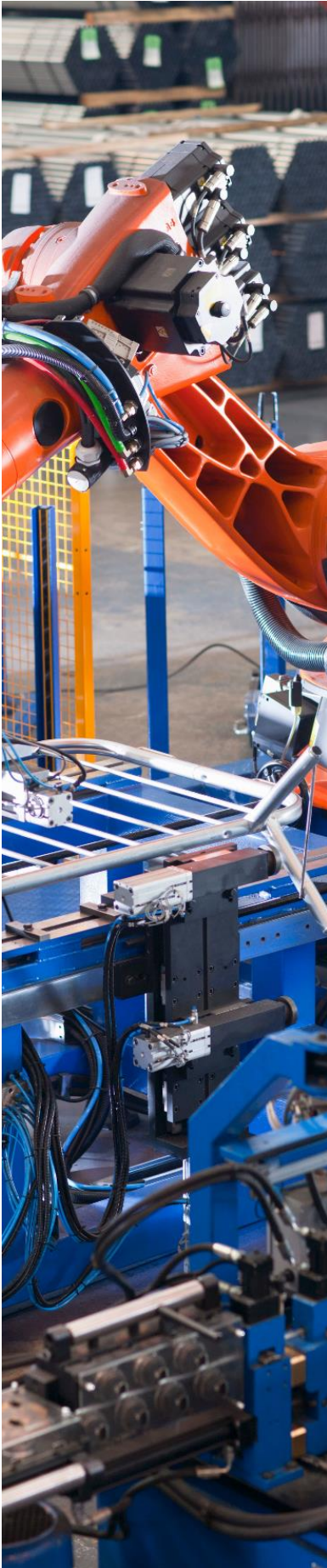
This comes as no surprise as the URA tries to widen the base and leverage off gains from indirect tax on non-residents providing electronically supplied services.

This follows similar tax introduced by neighbours such as Kenya. The URA/ Ministry of Finance has previously been non-committal on whether it intended to be part of the Inclusive Framework which would make Pillar 2 applicable. The OECD's Pillar 2 or "GloBE," introduces a minimum effective tax rate of at least 15%, calculated based on a specific rule set.

We note that a number of developing countries have introduced some form of digital tax to counter what they view as the challenge with aligning with OECD given the revenue parameters to enable them have a tax share of the revenue earned by MNEs operating within their jurisdictions in the short to medium term, if ever.

That notwithstanding, where Uganda is trying to encourage compliance from non-residents in this space while still recognizing how instrumental the digital economy is for businesses in Uganda it could give consideration to a rate lower than the proposed 5%.





Value Added Tax (VAT)

Expansion of definition of supply of goods

The measure

Extension of meaning of when a supply of goods takes place to include the ‘supply of goods by auction made by the auctioneer as the supplier in the course of auctioning goods.’

Creation of a distinction between the ‘supply of goods by the auctioneer’ and ‘supply of auction services’.

Who will be affected

Auctioneers.

Our view

This amendment seeks to treat the auctioneer as the person who has made a supply not just of their own services (which is already a taxable supply) but also the supplier of the goods they are auctioning.

This in turn places the responsibility on the auctioneer to account for VAT on the auctioned goods. This is regardless of the fact that there is no nexus between the auctioneer and the goods in question, whether as a person who owns or has an interest (such as a lien or other charge) over the property. The auctioneer merely renders a specific service as an agent of the person selling the goods.

Amendment to provisions relating to VAT on Electronically Supplied Services (ESS)

The measures

- The place of supply of services by a non-resident with no place of business in Uganda is considered to take place in Uganda and therefore subject to VAT if the recipient of the supply is not:
 - *a taxable person; or*
 - *a person who makes a supply with a total annual value in excess of UGX 150m; or*
 - *a Government entity that is registered for VAT.*

The time of supply of ESS services is when these are delivered to a person in Uganda.

- The definition of ESS has also been clarified as to the mode of delivery as services supplied through an online or digital network by a supplier from a place of business outside Uganda to a recipient in Uganda
- The list of what is included as an ESS has been expanded to include:
 - *advertising platforms;*
 - *streaming platforms and subscription-based services;*
 - *cab-hailing services;*
 - *cloud storage; and*
 - *data ware housing*
- The Minister will have powers to not only prescribe rules relating to determination of delivery of ESS services in Uganda but also to add to the list of services to be considered as ESS

In an addition the above it is proposed to allow providers of ESS to file returns and pay the tax in the return in United States dollars

Who will be affected

Non-residents providing ESS and consumers of ESS in Uganda.

Our view

The redefining of what is meant by ESS seeks to remove ambiguity that could exist on the basis of the mode through which ESS are provided. The current definition references provision or delivery remotely.

The expansion of the list of the type of services characterised as ESS speaks to the current trends as to the type of services a person, especially individuals who are end customers and therefore not required to account for VAT themselves, have access to.

By giving the Minister power to determine when ESS is deemed to be delivered in Uganda as well as what additional services are ESS, it removes the need to wait for amendments to be made through the Tax Bills, which need to go through Parliament and therefore have a longer process.

Allowing non-residents to file and pay tax in USD is intended to make it easier for non-residents to comply.



Returns in respect of imported services

The Measure

A person who makes a supply of a total annual value in excess of the UGX 150 million and who imports a service, shall lodge a tax return with the Commissioner General within fifteen (15) days after the end of the tax period in which the service was imported.

Who will be affected

Persons making supplies above UGX 150m who import services into Uganda.

Our view

This is aimed at requiring the filing of a separate return for imported services by those who meet a certain revenue threshold. What is not clear and needs clarification is whether:

- a) Taxable persons would also be required to file this imported services return in addition to the standard return that is used to account for VAT on trade; and
- b) Non-taxable persons meeting this threshold would simply be required to file a disclosure return, without necessarily having to pay any tax on the understanding that since the transaction meets the ESS definition, this would be accounted for by the non-resident.

Credit for Input Tax

The measure

Non-creditable input VAT has been expanded to cover a taxable supply relating to:

- payment for membership of a person in a club, association or society of a sporting, social or recreational nature; and

- services supplied by a non-resident who has no place of business in Uganda and are deemed to have their place of supply in Uganda under section 16(2) of the VAT Act.

A credit for input tax is restricted to a supply for “business use” or “use in the business” and only to expenses related to generating a taxable supply.

Who will be affected

VAT registered taxpayers.

Our view

The restriction of a taxable person to claim input VAT in an instance where a non-resident person has paid this to URA as VAT on ESS is meant to extend the principle that VAT on imported services (i.e. services received from a non-resident person) is not creditable VAT regardless of who accounts for the same.

What these proposals have still not addressed is the potential for VAT on ESS to be accounted for by a resident person (due to the obligation by an importer of services into Uganda to account for VAT under section 4 read together with section 5) and a non-resident providing ESS under section 16(2).

Tax refunds

The measure

Deletion of words that imply that consent of a taxpayer is required by the Commissioner General to utilise a VAT asset of UGX 5m or more to offset future tax liability or apply it in reduction of any other tax not in dispute from the taxpayer

Who will be affected

VAT registered persons in significant refund position.

Our view

This seems to re-enforce the practice by URA in recent years to write to taxable persons with a net VAT claimable in excess of UGX 5m who opt for offset advising them to request for refunds or risk having their offsets rejected. This is URA’s way of simplifying their work by not requiring such consent and being able to take the decision arbitrarily. Most taxpayers would generally be okay with this change if the VAT Refund process was better streamlined and there were fixed time periods within which refund were processed.

Capping of interest on unpaid tax

The measure

This is a similar repeal to that under Income Tax on the capping of interest to total of principal and penal tax as well as waiver of such interest in excess due for the period to 30th June 2017 and is meant to transfer the provision to the Tax Procedures Code Act.

Modification of Exempt Supplies Schedule

- Limitation of exemptions:
 - *For diapers to only adult diapers.*
 - *For iron ore production inputs, only to billets for further value addition in Uganda*
- Inclusion of the following as exempt supplies:
 - *Concentrates and seed cake*
- Removal of exemptions for:
 - *All production inputs necessary for processing of hides and skins into finished leather products in Uganda and the supply of leather products wholly made in Uganda; and*
 - *Cotton seed cake*

Excise Duty (ED)

Amendment to Excise Duty rates

Although there are a number of proposed changes, most do not necessarily change the definitions or rates in the Excise Duty Amendment Act 2022 which was passed but was never assented to by the President. As such measures under the 2022 Amendment Act did not legally come into law.

Measure

Re-introduced definitions

“fruit juice” means unfermented liquid extracted from the edible part of a fresh fruit, whether the extracted liquid is diluted or not;”

“un-denatured spirits” means spirits that are not mixed with any substance so as to render the spirit unfit for human consumption or capable of being rendered unfit for human consumption and includes neutral spirits or alcoholic beverages made from neutral spirits that are fit for human consumption;”

“vegetable juice” means unfermented liquid extracted from the edible part of a vegetable, whether the extracted liquid is diluted or not.”

Re-introduced changes to duty rates

Item	Current rate	Proposed rate
Opaque beer	20% or Ushs. 230 per litre, whichever is higher.	12% or Ushs. 150 per litre; whichever is higher.
Un-denatured spirits of alcoholic strength by volume of 80% or made from locally produced raw material	60% or Ushs. 1500 per litre; whichever is higher.	60% or Ushs. 1500 per litre; whichever is higher.
Un-denatured spirits of alcoholic strength by volume of 80% or made from imported raw material	100% or Ushs. 2500 per litre whichever is higher.	100% or Ushs. 2500 per litre whichever is higher.
Any other un-denatured spirits that is locally produced of alcoholic strength by volume less than 80%	80% or Ushs. 1700 per litre whichever is higher.	80% or Ushs. 1700 per litre whichever is higher.
Un-denatured spirits made from locally produced raw materials that is used in the production of disinfectants and sanitizers from the prevention of the spread of COVID-19 of alcoholic content by Volume not less than 70%.	Nil	Nil
Fruit 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.	13% or Ushs. 250 per litre whichever is higher.	12% or Ushs. 250 per litre, whichever is higher.
Any other non-alcoholic beverage locally produced other than the beverage referred to in paragraph (a) made out of fermented sugary tea solution with a combination of yeast and bacteria.	12% or Ushs. 250 per litre whichever is higher.	12% or Ushs 150 per litre whichever is higher.
Any other fermented beverages including cider, perry, mead or near beer produced from locally grown or produced raw materials.	30% or Ushs. 550 whichever is higher.	30% or Ushs 550 per litre whichever is higher.
Construction materials of a manufacturer, whose investment capital is, at least thirty-five million United States Dollars or, in the case of a foreigner or five million dollars in case of a citizen.	Nil	Nil

Excise Duty (ED) cont'd

Amendment to Excise Duty rates

The only new change from the proposed amendments last year relates to:

- Imported un-denatured spirits of an alcoholic strength by volume of less than 80%.

Current rate	Proposed rate
80% or Ushs. 1700 per litre whichever is higher.	100% or Ushs. 2500 per litre whichever is higher.

Who will be affected

All taxpayers dealing in excisable goods.

Our view

Long believed to be a sin tax, excise duty is a common measure used by the legislators to increase tax revenues without necessarily affecting what is considered tax on livelihoods of people.

With the exception on imported un-denatured of less than 80%, the proposed amendments were previously introduced in the Excise Duty Amendment Act 2022 that was not assented to by the President. The rates only become applicable once the laws under which they are introduced come into force.

Tax Procedure Code Act, 2014 (TPC)

Offenses related to Tax stamps

The measures

A person who makes an unauthorised interference to, or tampers with, a digital tax stamps machine commits an offence and is liable, on conviction:

- A fine not exceeding UGX 30 million; or
- Imprisonment not exceeding ten (10) years

It is also proposed to create an offense related to a person fixing or activating a tax stamp on a wrong good, brand or volume. Such offense makes one liable on conviction to:

- A fine not exceeding UGX 10 million; and/or
- Imprisonment not exceeding three (3) years.

Who will be affected

Persons who produce or sell excisable goods.

Our view

This is in line with URA's focus on compliance through the reliance on systems that enable them track revenue which ultimately is intended to increase tax collection. As such there is a push to deter non-compliance by making it extremely punitive for offenders.

Consolidation of interest capping on unpaid tax

The measure

Introduction of provision relating to waiver of interest due and payable by 30th June 2017 in excess of the aggregate of the principal and penal tax

Who will be affected

Persons with unpaid tax for the above period.

Our view

This same provision has been repealed under the ITA, VAT and Excise Duty Acts and is simply being consolidated in the TPC which regulates the administration of tax for those taxes in general.

Changes to waiver of interest and penalties under the Voluntary Disclosure Programme (VDP)

The measure

A taxpayer who voluntarily discloses and makes payment for tax outstanding as at 30 June 2023 will have penalties and interest waived as follows:

- Full payment of principal tax by 31 December 2023 – full waiver of interest and penalties
- Part payment of principal tax by 31 December 2023 – waiver of interest and penalties on a pro-rata basis.

Who will be affected

All taxpayers with any non-compliance

Our view

While we have seen an increase in the commencement of tax audits by the URA, they have in many instances requested taxpayers to carry out tax health checks and the findings from the same used as the basis for what would ordinarily be an audit conducted by the URA.

The Voluntary Disclosure Programme is also one such mechanism URA has relied upon to encourage compliance. This is an opportunity for all those who are not certain of their compliance for their different tax obligations or even those who think they are but have not been the subject of a comprehensive audit in over three (3) years.

Tax Procedure Code Act, 2014 (TPC) cont'd

Restriction on provision of additional information at objection or ADR stage

The measure

The Bill proposes to introduce a restriction on the prohibition of taxpayers from submission of any additional information during the Objection or Alternative Dispute Resolution proceedings where that information had already been requested for at earlier reviews stages by the URA and the taxpayer failed to avail it.

Who will be affected

Taxpayers in general

Our view

While on the face of it this would be a fair requirement i.e. that one should not provide in evidence to refute or substantiate a position information that they were not able to avail at the time of an audit, this can only work if it is being done in good faith. A maxim of equity states that one "who comes into equity must come with clean hands".

URA needs to come to their table with clean hands if this proposal passes. It is common practice during audits for URA to require information that spans a period of longer than three (3) or even five (5) at short notice. Information supporting tax is extensive and not always readily available.

It is important that if URA's aim is to genuinely establish compliance history it allows taxpayers sufficient time to obtain information necessary for the process otherwise this will simply become another tool that URA uses to raise unfair assessments and then go ahead and confirm such decision on basis of information not having previously been provided.

Noteworthy caselaw

Kuehne & Nagel Uganda Limited Vs URA TAT application no. 81 of 2022

Background

The Applicant is a company in Uganda providing logistics, clearing and forwarding services. The Respondent conducted a refund audit on the Applicant for the periods 2015 to 2019 and issued a WHT assessment of Ugx 1,283,289,792 on the ground that it did not withhold taxes on payments to non-resident transporters for the provision of road transport from Mombasa to Uganda.

Issue

Whether the Income Tax Amendment of 2022 that clarified that 'income derived from the carriage of passengers who do not embark or cargo or mail which is not embarked in Uganda is not income derived from a Uganda source service contract' and therefore not subject to 15% WHT on Ugandan source services contracts could be applied retrospectively to payments made before the amendment.

Court Ruling

Income derived by international carriers of passengers and cargo which is embarked outside Uganda is not liable to WHT at 15%. The tribunal held that this income is not derived from a Uganda source services contract. As such the Income Tax Amendment simply clarified a position that already existed.

Our view

This case confirms the general position that payments to non-resident transporters do not represent income sourced in Uganda under a Ugandan sourced services contract and are therefore exempt from the 15% withholding tax. A more recent ruling by the Court of Appeal in the case of **Roche Transport and Logistics Uganda Limited** reinforces this position.





Noteworthy caselaw cont'd

Wipro Technologies SouthAfrica PTY Limited Vs URA TAT Applications no. 5 of 2021

Background

The Applicant is a Ugandan branch of Wipro South Africa Pty Limited and is in the business of information technology and consulting. The applicant applied for a VAT refund from the URA following which the URA conducted a VAT Refund audit and raised VAT assessments of UGX. 1,557,626,815. Wipro had entered into an agreement with two companies (MTN Dubai Limited and MTN Sea Shared Limited) but issued invoices to a MTN Uganda Ltd in error. This error was subsequently corrected by issuing credit notes. However, the Respondent argued that the Applicant had not provided sufficient documentation, specifically tax invoice receipts and proof of payment, to support their claim for input tax credits.

Issue

Whether Wipro was entitled to a refund and input credits for a VAT assessment raised against a genuine mistake in invoicing which was corrected.

Court Ruling

While on the one hand the Tax Appeals Tribunal agreed with Wipro's argument that no assessment should have been raised as the error in invoicing was corrected and therefore it was in principle entitled to a VAT refund, the TAT did find however that in the absence of the receipts or proof of payment on tax invoices, Wipro had not provided evidence that it had paid the tax which resulted in the credit. As such it was not entitled to input credit claimed.

Our view

This is a reinforcement of the importance for taxpayers to maintain records and be vigilant in providing the same when requested by the URA. This case also reflects the proposed amendment to limit the ability of a taxpayer to provide additional information to the URA.

Prime Solutions Ltd v. Uganda Revenue Authority TAT Application No. 116 of 2019

Background

The Applicant charged fees for reimbursable and miscellaneous expenses (fuel, per diem) incurred in the provision of the consultancy services but did not charge VAT on the expenses. URA assessed them for VAT on the same.

Issue

Whether expenses incurred for the purpose of facilitating the effective performance of services represent a taxable supply

Court Ruling

The TAT ruled that incidental costs that the business must incur to deliver a good or service should not be excluded from the value on which VAT is calculated.

A reimbursement is a supply and is subject to VAT. Accordingly a reimbursable expense was provided by third parties to the Applicant who incurred VAT on the same at the time of expenditure. As such, expenses fall within the definition of consideration under the VAT Act.

Our view

The terms disbursements and reimbursements have typically been interchangeably which in turn has resulted in confusion as to the correct treatment for VAT purposes. While a disbursement is a payment made on behalf of and in the name of another person, usually a client (e.g., stamp duty, work permit fees, Trade Licence fees).

Alternative Dispute Resolution (ADR)

Issuance of The Tax Procedures Code (Alternative Dispute Resolution Procedure) Regulations, 2023

Background

The Tax Procedures Code (Amendment) Act, 2021 introduced provisions that were meant to provide a taxpayer dissatisfied with a tax decision an avenue to apply to the Commissioner to resolve the dispute using Alternative Dispute Resolution (ADR). The Minister was given power to make regulations for the operationalization of ADR.

Important definitions

Under **section 3** of the TPC Act, 2014, “tax decision” means—














(a) a tax assessment; or

(b) a decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction or determination of the Commissioner other than—

- a decision made in relation to a tax assessment;
- a decision to refuse, issue or revoke a practice note or an omission to issue or revoke a practice note;
- a decision or omission that affects a tax officer or employee or agent of the Authority;
- the compounding of an offence under any tax law; or
- a decision to refuse, issue or revoke a private ruling or an omission to issue or revoke a private ruling.

Aspect covered	Description
What ADR covers	<ul style="list-style-type: none"> • A tax decision made by the Commissioner
Exclusions	<ul style="list-style-type: none"> • Matters of interpretation of the law • Matters of public interest for TAT/Court to determine dispute • Deliberate or consistent non-compliance of taxpayer in respect to matter in dispute • Informer cases • Fraud • Time barred application
Timeline for taxpayer to request ADR	<ul style="list-style-type: none"> • Within seven (7) days of being served with the tax decision
Form of application	<ul style="list-style-type: none"> • In prescribed form
Timeline for Commissioner to respond to request for ADR	<ul style="list-style-type: none"> • Acceptance is within seven (7) working days of requesting for ADR by taxpayer. • Rejection is within fifteen (15) working days of requesting for ADR by taxpayer (Power to accept ADR is discretionary on the Commissioner based on their examination of the merits and eligibility of the dispute to ADR)
Does ADR delay application to TAT/ High Court	<ul style="list-style-type: none"> • No. Timelines for application for review to TAT remain unchanged
Process	<ul style="list-style-type: none"> • Conciliation – involves an independent third party appointed/ agreed to by the parties facilitating the discussion. The conciliator offers no opinion on the merits of either party’s case • Negotiation - non-facilitated engagement between URA and taxpayer including exchange of information <p>Taxpayer indicates preferred method at time of application</p> <ul style="list-style-type: none"> • Taxpayer can represent themselves or be represented by a tax agent or advocate • Each party presents its case including calling of witnesses • Settlement of dispute is based on evidence submitted by each party • Subject matter experts can be called upon in the event of a matter arising which requires specific expertise
Conduct of process	<ul style="list-style-type: none"> • Full disclosure of material facts and documentation relevant to the dispute • Either party can withdraw from process at any time upon written notice • Settlement Agreement signed by the Commissioner and taxpayer represents issues settled through ADR. Adjustment to tax liability where applicable has to be done within fourteen (14) days from signature of settlement agreement.

Meet the Team

 <p>Fredrick Omondi EA Regional Tax & Legal Partner</p>	 <p>Patronella Namubiru Associate Director, Tax & Legal (Burundi, Rwanda & Uganda)</p>		
 <p>Martin Makumbi Senior Manager, Tax & Legal Tax Controversy & Business Tax</p>	 <p>Maurice Agaba Manager, Tax & Legal Transfer Pricing</p>	 <p>Lydia Muhindo Manager, Tax & Legal International Tax & GES</p>	 <p>Samson Kiyabwe Manager, Tax & Legal Business Process Outsourcing</p>
 <p>Jerry Gumisiriza Senior, Tax & Legal</p>	 <p>Tabitha Awino Senior, Tax & Legal</p>	 <p>Brian Naganga Senior, Tax & Legal</p>	
 <p>Joanna Muhwezi Senior, Tax & Legal</p>	 <p>Nelson Owori Senior, Tax & Legal</p>	 <p>Collin Odeke Senior Associate, Tax & Legal</p>	
 <p>Samantha Apio Senior Associate, Tax & Legal</p>			

Contacts for this alert

For clarifications on this publication please contact

Patronella Namubiru
Associate Director, Tax & Legal
pnamubiru@deloitte.co.ug

Martin Makumbi
Senior Manager, Tax & legal
mmakumbi@deloitte.co.ug

Offices

Uganda
3rd Floor, Rwenzori House
1 Lumumba Avenue
Nakasero, Kampala

Tel: +256 417 701 000
Email: admin@deloitte.co.ug

Tax & Legal leaders

Norbert Kagoro
Managing Partner, Deloitte Uganda
nkagoro@deloitte.co.ug

Fredrick Omondi
Tax & Legal Leader, Deloitte East Africa
fomondi@deloitte.co.ke

Lillian Kubebea
Tax & Legal Partner
lkubebea@deloitte.co.ke

Doreen Mbogho
Tax & Legal Partner
dmbogho@deloitte.co.ke

James Mwendia
Tax & Legal Partner
jmwendia@deloitte.co.ke

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