



Uganda - Tax Update

Tax Amendment Acts, 2024

MAY 2024

Tax Amendment Acts, 2024

Introduction

This publication highlights significant tax and other measures included in the 2024/25 Amendment Acts. This guide provides a comprehensive summary that analyzes and indicates the potential impact of the Amendment Acts on various aspects, as outlined below. The document is not intended to be a comprehensive summary of tax law and practice but rather a focused exploration of the critical changes and their implications.

- The Income Tax (Amendment) Act, 2024;
- The Value Added Tax (Amendment) Act, 2024;
- The Excise Duty (Amendment) Act, 2024;
- The Tax Procedures Code (Amendment) Act, 2024;
- The Stamp Duty (Amendment) Act, 2024;

The Acts were passed by Parliament in May 2024 and will take effect after assent by the President on 1 July 2024, subject to any changes.

We have also included noteworthy cases from last year that impact the interpretation of the tax provisions.

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Corporation Tax (CIT)

Additional definition of a retirement fund

Measures introduced

The amendment provides for a broader definition of the term "retirement fund" under section 2(III) of the Income Tax Act(ITA), expanding its meaning beyond traditional pensions to now include funds that provide benefits to members in the event of termination of service or upon the occurrence of an event as specified in a written law, agreement or arrangement.

Who will be affected

- Employees contributing to retirement funds.

Our view

This broader definition could encourage the creation of more diverse retirement plans, offering employers and employees more flexibility in planning and saving for employees' retirement.

Tax benefits, i.e. payments made by a resident retirement fund to its members or their dependants, are exempt from income tax. Therefore, widening the definition means widening the scope of income enjoying this exemption, which will encourage more participants. Currently, the definition is limited to death and retirement.

With changing times and economic pressures impacting businesses, individuals have found themselves out of work and yet unable to access contributions made.

Expanding the definition to include instances of termination or operation of the law or agreement allows for individuals who find themselves out of work and having to access funds able to enjoy the same tax benefit as they would have had they retired.

Addition to the category of exempt income (Section 21)

The Act adds new categories of income that would be exempt from income tax under section 21 of the ITA as follows:

- a) Income earned by private equity or venture capital funds, which is regulated by the Capital Markets Authority (CMA).
- b) Profits derived from selling government securities on the secondary market.
- c) Income from electric vehicle manufacturing and related activities, including the production of [electric batteries, charging equipment, and fabrication of the frame and body of electric vehicles], will be exempt from income tax.
- d) Income from operating specialized hospital facilities.

Who will be affected

- Private equity and venture capital funds.
- Individuals and institutions buying and selling government bonds.
- Entities involved in the Electric Vehicle (EV) Industry.
- Operators of specialized hospitals.

Our View

By exempting income from these sectors, the Government aims to incentivize investment in areas they deem crucial for economic growth (e.g., private equity, EVs, specialized healthcare).

Corporation Tax (CIT)

Increase in the categories of exempt income (Section 21) ...continued

This, hopefully, should boost the ecosystem related to these sectors and potentially increase job creation in these areas.

The exemption on profits from selling government bonds on the secondary market could make these bonds more attractive, potentially allowing the Government to borrow more funds at lower costs.

There have been challenges in the past with respect to the implementation and proper characterization of persons who qualify for these exemptions, as well as when the exemptions start to apply. It is, therefore, necessary for the issuance of clear guidelines and regulations to not only guide those for whom these exemptions are intended but also to ensure that only qualified entities and activities benefit from these exemptions, thus minimizing the potential abuse.

Changes to capital gains tax treatment for venture capital funds

The Act has repealed provisions under section 54 of the ITA relating to the exemption of gains derived from the disposal of investment from venture capital funds if they are re-invested.

Who will be affected

- Startups and businesses that seek investment from venture capital funds.

Our view

This amendment is consistent with the extension of exemption from income tax of income of venture capital funds under Section 21 discussed previously. The key distinction, though, is that while the exemption that is being repealed for CGT purposes is applicable to a registered venture capital fund, the income exemption amendment requires that the venture capital/ private equity fund is registered with CMA.

Corporation Tax (CIT)

Permanent Establishment

Measures introduced

The Act has repealed section 78(a) of the ITA, which defines a branch or what is commonly termed as a Permanent Establishment (PE). Instead, it has replaced that definition with language in line with International best practice, as well as provided guidance as to how the income of a PE is calculated.

“PE” means a fixed place of business through which the business of the enterprise is wholly or partly carried on and includes

- a place of management;
- a branch;
- an office;
- a factory;
- a workshop
- a warehouse, in relation to a person providing storage facilities to others;
- a mine, an oil or gas well, a quarry or any other place of exploration for or extraction or exploitation of natural resources;
- a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on;
- a sales outlet.

Permanent Establishment...continued

- a building site or a construction, installation or assembly project, or supervisory activities in connection with the site project or activity; the furnishing of services, including consultancy services, by a person through employees or other personnel engaged by the person for such purposes; substantial equipment or machinery that is operated, or is available for operation, in Uganda for a given number of days in 12 months.

An agent (other than an independent agent) shall be deemed to cause a PE for the principal in Uganda if such agent:

- Habitually concludes contracts or habitually plays the principal role, leading to the conclusion of contracts routinely concluded without material modification by the principal. These contracts are outlined below -
 - in the name of the principal;
 - for the transfer of the ownership of, or for the granting of the right to use, property owned by the principal or that the principal has the right to use; or
 - for the provision of services by the principal.
- An independent agent is an agent who acts exclusively or almost exclusively on behalf of one or more principals with whom the agent is associated.

Corporation Tax (CIT)

Permanent Establishment...continued

Permanent Establishment shall not include:-

- The maintenance and use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the person;
- the maintenance of a stock of goods or merchandise belonging to the person solely for the purpose of processing by another person;
- the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information for the person and carrying on, for the person, any other activity;
- the maintenance of a fixed place of business solely for any combination of activities mentioned above as long as it is preparatory or auxiliary.

Calculation of Chargeable income of a PE

The income of a non-resident person attributable to activities of a permanent establishment shall be taxed in Uganda, including -

- The income derived from the sales of goods or merchandise in Uganda of the same or similar kind as those sold through the permanent establishment; or
- The income of other business activities in Uganda is similar to those carried out through the permanent establishment

Calculation of chargeable income of a PE...continued

In the determination of chargeable income, no deduction is allowed for payments to the head office of the non-resident person or any of its other offices by way of:

- royalties, fees or other similar payments in return for the use of patents or other rights;
- commission for specific services performed or for management; or
- interest on money lent to the permanent establishment, except for financial institutions.

However, a deduction will be allowed for expenses which are incurred for the purposes of the business of the PE.

Annuity paid by a PE treated as income sourced in Uganda

Income is derived from sources in Uganda to the extent to which an annuity is paid by a non-resident person as a business expense carried out by the non-resident person through a PE in Uganda.

A foreign person will not be subject to a 15% withholding tax under a Ugandan source services contract where income taxable under this section has already been taxed as business income of their PE created in Uganda.

Related party transactions between PE and Parent

Section 85 (6) has been introduced which makes a PE a distinct and separate entity from the non-resident parent. As such transactions between the PE and non-resident parent are subject to the anti-avoidance provisions.

Corporation Tax (CIT)

Related party transactions between PE and Parent...continued

Who will be affected

- Foreign companies operating in Uganda.

Our view

By providing clear guidelines on when a foreign company has a PE, the government aims to ensure that taxes are collected on a broader range of business activities conducted in Uganda by foreign companies.

By defining how to calculate the taxable income of a PE, the government aims to ensure they collect the appropriate amount of tax on the income generated by foreign companies' Ugandan operations, thus increasing Uganda's tax revenue.

The effects of the growth of multinational enterprises and globalization have been profound. Many multinational enterprises now operate around the world in various forms, which leads to the creation of permanent establishments.

The amendment is in line with business profits Article of the Organization for Economic Co-operation and Development (OECD) model tax convention which attributes profits to a PE in a host country for tax purposes with modifications.

Uganda is no exception in taxing international companies and has clearly defined a permanent establishment. Previously, a PE was described with reference to a branch. A branch is included in the definition of a PE.

Establishing clear rules on calculating taxable income should create greater transparency and consistency in how foreign companies with PEs are taxed in Uganda.

Inclusion of insurance premium payments associated to a risk in Uganda under the source rules

Measures introduced

The Act has amended Section 79 of the ITA by inserting immediately after paragraph (q) the following;

(iii) derived from the payment of insurance premium, if the premium relates to insurance or reinsurance of a risk in Uganda.

Who will be affected

- Persons operating in the insurance sector.

Our view

Under the current law, premiums for re-insurance services paid to non-residents are subject to tax in Uganda at a rate of 10%. However, due to the lack of clear criteria for sourcing such income or payment, a potential area of controversy could easily arise regarding the circumstances under which such payments are sourced from Uganda. The proposed amendments aim to address and provide clarity.

Following the ruling passed by the Tax Appeals Tribunal in **Goldstar Insurance Limited vs. Uganda Revenue Authority, TAT Application No. 154 of 2020**, in which it was ruled that all payments made in respect of reinsurance of risk in Uganda are subject to the 10% withholding tax, this amendment is meant to re-enforce that position and remove any ambiguity in the law.

Corporation Tax (CIT)

Withholding tax on commission paid to payment service providers

Measures introduced

The Act introduces section 118I, which requires a person who pays a commission to a banking agent or other agent offering financial services (payment service provider) to withhold tax on the commission paid to the payment service provider at 10%.

Who will be affected

- Payment service providers.

Our view

This specific amendment follows a trend that has seen the imposition of withholding tax on commission payments to insurance agents, advertising agents, and, most recently, commissions from the provision of airtime distribution services and mobile money.

From a tax technical standpoint, the current provisions of Section 119 of the ITA require a person to withhold payment of commission to a payment services provider if the payer is a withholding tax agent, albeit at 6%.

Section 119 imposes WHT on payment for goods and services, and payment service providers subscribe to the latter. This proposed amendment could be more about leveling the playing field with mobile money providers, who are considered competition with payment service providers.

List of exempted institutions

Under the first schedule of the ITA, the list of listed institutions exempt from income tax has been amended to include the following institutions;

- African Reinsurance Corporation (Africa Re)
- Independent Regulatory Board of the East African Power Pool
- Islamic Cooperation for the Development of the Private Sector

Who will be affected

- The listed entities and those dealing with them

Value Added Tax (VAT) - Amendments to Value Added Tax Act, Cap. 349

Amendments related to goods purchased through auctions

Measures introduced

1. Amendment of section 5, which identifies who is liable to pay VAT to the effect that VAT on a supply of goods through auction is to be paid by the recipient of the auction proceeds.
2. Amendment of section 10, which defines when there is a supply of goods to include that a supply of goods through auction by an auctioneer is treated as a supply of goods by the recipient of the auction proceeds.

Who will be affected

- Persons who receive money realised from the auction of goods. Common recipients of auction proceeds include financial institutions foreclosing on mortgaged property, Government parastatals, and publicly listed organisations disposing of assets.

Our view

In FY2023/2024, the VAT Law was amended to introduce VAT on auctioned goods. The responsibility to account for the VAT on the auctioned goods was placed on the auctioneer as an agent of the person seeking their services.

This amendment seeks to place the burden of accounting for VAT on the principal i.e. the person who seeks the services of the auctioneer and therefore receives the auction proceeds.

Unlike the previous amendment, the amendment Act acknowledges the auctioneer as a service provider, a straightforward recognition that simplifies the URA's administrative processes.

However, it still poses several practical issues where auctions are done on behalf of private individuals or are part of a recovery of debt, especially considering that the recovery process for financial institutions is part of the financial transaction and therefore exempt for VAT purposes.

Value Added Tax (VAT)

Expansion of the definition of taxable supply

Measures introduced

The Act amends section 18 of the VAT Act, which defines a taxable supply to include the provision of goods or services to an employee for no consideration by an employer who is either VAT registered or required to be VAT registered as a supply for consideration as part of the employer's business activities.

Who will be affected

- Employers and employees.

Our view

The provision implies that when a VAT-registered business provides goods or services to its employees for free, the transaction is considered a taxable business activity (a sale). Therefore, the business ought to account for VAT. Under VAT law, taxable value with an application to own use or reduced consideration is the fair market value. This is, therefore, the value that will need to be used.

Current law mandates that VAT must be accounted for when goods or services are utilized for personal use, including by a relative or any other non-business use, or when they have been provided for no consideration. It needs to be clarified whether the existing regulations cover situations where businesses offer their employees goods or services that usually generate revenue. Additionally, it is uncertain whether the law considers the provision of benefits such as housing or a car as a taxable supply for VAT. If the latter is correct, it would be unreasonable since these benefits are already taxed for PAYE purposes or are disallowed for corporate tax purposes. Additionally, the employer would not be the person providing said service.

Increase in threshold for an automatic request for VAT Refund

Measures introduced

The Act has amended section 42(2) of the VAT Act to increase the threshold for a taxpayer to request a VAT refund rather than carry forward excess input as an offset from UGX five (5) million to UGX ten (10) million.

Who will be affected

- All VAT-registered taxpayers.

Our view

Currently, if a taxpayer has a tax credit of UGX 5 million or more, they must apply for a cash refund rather than carry forward the amount to offset against a subsequent month's tax liability, as applicable.

About three (3) years ago, the URA issued letters to several taxpayers reminding them of their requirement to apply for refunds when the net VAT was a credit position that hit the UGX 5 million threshold. Most taxpayers perpetually carried forward these amounts for offset until such a point when they would have a tax payable.

At the time, we believe that URA was perhaps trying to improve revenue collections for taxpayers who, in one month, could be in a recoverable position and then in the next or the one after have a tax payable, against which they would have a credit to offset. Given the significant difference in timing between when a VAT refund is paid out by the URA versus the immediate requirement to make a pay where a person has a tax payable, this push at the time came as no surprise.

Value Added Tax (VAT)

Increase in threshold for an automatic request for VAT Refund ...continued

With the growing pressure on URA to meet revenue collection targets, the sheer volume and quantum of VAT refunds has not aided this, even as businesses continue to recover from the almost two-year COVID-19 lockdown and a stagnant/worsening economy locally and globally.

The increase in the VAT refund threshold, coupled with other proposed measures such as limiting who can voluntarily register for VAT, is likely intended to reduce the sheer volume of refunds that need to be processed.

Expansion of list of Public International Organizations (Amendment of the First Schedule)

Measures introduced

The following entities have been added to the list of Public International Organizations (PIO) under the 1st Schedule;

- a) African Reinsurance Corporation (Africa Re)
- b) International Regulatory Board of the East African Power Pool, and
- c) Islamic Cooperation for the Development of the Private Sector.

Who will be affected

- The listed entities.

Our view

The list of PIO is updated every year to cater for organisations that are Development Partners and Funding Agencies of foreign countries that support (technical or financial) priority initiatives/ sectors/Projects under the Government of Uganda's National Development Plan. Concerning the Islamic Cooperation for the Development of the Private Sector specifically, this aligns with all the changes introduced in the different tax laws affecting Islamic banking.

Value Added Tax (VAT)

Amendments to the Second Schedule – Exempted goods and services

Repealed	Added	Updated
<ul style="list-style-type: none"> Exemption of supply of postage stamps Supply of software and equipment installation services to manufacturers 	<ul style="list-style-type: none"> Supply of cooking stoves that use fuel ethanol, assembled in Uganda, up to 30th June 2028 Supply of an electric vehicle locally manufactured or supply of frame and body of an electric vehicle locally fabricated Supply of electric vehicle charging equipment or supply of charging services for an electric vehicle Inclusion of the manufacture of an electric vehicle and associated accessories to Paragraph pp(ii), which lists investment projects that have VAT exemption on supplies to them based on level of investment capital injected, sector of operation or nature of investment made and in specific industries or those manufacturing specific items 	<ul style="list-style-type: none"> Amendment of Paragraph 1(dda), which exempts from VAT the supply of goods or services to the contractors and subcontractors of renewable energy projects to exclude supplies of a personal or domestic nature

Value Added Tax (VAT)

Amendments to the Second Schedule – Exempted goods and services

Our view on the amendments to the Second Schedule

- For goods that have been exempted, if the intention is to encourage the production or supply of these items, exempting them becomes counterproductive. A supplier of an exempt good or service has to absorb the cost of the VAT charged on purchases by their suppliers. As such, the VAT they pay becomes a cost that impacts the final sale price, considering that it can not be claimed as input VAT.
- Regarding the exemptions applicable to electric vehicles, our view is that this is meant to encourage local investment in electric vehicles, especially with a global focus on minimizing contributors to pollution such as fossil fuels used by ordinary cars. While this may be well-intentioned, as previously highlighted, an exemption does not make goods or services less expensive.

Excise Duty Act, 2014 (EDA)

Amendments to the definition section

Measures introduced

The Act amends Section 2 of the EDA (definition section) by including the following definitions:

- **“Fruit juice”** means unfermented liquid extracted from the edible part of a fresh fruit, whether the extracted liquid is diluted or not.
- **“Powder for reconstitution into beer”** means a powder, crystal, or any other dry substance that, after being mixed with water or any other non-alcoholic beverage, ferments or otherwise becomes an alcoholic beverage.
- **“Un-denatured spirits”** means spirits that are not mixed with any substance 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.

Who will be affected

- Manufacturers and traders of the above-mentioned items.

Our View

It should be noted that most of the products or services listed in the schedules under the Excise Duty Act are not defined, which causes ambiguity regarding classification.

The amendment shall provide a more streamlined approach for defining fruit juice, powder for reconstitution into beer, undenatured spirits, and vegetable spirits, which have been determined by reference to other sources such as customs nomenclature.

Excise Duty Act, 2014 (EDA)

Item	Excisable good or service	Nature of proposed change	Current rate and classification (where applicable)	New rate
Beer	Opaque beer	Reduction in excise duty rates	20% or UGX 230 per litre, whichever is higher	10% or UGX 150 per litre, whichever is higher
	Any other Alcoholic beverage locally produced	Reduction in excise duty rates	20% or UGX 230 per litre, whichever is higher	10% or UGX 150 per litre, whichever is higher
	Powder for reconstitution into beer	Introduction of a new excisable good	Nil	UGX 2500 per kg
Spirits	Un-denatured spirits	Un-denatured spirits of alcoholic strength by volume of 80% or more made from imported raw materials.	Made from locally produced raw material: 60% or UGX 1500 per litre, whichever is higher Made from imported raw material: 100% or UGX 2500 per litre, whichever is higher	100% or UGX 2500 per litre, whichever is higher (i) 80% or UGX 1700 per litre, whichever is higher (ii) 80% or UGX 1700 per litre, whichever is higher
		Other undenatured spirits; (i) Locally produced of alcoholic strength by volume less than 80%. (ii) Imported of alcoholic strength by volume less than 80%:		
Wines	Other wines	Increase in excise duty rate	80% or UGX 8000 per litre, whichever is higher	100% or UGX 10,000, per litre whichever is higher

Excise Duty Act, 2014 (EDA)

Item	Excisable good or service	Nature of proposed change	Current rate and classification (where applicable)	New rate
Non-alcoholic	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.	Addition of weight criterion in relation to drinks made from vegetables and fruits grown locally	Fruit juice and Vegetable juice except juice made from at least 30% pulp from fruit and vegetables grown in Uganda 12% or UGX 250 per litre, whichever is higher	10% or UGX 150 per litre, whichever is higher
	Any other non-alcoholic beverage locally produced (other than non-alcoholic beverages not including fruit or vegetable juice) made out of fermented sugary tea solution with a combination of yeast and bacteria	Reduction in excise duty rates per litre	12% or UGX 250 per litre, whichever is higher	10% or UGX 150 per litre whichever is higher
	Mineral water, bottled water and other water purposely for drinking	Introduction of duty rate per litre	10%	10% or 75 UGX 50 per litre, whichever is higher
Cement	Cement	Cement, adhesives, grout, white cement or lime	UGX 500 per 50 kg	UGX 500 per 50 kg
Fuel	<ul style="list-style-type: none"> Motor Spirit (Gasoline) Gas oil (Automotive, light, amber for high-speed engine) 	Increase in excise duty charge	UGX 1450 per litre UGX 1130 per litre	UGX 1550 per litre UGX 1230 per litre

Excise Duty Act, 2014 (EDA)

Item	Excisable good or service	Nature of change	Current rate and classification (where applicable)	New rate
Payment Services	Payment service of withdrawals of cash provided through a payment system but does not include withdrawal services provided by a financial institution or a micro finance deposit taking institution and an agent of a financial institution.	Introduction of a new excisable service	N/A	0.5% of the Value of the transaction
Construction materials		Furnishings and fittings or locally produced materials for construction of premises and other infrastructure to a hospital facility developer whose minimum investment capital is at least USD 5 million who develops a hospital with the capacity to provide specialised medical care	Furnishings and fittings or locally produced materials for construction of premises and other infrastructure to a hospital facility developer whose minimum investment capital is at least USD 5 million and who develops a <i>national referral hospital</i> with the capacity to provide specialised medical care	Nil
		Construction materials of a manufacturer of an electric vehicle, electric battery or electric vehicle charging equipment or fabricator of the frame and body of an electric vehicle whose investment capital is at least USD 35 million in case of a foreigner or USD 5 million in the case of a citizen	N/A	Nil

Excise Duty Act, 2014 (EDA)

Item	Excisable good or service	Nature of change	Current rate and classification (where applicable)	New rate
Telecommunication Services	Incoming International calls	Incoming international calls, except calls from the Republic of Kenya, Burundi, United Republic of Tanzania , the Republic of Rwanda and the Republic of South Sudan	Incoming international calls, except calls from the Republic of Kenya, the Republic of Rwanda and the Republic of South Sudan	USD 0.09 per minute
Fermented beverages	cider, perry, mead or near beer	Any other fermented beverages including cider, perry, mead or near beer produced from locally grown or produced raw materials	Any other fermented beverages made from locally grown cider, perry, mead, spears or near beer 30% or UGX 550 per litre, whichever is higher	30% or UGX 550 per litre, whichever is higher

Stamp Duty Act, 2014

Measure	Our View	Who will be affected
Stamp duty relief or exemption on duty on nominal share capital or any increase of shares acquired by investors in a private equity or venture capital fund (regulated under the Capital Markets Authority Act)	While this amendment recognises the need for alternative financing options outside of traditional financial institutions, limiting this to only private equity or venture capital regulated under the Capital Markets may be premature. It is probably meant to serve as an incentive for locally registered funds. It aligns with changes introduced in the Income Tax Act 2021 concerning the non-recognition of capital gains and additional proposals in the same Act	Beneficiaries of financing from private equity or venture capital funds
Investment incentive – The Act exempts manufacturers of electric vehicles, electric batteries, electric vehicle charging equipment, or fabricators of electric vehicle frames and bodies from paying stamp duty subject to meeting specific requirements	Exempting manufacturers in the electric vehicle industry from stamp duty could incentivize investment and development in the electric vehicle industry. This aligns with a global shift towards cleaner energy and could benefit the environment	Companies involved in manufacturing electric vehicles or electric charging equipment
Adjustments to criteria to be met by an operator to benefit from stamp duty exemption on qualifying instruments; i. Employ at least eighty percent (80%) citizens with an aggregate wage of at least seventy (80%) of the total wage bill of the new manufacturer. ii. New and existing manufacturers should have the capacity to use at least eighty percent (80%) of locally produced raw materials	This is aimed at promoting, among others the Buy Uganda Build Uganda agenda by encouraging companies to use locally produced raw materials. This is also in line with local content requirements which require firms to use domestically-manufactured goods or domestically-supplied services to operate in an economy This could contribute to economic development and potentially reduce reliance on imported goods. Additionally, companies seeking stamp duty exemptions will be encouraged to employ a higher percentage of Ugandan Citizens. This could lead to increased job opportunities for Ugandans, potentially boosting the economy through higher wages and consumer spending	Operators of strategic investment projects
To expand the scope of hospital facility developers who can benefit from stamp duty relief. Currently this is limited to developers of a hospital to the level of a national referral hospital	This aims to encourage development, investment and growth in the healthcare sector	Investors who develop hospitals that provide specialized medical care

Tax Procedure Code Act, 2014 (TPC)

Ability for claim a deduction or obtain credit for destroyed goods

The measure

The Act introduces section 18A, which requires a taxpayer to have informed the Commissioner in writing before the destruction of goods as a pre-requisite to be able to claim a deduction or credit for goods destroyed based on;

- Damage to trading stock
- Expiry of trading stock
- Damage to manufactured stock
- Expiry of manufactured stock or
- Obsolete stock

Who will be affected

- All taxpayers with trading and manufactured stock

Our view

Currently, URA has no specific requirements under the law for a taxpayer to claim a deduction or credit for goods destroyed. However, in practice, taxpayers are encouraged to have supporting documentation in place for the write-off of any stock or to claim the deduction if the URA queries the destruction of the goods. For example, the documentation can include a letter of valuation highlighting the reduction in value of any stock due to damages to the stock

The provision has been introduced to establish criteria for claiming a deduction or credit on trading stock or manufactured goods destroyed. The above proposal ensures that the tax authority has sight of the goods to be destroyed and taxpayers are not unjustifiably claiming a deduction or credit on any destroyed stock.

This will streamline the process as taxpayers will be required to notify the URA of the goods to be destroyed instead of seeking authorization, which requires URA verification of the destruction of any stock. Our view, however, is that the notification may still have to be accompanied by details of the stock to be destroyed, such as the quantity, nature, and expiration date of the goods.

However, we note that taxpayers such as retail stores (supermarkets) and pharmacies that destroy stock more frequently will be required to be proactive and notify the Commissioner of any stock destruction, which would mean that someone within the business has this as a day-to-day function given the frequency of such destruction from perishable to expired products depending on shelf life.

Tax Procedure Code Act, 2014 (TPC)

Waiver of interest and penalty on payment of principal tax

The measure

The Act introduces section 40E which is similar to a provision introduced under the TPC Amendment Act of FY23/24 waiving any interest and penalty outstanding as of 30th June, 2023. This amendment extends the deadline for payment of the principal tax for one to enjoy the waiver to 31st December 2024.

Where a taxpayer makes part payment of the principal tax outstanding as of 30th June 2023 by 31st December 2024, the payment of interest and penalty will be waived on pro rata basis.

Who will be affected

- All taxpayers

Our view

The URA initially provided a tax amnesty to taxpayers to have their interest and penalties waived if they paid off any outstanding principal tax by 31st December 2023 and where part payment was made, the interest and penalty fees would be waived to the proportion of the principal tax paid off.

This initiative came into place to encourage all taxpayers to pay off the outstanding tax to avoid accumulating further penalties and interest on the outstanding taxes. This amendment is an extension on that previous one introduced last year especially given that there was little time given for the waiver to apply. Those who had already carried out tax reviews and established non-compliance but missed the December 2023 window have the opportunity to rectify this.

Waiver of interest and penalty on payment of principal tax ...continued

Those who were not aware of the first one have the opportunity to utilise this current one.

Introduction

Income tax

Value Added Tax

Excise Duty

Tax Procedure Code

Contacts

Tax proposals not passed by Parliament

The measures below had been proposed in the Bills tabled before Parliament but have been removed in the Tax Amendment Acts passed and pending Presidential assent.

Income Tax

- Introduction of a 5% Capital Gains Tax (CGT) on shares in a private company (not publicly traded), land in cities or municipalities (excluding one's primary residence) and rental properties (already subject to rental tax)
- Repeal of non-recognition of gains or losses in instances involving a transfer of assets between spouses.
- Amendment of section 83(1) of the ITA by to add "annuity" to the scope of international payments subject to 15% withholding tax
- Insertion of a new paragraph to section 90 of the ITA, requiring a person with related party transactions to submit transfer pricing information to the Commissioner at the time of filing returns.
- introduction of a 2% withholding tax on interest paid by resident persons, other than the Government, to third party (nonrelated party) non-resident financial institutions providing loans other than under an arrangement involving a back-to-back loan or other arrangement that is economically equivalent and intended to have a similar effect to a back-to-back loan.

Value Added Tax

- Repeal of section 7(4A)(c) of the VAT Act to remove commercial farming from the list of those who can voluntarily register for VAT, regardless of meeting the VAT registration threshold.
- Introduction of section 66A under the offences to make a withholding agent who fails to withhold tax personally liable for the amount of VAT which has not been withheld including being subjected to recovery provisions such as penal interest on unpaid tax.

Amendments to the Third Schedule – Zero-rated goods and services

Repealed

1. Repeal of zero rating on the supply of seeds, fertilizers, pesticides and hoes.
2. Definition of '**pesticides**' moved from the Third schedule to the Second Schedule.

Tax proposals not passed by Parliament

Excise Duty

Item	Excisable good or service	Nature of proposed change
Spirits	Undernatured spirits	Alcoholic strength by volume of 80% OR made from locally produced raw material: 60% or UGX 5000 per litre, whichever is higher
Fuel	<ul style="list-style-type: none">Motor Spirit (Gasoline)	Increase in excise duty charge from UGX 1450 per litre To UGX 1550 per litre

Note worthy cases

Uganda Revenue Authority v Mukwano Enterprises Limited (Civil Appeal 55 of 2019) [2023] UGCommC 162 (Judgement 30 December 2023)

Background

Mukwano Enterprises Limited, a property and real estate development business that buys leases on land, constructs or renovates commercial or residential buildings on the leased properties and rents them out for profit was audited by the URA for which premium and rent payments treated as tax deductible expenses were disallowed on the basis of being capital in nature and therefore non-deductible. The company objected to the assessment and subsequently applied to the Tax Appeals Tribunal (TAT) for judicial review. The TAT in agreeing with the taxpayer held that the rent and premiums paid were tax deductible expenses. The URA appealed the TAT decision.

Issue

Whether the TAT erred in law in holding that the rent and premium paid by the Respondent was a revenue expenditure and therefore deductible as allowable expenses.

Court Ruling

The Commercial Court in arriving at its judgement considered what amounted to a capital and revenue expenditure. It concluded that a capital expenditure was one typically incurred in acquisition, extension or improvement of assets whereas revenue expenditure was a routine business expenditure. Expenses captured under section 22(2) of the ITA (nondeductible) that were capital in nature were those that were a once for all payment intended to provide a long-term benefit to the business and not a recurrent expenditure.

The Court in recognizing that while on the one hand land acquisition was treated as a capital expenditure since land is a fixed asset, where a taxpayer deals in real estate, the interest in land is circulating capital for such a taxpayer because once acquired, the interest is sold for profit. As such all money spent to acquire such interest in real estate is a revenue expenditure.

However, it went on to make a distinction based on the company's business i.e. they did not simply buy and sell the land but rather retained the same for the duration of the leases. They developed them and received rent from the developed properties till the lapse of the lease. This was reinforced by the company's financial statements which disclosed these as 'non-current assets'. The amortisation by the respondent of the premiums was indicative of their non-recurrent nature. The amortization of expenses automatically infers that such expenses are a one-time capital expense which need to be spread out over the useful life of the fixed asset and written off gradually.

The Court concluded that while the premiums were capital in nature, the rent payments were of a revenue nature and therefore tax deductible.

Our view

This decision confirms the ruling in the case of *Vivo Energy Uganda Ltd v Commissioner Land Registration & 4 Ors (CIVIL APPEAL No.4 OF 2019) [2020] UGHCCD 205 (23 September 2020)* which also considered the question of what amounts to a capital and revenue expenditure and the deductibility for tax purposes of amortisation of leases.

Introduction

Income tax

Value Added Tax

Excise Duty

Tax Procedure Code

Other

Contacts

Note worthy cases

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Note worthy cases

Uganda Revenue Authority Versus Agaba Henry, High Court Civil Appeal No. 32 of 2021 (Judgement 29 December 2023)

Background

This case involved the valuation method used by the URA in determining the taxes payable by an individual who purchased and imported a secondhand car. Instead of using the transaction value, the URA on the basis that the East African Community (EAC) Administrative Ruling of Valuation of Used Goods of 13th December 2013 prescribed the fallback method as the applicable customs valuation method for all used cars imported into the EAC, uplifted the value. The importer made an application to the TAT. In its ruling, the Tribunal agreed with the importer that URA was not justified in uplifting the vehicle's customs value. This was on the basis that in construing Section 122(5) and (6) of the EACCMA and the Administrative Ruling, for customs to apply the fallback method, there must be actual as opposed to perceived complexities, in applying the initial five valuation methods. URA appealed the TAT decision.

Issue

- Whether the TAT erred in law in disregarding Section 122(6) of the East African Community Customs Management Act
- Whether the TAT erred in law in not taking into account the Administrative Ruling of Valuation of Used Goods of 2013
- Whether the TAT erred in law in holding that the importer's vehicle qualified for the transaction value method of valuation

Court Ruling

Section 122 and the 4th Schedule of the EACCMA relegate the fallback method to be the residuary method of customs valuation. The fallback method is a method of last resort only applicable when all others have failed. An ideal case in which the fallback method could apply is one in which the importer lacks any purchase documents for the imported good. Administrative rulings are made under delegated legislative power pursuant to Section 122(5) of the EACCMA which expressly anticipates that administrative rulings of general application may be made and published to give effect to the Fourth Schedule. Delegated legislation cannot exceed the purview of the parent Act. When delegated legislative power is exercised beyond the scope prescribed or anticipated by the parent Act, the resultant subsidiary legislation is null and void to the extent of its inconsistency with that parent Act.

In accordance with Paragraph 2 of the 4th Schedule of the EACCMA, the only criterion for the transaction value method to apply is the presentation of genuine proof of the actual price paid or payable for the good.

Our view

One of the most common issues in customs matters is that related to valuation of goods. For used motor vehicles especially it is known, and begrudging accepted by importers that the value used for customs purposes is not the transaction value but rather values determined by customs based on model of car and year of manufacture. All we can hope for at this point is that with another court decision going against URA in respect to the priority of the valuation methods, there can be a reconsideration in terms of application of the provisions of the EACCMA.

Note worthy cases

Absa Bank Uganda Limited v Uganda Revenue Authority (TAT Application 57 of 2021) [2023] UGTAT 8 (Judgement 22 November 2023)

Background

Following a tax audit, the URA raised assessments for non-declaration of WHT on charges paid to corresponding banks (Nostro charges) and non-declaration of VAT on initial customer deposits to suppliers for leased items. In addition, it disallowed interest expense under Section 47 of the Income Tax Act. The taxpayer applied for judicial review to TAT of the matters giving rise to these assessments.

Issue

- Whether the Bank was liable to pay the taxes assessed by the URA

Court Ruling

Treatment of Nostro charges

The TAT agreed that the payments made by the Bank to corresponding banks were in respect of business decisions for transactions between the banks as they related to provision of services could be considered as management charges under section 78 of the ITA. Having considered the nexus between, the charges to the foreign banks and the liability to pay tax under the source rules (section 79), the TAT concluded that as the bank was the one effecting payment on its client's behalf, it had the obligation under section 120 to withhold the 15% tax.

Applicability of VAT on initial customer deposits

In determining whether VAT was applicable on the initial deposit made by a customer to the supplier under capital asset financing consideration was made to the fact the supplier of the asset issues the bank with an invoice for 100% of the purchase value even though the bank finances only a portion of the same. The TAT concluded that because the bank was claiming 100% input VAT on the purchase invoice from the supplier, it should also account for VAT on the full payment made by the customer including the initial deposit which was not financed by the bank

Right to claim a deduction of an interest expense

In considering whether interest expense accrued on customer accounts was tax deductible even though withholding tax was paid on maturity (when payment was made to the customer), the TAT considered section 42 dealing with accrual basis, section 47 on timing of deferred interest expense and section 2(xx) which defines payment.

It concluded that when a taxpayer uses the accrual method, the law allows that taxpayer to incur expenditure when it is payable by the taxpayer. Therefore, a taxpayer can incur an interest expense when it is payable under the accrual accounting system.

In this particular instance however, the Court found that the bank, which was using an accrual accounting method, contradicted itself because it also allowed paid interest as allowable deductions using the cash-based accounting method.

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Introduction

Income tax

Value Added Tax

Excise Duty

Tax Procedure Code

Contacts



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