Uganda's proposed tax changes for the year 2018/2019

THE STORY BEHIND THE BILLS

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1 Introduction

As the current financial year draws to a close on 30th June 2018, the country waits with bated breath the budget speech for the financial year 2018/19 to be read by 15th June 2018. The budget framework paper containing government budget strategy and the recently published tax bills being deliberated by Parliament before passage into law are giving some clues on what the final budget document may contain.

Government spending for the financial year 2018/19 will increase from 19 trillion to over 22 trillion with significant outlay on public infrastructure and related interest payments. The country's resource envelope must however rise to achieve this expenditure. Tax collections for the financial year 2018/19 are projected to increase from 14 trillion to 16 trillion. The projections notwithstanding, we would like to note that the actual tax collections for the financial year 2017/2018 are underperforming.

The ratio of Uganda's tax collections as a percentage of Gross Domestic Product (GDP) has stagnated at under 13% for the past 5 years against the International Monetary Fund (IMF) recommended benchmark of 24%.The Government hopes to increase this ratio to 14% in the coming year but cynics have their doubts. Tax impositions or increments in the past have not necessarily improved this ratio and a viewpoint is emerging that government may have to invest in changing the structure of the economy. Though reforms in tax administration over the years have been solid and lauded, they are yet to yield the expected results.

Draft bills with tax proposals aimed at increasing domestic tax revenues are now in the public domain. These are:

- The Value Added Tax (Amendment) Bill, 2018;
- The Income Tax (Amendment) Bill, 2018;
- The Excise Duty (Amendment) Bill, 2018;
- The Lotteries and Gaming (Amendment) Bill, 2018;
- The Stamp Duty (Amendment) Bill, 2018;
- The Tax Appeals Tribunal (Amendment) Bill, 2018;

- The Tax Procedures Code (Amendment) Bill, 2018;
- The Traffic and Road Safety Act 1998 (Amendment) Bill, 2018;

Proposed changes to the East African Community Customs Management Act, 2004 (EACCMA) are yet to be finalized by the East African Community Secretariat. We will share these once they are available in the public domain.

These bills will go through 3 stages of reading in Parliament before assent to by the President to have the force of law. The commencement date for the proposed tax changes is 1st July 2018 though based on past experience the legislative process of enacting tax laws usually goes past 1st July. We therefore anticipate that a Tax and Duties (Provisional Collection) Order may be issued by 1st July 2018 in case the bills are not yet finalized dealing with the transitional period. This order confers the authority of law on these bills for a period of 4 months until enactment. It is also possible there could be some changes to the final Acts once passed.

This publication provides an expansive discussion of the proposed amendments affecting both direct and indirect taxes for the financial year 2018/19 and where possible highlighting their implications. Though the introduction of a 'social media tax' and the prohibition of importation of cars older than 8 years from the date of manufacture have attracted greater public attention, there are other sweeping changes that these bills propose.

2 Snapshot of the proposed tax changes

In this snapshot below, we provide an outline of the proposed tax changes for the financial year 2018/19 whose detail and implications this publication discusses.

Tax head and issue	Proposed amendment
Value Added Tax (VAT)	
Withholding (WHT) VAT on payments to registered vendors	• Enterprises and persons mandated by the Finance Minister must deduct 50% of the VAT payable to VAT registered persons
WHT VAT on payments to non-registered vendors	• Enterprises and persons mandated by the Finance Minister must deduct 50% of the VAT that would be payable by non-registered persons if registered for VAT whose sales value for the transaction in question exceed Uganda shilling (Ushs) 37.5 million
Islamic financial transactions	• The Finance Minister will make rules that will determine the VAT treatment of supplies made in Islamic financial transactions
Definition of electronic services	• There is a new definition provided for electronic services broadening the reach of electronic services considered to be supplied in Uganda
Restriction on deemed VAT status	• VAT incurred on supplies of passenger automobiles and entertainment for extractive sector and donor funded projects will no longer enjoy the deemed VAT paid status
Filing of tax returns	• A provision requiring the filing of VAT returns which had been deleted and moved to the Tax Procedures Code Act (TPC) is now reinstated in the VAT Act

Tax head and issue	Proposed amendment
Due date of payment of tax	• A provision setting out the timing of VAT payments which had been deleted and briefly alluded to by the TPC is now reinstated in the VAT Act • The Commissioner General of the Uganda Revenue Authority (URA) may ask immigration authorities to prevent indebted taxpayers from leaving the country if there is reason to believe that they are leaving Uganda to avoid paying taxes • The Finance Minister may, by regulations, prescribe the terms and conditions of payment of VAT on plant and machinery though there are current regulations on the same
Capping of the interest payable	• Interest payable on overpaid taxes or late refunds by the URA will not exceed the principal VAT repayable
International agreements	• Provisions relating to the treatment of VAT issues set out in international agreements are now consolidated. VAT tax reliefs or benefits thereof may only take effect upon the ratification of the agreement by Cabinet and upon approval by Parliament
Public International Organisations	• The list of public international organisations under the First Schedule to the VAT Act has been expanded to include the Africa Trade Insurance Agency
List of exempt supplies	• The Second Schedule to the VAT Act that provides for VAT exempt supplies has been expanded to include 8 additional items
Definition of educational materials	• The definition of educational materials qualifying for VAT zero rating has been amended restricting its reach
Income Tax Act (ITA)	
Income of Savings and Credit Co-operative Organisations (SACCOS)	• The SACCO income exemption from tax granted in the financial year 2017/18 is now revoked
Developers of industrial parks or free zones	• Investments of at least United States Dollars (USD) 200 million in developing an industrial park or free zone will enjoy tax holiday for a period of ten years from the date of commencement of construction
Operators in industrial parks or free zones	• Investments of at least USD 30 million (Foreigners) or USD 10 million (locals) as an operator in an industrial park or free zone will enjoy a 5 year tax holiday on income derived from within and outside of the free zone from the date of commencement of business
Interest deduction	• Interest incurred on mortgages from financial institutions by individuals to acquire or build property to generate rental income is deductible for determination of the income tax payable by individuals
Thin capitalisation rules	• Thin capitalisation rules have been repealed and replaced by new rules that cap the deductible interest in any year of income to 30% of Earnings Before Interest, Tax, Depreciation and Armortisation (EBITDA) and spreads out the excess interest over the subsequent 3 years

Tax head and issue	Proposed amendment
Returnable containers	• Returnable containers will not enjoy minor capital expenditure allowance but will be entitled to an annual depreciation deduction to be determined by the Commissioner General of the URA
Alternative minimum tax	• Alternative minimum taxation for taxpayers with unrelieved tax losses for a period of 7 years of income introduced. After the 7th year of unrelieved tax losses, tax will be calculated at the rate of 0.5% of the taxpayers' gross annual turnover
Islamic financial transactions	• The Finance Minister has been given powers to make rules determining the tax accounting for Islamic financial transactions
Corporate reorganisations	• Corporate reorganisations involving a change in ownership by 50% within 3 years shall be treated as involving a disposal and acquisition of all assets and liabilities
Definition of immovable property	• Immovable property now includes any intangible asset which is a business asset or any part of the business
Mining exploration right	• Mining exploration rights have been amended to include retention licenses
International agreements	• The Inter-Governmental Agreement on the East African Crude Oil Pipe Line is now an international agreement
Farm out agreements	• The definition of farm out has been revised to include both the partial and full divesture of interest in a mining or petroleum agreement
Return of income	• A provision requiring the filing of Income Tax returns and prescribing the level of detail to comply with has been reintroduced under section 92A of the ITA. The provision setting out the requirements for filing income tax returns had been repealed and moved to the TPC
Agricultural supplies	• Payments for agricultural supplies by designated withholding agents will be subjected to 1% WHT of the gross value.
Telecommunication commissions	• Telecoms to withhold tax at 10% on payment of commissions to agents. The 10% WHT will be a final tax on the income of the agents
Schedule of exempt income	
Excise Duty Act	
Over the top services	• Data used for social media sites will be subject to excise duty of UShs 200 per day
Time of supply of excisable services	• Rules prescribing the timing of the supply of excisable services and over the top services have been made
Remission of excise duty on exports	• Excise duty incurred on the export of goods that have been exported can be remitted subject to the satisfaction of the Commissioner General of the URA
General penalty	• General penalty is set out for the failure to apply for a license prescribed under the Excise Duty Act

Tax head and issue	**Proposed amendment**
New or enhanced rates of excise duty	• New or enhanced duty rates, but most notable, is the excise duty introduced on mobile money withdraws and the excise duty on data for accessing social media sites
Exemptions	• Inputs of certain strategic sector items have been exempted from excise duty
Gaming Act	
Cap to interest payable	• Interest payable on any unpaid taxes may not exceed the underlying principal tax amount
Stamp Duty Act	
Islamic financial transactions	• Instruments executing Islamic financial transactions shall be chargeable with duty prescribed by the Finance Minister
New rates	• Nominal rate of stamp duty increased fromUShs10,000 to UShs15,000
Exemptions	• Broad stamp duty exemptions for investments in the tourism and health sector have been introduced
Tax Procedure Code Act	
Returns for gaming and lottery	• Weekly filing of returns and monthly filing of returns
Tax waiver	• Tax waivers for tax commitments that were made by the government
Electrical Fiscal Devices	• Introduction of electronic fiscal devices as is the case in Kenya and Tanzania
Tax Appeals Tribunal (TAT)	
Mediation rules	• The TAT Act is amended to provide for mediation in accordance with the Judicature (Mediation) Rules, 2013
Additional powers	• In addition to the powers to make orders as to damages, interest or any other remedy against any party, such orders may be enforceable in the same manner as an order of the High Court
Registrar powers	• The Registrar of the TAT is to be assigned specific powers to hear and determine interlocutory applications away from an application filed with a tribunal, to tax a bill of costs and to mediate any matter referred to him/her
The Traffic and Road Safety Act, 1998	
Prohibition on importation	• The Traffic Road and Safety Act now prohibits the importation of motor vehicles which are eight years or more from the date of manufacture though creates exemption for most commercial vehicles
Registration fees	• Prescribes increased registration fees for different classes of motor vehicles
Environment levy	• The amendment prescribes a levy on motor vehicles that are five years or more old from the date of manufacture

3 The Value Added Tax (Amendment) Bill, 2018

The Value Added Tax (Amendment) Bill, 2018 proposes changes to the VAT Act Cap 348 some of which leave some shade of uncertainty.

a. Withholding VAT introduced

Section 5 of the VAT Act is amended to renumber the current provision to subsection 1 but also introduce two other subsections. Subsection 2 introduces WHT VAT requiring taxpayers designated by the Finance Minister to deduct half of the VAT payable to their vendors and remit the same to the URA.

WHT VAT in accordance with subsection 3 must be deducted from VAT registered persons or persons required to register for VAT with qualifying sales equal to or more than Ushs 37.5 million.

Comments

- Uganda follows in the path of Kenya that re-introduced WHT VAT about 2 years ago. The WHT VAT rate in Kenya is however 6%.
- Taxpayers making taxable sales but reluctant to register for VAT may reconsider their position in light of this amendment.
- Though not explicitly stated, we believe that the withheld VAT can be offset against the vendor's future output VAT. Elaborate guidelines on how to account for this WHT VAT should be issued to address ambiguities.
- By deducting the VAT ordinarily payable to the vendors then conveyed to the URA, taxpayers would fund the VAT payable to the URA assuming they do not have input VAT to offset against thereby increasing their financing costs.
- While this measure accelerates government revenues and potentially encourages reluctant taxpayers to register for VAT, it may burden tax compliant persons funding VAT payments to the government. Creating exception for these should be considered.
- Strictly reading the provisions of the law, VAT registered taxpayers may still be able to avoid WHT VAT by ensuring that they don't bill more than Ushs 37.5 million for each individual transaction.
- WHT VAT is likely to increase the refunds due to taxpayers. VAT refunds currently delay and usually refund applications by taxpayers trigger comprehensive tax audits.

b. Tax treatment of Islamic finance products

Section 12 of the VAT Act providing for the VAT treatment of mixed supplies (exempt and VATable supplies) has been amended introducing a new subsection giving power to the Minister responsible for Finance to make regulations determining the tax treatment of supplies made in islamic financial transactions.

Comments

- The supply of conventional financial services is exempt from VAT. Applying normal VAT principles to Islamic finance products can get complicated given islamic financial transactions are typically based on identifiable and tangible underlying assets and involve risk sharing between the investor and investee. Some tax authorities have attempted to create a reasonable level playing field between the two. Unfortunately, it is not easy to achieve without added complexity to negate the additional costs that islamic finance may suffer if the normal rules of VAT apply.

c. Place of supply of services

Section 16(5) (a) of the VAT Act is amended providing a new definition of electronic services broadening their reach to be deemed supplied in Uganda. Electronic services include (not exhaustive) the following when provided or delivered remotely:

- Websites, webhosting or remote maintenance of programmes and equipment;
- Software and the updating of software;
- Images, texts and information;
- Access to databases;
- Self-education packages;
- Music, films and games including games of chance;
- Political, cultural, artistic, sporting, scientific and other broadcasts and events including television.

Comments

- Determining the place where services are performed is key as VAT is ordinarily chargeable if services are supplied or consumed in Uganda.

d. Restriction of items on which VAT is deemed paid

Section 24 of the VAT Act is amended restricting items on which VAT is deemed paid in respect of donor funded and extractive sector projects. VAT incurred on passenger automobiles and entertainment is excluded from the deemed VAT paid regime going forward. Passenger automobile is defined as a motor vehicle designed solely for the transport of persons with a seating capacity of not more than eight persons while entertainment is defined as the provision of food, beverages, tobacco, accommodation, amusement, recreation, or hospitality of any kind.

Comments

- Uganda introduced a deemed VAT paid regime for the extractive sector and donor funded projects about 2 years ago widely lauded by stakeholders as mitigating costs during the investment phase of extractive sector projects.
- The amendment in respect of accommodation for the extractive sector however needs to be rethought. Providing accommodation in remote areas meeting the stringent health, safety and environmental standards for the extractive industry is a critical yet expensive undertaking. The imposition of 18% VAT (cash outlay) will escalate project accommodation costs.

e. VAT returns

The requirement to file VAT returns and the level of detail thereof has been reintroduced under section 31A of the VAT Act. A similar provision in the VAT Act had been struck out and moved to the TPC.

Comments

- Though this amendment seems to duplicate section 16 of the TPC that already set out the requirement to file VAT returns, it is more elaborate on the information to include in the return.

f. Due date of VAT payments

A provision setting out the timing of payment of taxes under the VAT Act has been reintroduced under section 34A. VAT is payable:

- In the case of a taxable supply by a taxable person in respect of a tax period, on the date the return must be lodged;

- In the case of an assessment issued under the VAT Act, on the date specified in the notice of assessment;
- In any other case, on the date the taxable transaction occurs as is determined under the VAT Act.

Section 34 A (8) further empowers the Finance Minister to prescribe by regulations the terms and conditions of payment of VAT on items of plant and machinery. Regulations providing for the deferment of VAT on items of plant and machinery are however already in place.

Comments

- Though the TPC has a provision on the timing of tax payments, it refers back to the primary law as the determinant of the date on which tax is payable. The provision in the VAT law specifying the timing of payment of taxes had been removed thereby creating a void.
- There were lean provisions in the TPC regarding when tax payments could be made and the TPC kept making reference to the primary legislation.
- VAT deferment system on items of plant and machinery is similarly maintained.

g. Interest on tax refunds and payments

Section 44 of the VAT Act is amended to cap interest payable on overdue payments under the VAT Act by the URA.

Comments

- This amendment harmonises the position of the law for both the URA and taxpayers. Interest payable by taxpayers and URA for delayed payments under the VAT Act may not exceed the principal tax payable or repayable. The cap on interest payable previously applied only to taxpayers.

h. International Agreements

Section 81 of the VAT Act has been repealed and its provisions thereof consolidated with section 76 of the VAT Act that deals with VAT issues under international agreements. Where an international agreement entered into between the government of Uganda and that of a foreign country or an international organisation provides tax relief to the intended recipient, the provisions relating to tax relief or benefits take effect upon the ratification of the agreement by Cabinet and upon approval by Parliament.

Comments

- It is generally understood that in the hierarchy of laws, validly subsisting international agreements take precedence over domestic law. There are however lingering questions yet to be addressed by courts in Uganda whether any domestic tax provisions limiting the full application of the benefits conferred upon by international agreements can stand the test of the law.
- Further, international treaties create obligations on states upon becoming signatories, regardless of the domestication process of such an international treaty. Creation of Parliamentary approval of obligations incurred by a state under treaty law undermines the spirit of international law.

i. Amendment to the First Schedule to the VAT Act

The first schedule to the VAT Act has been amended adding the Africa Trade Insurance Agency to the list of public international organisations.

Comments

- Diplomatic agencies and public international organisations listed in the first schedule to the VAT Act are able to lodge VAT refunds for the input VAT that they incur for their operations subject to restrictions in the law.

j. Amendment to the Second Schedule to the VAT Act

8 items have been added to the VAT exempt supplies schedule. These are:

- The supply of Bibles and Qurans;
- The supply of services to conduct a feasibility study, design and the construction to a developer of an industrial park or free zone committing at least USD 200 million;
- The supply of earth moving equipment and machinery for development of an industrial park or free zone to a developer committing at least USD 200 million;
- The supply of construction materials for development of an industrial park or free zone to a developer committing at least USD 200 million;
- The supply of services to conduct a feasibility study and design; the supply of locally produced materials for the construction of a factory or a warehouse and the supply of locally produced raw materials and inputs or machinery and equipment to an operator within an industrial park, free zone or an operator with a single factory or other business outside the industrial park or free zone who meets the following requirement:
    - a minimum investment capital of USD 30 million in the case of a foreigner or USD 10 million in the case of a citizen;
    - carries on business in agro processing, food processing, medical appliances, building materials, light industry, automobile manufacturing and assembly, household appliances, furniture, logistics and ware-housing, information technology or commercial farming
    - seventy percent of the raw materials used are sourced locally, subject to their availability;
    - directly employs a minimum of one hundred citizens; and
    - provides for substitution of thirty percent of the value of imported products
- The supply of services to conduct a feasibility study, design and construction; the supply of locally produced materials for construction of premises, infrastructure, machinery and equipment or furnishings and fittings which are not available on the local market to a hotel or tourism facility developer whose investment capital is USD 15 million with a room capacity exceeding one hundred guests;
- The supply of services to conduct a feasibility study, design and construction; the supply of locally produced materials for the construction of premises and other infrastructure, machinery and equipment or furnishings and fittings to a hospital facility developer whose investment capital is at least USD 10 million and who develops a hospital at the level of a national referral hospital with capacity to provide specialised medical care;
- The supply of movie production.

Comments

- Contrary to common perception, exemption from VAT does not necessarily result in reduced prices locally unless the supplies in question are imported directly. This is because the local suppliers are not able to claim the input VAT they suffer in the course of their business. Inevitably, the cost of this irrecoverable input VAT is passed onto the buyer so the saving may not be as big as it might at first sight seem.
- The conditions given to qualify for this VAT exemption are stringent, convoluted and ambiguous with deeper scrutiny.

k. Amendment of the Third Schedule to the VAT Act

The definition of educational materials in the Third Schedule has been amended to mean locally produced materials which are suitable for use in public libraries or for educational services as defined in paragraph (2) (a) of the Second Schedule to this Act, and which shall be prescribed by the Finance Minister by regulations.

Comments

- We are aware that the URA is currently locked in tax disputes with some taxpayers regarding the reach of educational materials that enjoy zero rated status and believe this amendment is in response to this.

4 The Income Tax (Amendment) Bill, 2018

The Income Tax (Amendment) Bill, 2018 proposes changes to the Income Tax Act 340 (ITA) that are likely to receive mixed reactions from taxpayers as we discuss below.

a. Income exempt from taxation

Incomes of the following are now exempt from income tax under section 21 of the ITA.

- A developer of an industrial park or free zone committing at least USD 200 million investment capital is exempt from income tax for a period of ten years from the date of commencement of construction.
- A foreigner committing at least USD 30 million investment capital as an operator in an industrial park or free zone or other business outside the industrial park or free zone and a Ugandan citizen committing at least USD 10 million investment capital is exempt from income tax for five years from the date of commencement of business.

Comments

- This proposed fiscal incentive may not necessarily result in the development of free zones or industrial parks. The capital requirements to qualify for this incentive are considerable and higher than what Kenya and Tanzania prescribe for their special economic zone enterprises to qualify for incentives.
- The cost of power and credit somewhat blemish Uganda's investment environment increasing the cost of doing business. It is imperative the government addresses these issues which would create a more competitive environment of doing business and making these fiscal incentives more attractive.

b. Revocation of the exemption for SACCO income

The 10 year tax holiday for incomes derived by SACCOs that had been given last year is proposed to be repealed this year.

Comment

- Whilst announcing this tax holiday last year, the Finance Minister noted that he wanted every Ugandan to belong to a financial institution of some sort. He was keen to encourage Ugandans especially in rural areas to save with financial institutions. It is not clear what caused this sudden change of position to revoke the tax exemption.

c. Interest incurred on building generating rental income

Section 22 of the ITA is amended to provide for a deduction of interest on a mortgage from a financial institution incurred by an individual to acquire or construct premises that generate rental income.

Comments

- This is a commendable measure that should also be extended to interest incurred on building or buying principal residential houses as is the case in Kenya. Deductible expenses for individual taxpayers deriving rental income prior to this proposed interest deduction were capped to 20% of the gross rental revenues.
- This interest deduction is only extended to loans procured from financial institutions which is narrowly defined in the ITA yet similar loans could be obtained from alternative based lending firms not necessarily financial institutions within the meaning of the ITA.

d. Restriction on interest deductions

The amendment on the restriction of group interest deductions represents a radical departure and adopts the proposals espoused in Base Erosion Profit Shifting (BEPS) Action 4. Section 89 of the ITA that provided general thin capitalisation rules capping the deductibility of interest payments by group entities to a prescribed debt equity ratio has been repealed.

Section 25 of the ITA is now amended to provide that the, the amount of interest deductible by group entities in any year of income shall not exceed 30% of the tax earnings before interest, tax, depreciation and amortisation (EBITDA).Taxpayers whose interest exceeds 30% of EBITDA may carry forward the excess interest for not more than three years and the excess interest shall be treated as incurred during the next year of income.

Comments

- In the final report on BEPS Action 4, the Organisation for Economic Cooperation and Development (OECD) recommends that countries implement a “fixed ratio” rule that would limit net interest deductions claimed by an entity (or a group of entities operating in the same country or not) to a fixed percentage of earnings before interest, taxes, depreciation and amortization (EBITDA).

  Beyond this basic framework, the final report also recommended that countries consider the following: (i) adopting an ‘equity escape’ rule, which allows interest expense so long as an entity’s debt to equity ratio does not exceed that of its worldwide group (ii) providing for carry forward and or carry back of disallowed interest expense and / or unused interest capacity.
- At the right gearing levels, debt financing is most optimal to finance business growth. While some taxpayers can pursue aggressive tax planning using interest payments to erode their taxable base, many capital projects including the impending crude oil development will be funded by way of project finance. Project finance is the customary means of financing these projects and therefore limiting interest deductions can interfere with the economics of these projects.

e. Minor capital expenditure

Section 26 of the ITA is amended to exclude returnable containers from the category of assets qualifying for minor capital expenditure. Instead, bottlers will be allowed a deduction of an amount representing the diminution in value of returnable containers as the commissioner may determine.

Comments

- Section 26 of the ITA allows taxpayers to deduct the cost of individual capital assets bought in a year of income not exceeding Ushs 1,000,000.The cost of purchasing returnable containers collectively constitutes a big cost to the bottling companies. It remains to be seen the diminution rates that the Commissioner will provide in exercise of the powers under this amendment.

f. Treatment of tax losses

Section 38 of the ITA is amended so that taxpayers with carried forward tax losses for 7 consecutive years of income pay income tax at a rate of 0.5 percent of the gross turnover for every year of income in which the loss continues after the seventh year.

Comments

- With this amendment, Uganda follows in the path of Tanzania that levies an alternative minimum tax of 0.3% of annual turnover in the next year after 3 years of successive tax losses. Kenya has a cap on perpetual carrying forward of tax losses but does not impose an alternative minimum tax.
- There are unfounded concerns amongst some circles that business ventures cannot sustainably operate for more than 7 years of making accounting and tax losses. This is infact the case with many capital projects that have a longer term profile of recouping their investment.
- It is not clear whether the tax losses at hand by the 7th year would be forfeited by the taxpayer. Capital projects being the sort of investments that Uganda requires now will be adversely affected by this amendment unless exceptions are created.

g. Tax accounting for Islamic financial transactions

A new provision in section 55 A is introduced in the ITA allowing the Finance Minister to make regulations for the tax accounting of islamic financial transactions.

Comments

- In many countries, the term islamic finance does not appear in tax legislation. For tax purposes, depending on the circumstances, transactions which are structured to be Shari'a compliant may or may not be treated like the conventional financial transactions, which are similar in substance. We await to see whether the rules relating to islamic financing that are to be enacted will depart materially from the tax accounting rules applicable to conventional financing transactions.

h. Change in control provision

Section 75 of the ITA is amended to tax gains that arise on change in control. Enterprises other than individuals, a government, a political subdivision of a government and listed institutions that change their ownership by 50% or more, within a period of 3 years, will be deemed to have realised their assets and liabilities on the date of change of control. Such sales will be deemed to take place at market value. Immediately after the change, the enterprise is also treated as having re-acquired the assets and liabilities deemed to have been sold at market value.

Comments

- Uganda follows in the path of Tanzania that introduced a similar amendment in 2012. This amendment will have far reaching implications on merger and acquisition transaction as there is potential to tax the same transaction twice though in different hands. The party deriving gains on disposal of interest of more than 50% will pay capital gain tax as well as the company in case of a gain arising as a result of the change in control rules.
- This is a complex amendment that tax payers will grapple with operationally unless all questions around it are answered.

i. Definition of immovable property

The definition of immovable property in section 78 of the ITA is expanded to include any intangible asset which is a business asset or any part of the business.

j. International agreements

Section 88 of the ITA gives precedence subject to some limitations the provisions of any international agreement entered into between the government of Uganda and the government of a foreign country or other foreign country. Section 88 is amended giving the inter-Governmental Agreement on the East African Crude Oil Pipe Line the status of an international agreement.

Comments

- International agreements take precedence over domestic law in the hierarchy of laws subject to some limitations imposed by domestic legislation which we predict will be a subject of adjudication in the future.
- Investment in the petroleum industry is long term, large scale and upfront, which raises concerns for investors with regard to fiscal changes. This agreement likely contains fiscal incentives and assurances that may not be overridden by the provisions of the domestic tax law even if the provisions in the ITA are changed.

k. New definition of a mining exploration right

There is a new definition of mining exploration right under section 89A of the ITA that now incorporates retention licenses. Retention licences are common in the mining sector and allow such license holders to keep the blocks they have discoveries until such time it is commercially viable to proceed to development and production.

l. Application of the provision relating to farm outs

Section 89 GE is amended to expand farm outs in the extractive sector to include both the partial and complete divesture of interests in a mining or petroleum agreement.

Comments

- Farm outs or assignments are common in the extractive sector as a means of growing the sector by way of capital raising and risk sharing. Section 89GE provides for the rules of taxation of farm outs which still fall short of best practice by reason of taxing funds earmarked for work obligations.

m. Return of income

A provision requiring the filing of Income Tax returns and prescribing the level of detail to comply with has been reintroduced under section 92A of the ITA. The provision setting out the requirements for filing income tax returns had been repealed and moved to the TPC.

Comments

- Though this amendment seems to duplicate section 16 of the TPC that already sets out the requirement to file income tax returns, it is more elaborate on the information to include as well as the process of preparing the return.

n. Payments for agricultural supplies

A new provision in section 118 D of the ITA obliging persons making payment for agricultural supplies in excess of one million shillings to withhold tax on the gross amount of the payment at rate of 1% if the payer is designated by the Finance Minister is introduced. Previously a higher rate of 6% applied.

o. Commissions paid to service providers on airtime commissions and mobile money

A new provision in section 118E of the ITA requiring telecommunications service providers making payments of commissions for airtime distribution or provision of mobile money services to withhold tax on the gross amount of the payment at the rate of 10% is introduced. This will be a final tax. This measure is intended to widen the tax base and capture hard to tax vendors in the informal sector.

p. Amendment of the first schedule to the ITA

The list of organisations included in the first schedule to the ITA has been expanded to include the African Trade Insurance Agency. Public International organisations that are listed in this schedule are exempted from income tax.

5 The Excise Duty (Amendment) Bill, 2018

The Excise Duty (Amendment) Bill, 2018 proposes amendments to the Excise Duty Act, 2014 some of which have attracted widespread public scrutiny and also likely to collect significant tax revenues for the government.

a. Social media tax

Section 4 of the Excise Duty Act is amended requiring telecommunications service operators providing data to access over the top services to account for and pay excise duty on the access to the over the top services. The tax payable is Ushs 200 per day. Over the top services are defined to mean the transmission or receipt of voice or messages over the internet protocol network and includes access to virtual private networks but does not include educational or research sites prescribed by the Finance Minister by notice in the Gazette.

Comments

- Though this new tax is a low hanging fruit for the government, it remains to be seen whether the government will be able to obtain technology to track down the use of social media as a means of verifying the correctness of the taxes being declared.
- This amendment has not been received well by activists who consider this to be a potential clampdown of their liberal rights.
- While government revenues may increase as a result of this tax imposition, it is a worrisome trend that instead of devising strategies to include more people in the category of taxpayers, the government increases taxes on the minority lot that is already burdened by the existing taxes.

b. Time for supply of an excisable service

Section 4 (4) providing for the timing of the supply of excisable services has been amended. A person providing an excisable service becomes liable to pay excise duty on that service on the earlier of the following—

(a) the date on which the performance of the service is completed;

(b) the date on which payment for the service is made; or

(c) the date on which an invoice is issued;

c. Time of supply of over the top services

Section 4 of the Excise Duty Act is amended by providing that a telecommunications service operator providing data to access over the top services is liable to account for and pay excise duty on the access to the over the top services.

d. Excise duty on exports remitted

Section 10 of the Excise Duty Act is amended to provide that the Commissioner General of the URA may, if satisfied that the excisable goods have been exported, remit the excise duty chargeable on those goods. This is a laudable and fair measure that will support exportation companies.

e. General penalty

Section 15 of the Excise Duty Act is amended providing for a new section 15A imposing penalties on persons who fail to apply for a licence under section 5. The penalty payable is equal to the amount of duty payable during the period commencing with the last day of the application period until the person files an application for the licence with the Commissioner, or until the Commissioner grants the licence, whichever is earlier.

f. New excise duty imposition

Schedule 2 of the Excise Duty Act is amended providing for new or enhanced rates of excise duty as outlined below.

Item	Excise duty payable	Comment
Opaque beer	30% or Ushs. 230 per litre, whichever is higher	New imposition
Undenatured spirits made from locally produced raw materials	60% or Shs 2000 per litre, whichever is higher;	Old rate but general categorisation now further split
Undenatured spirits made from imported raw materials	100% or Ush 2500 per litre, whichever is higher	Old rate but general categorisation now further split
Ready to drink spirits	80% or Ush 1300 per litre, whichever is higher	Old rate but general categorisation now further split
Wine made from locally produced raw materials	20% or Shs 2000, per litre, whichever is higher	Old rate but general categorisation now further split
Other wine	80% or Shs 8000, per litre, whichever is higher	Old rate but general categorisation now further split
Powder for reconstitution to make juice or dilute- to - taste drinks, excluding pulp	15% of the value	Tax imposition
Airtime on mobile cellular, landlines and public pay phones	12% of the fee charged	Increased rate
Over the top services	Ushs 200 per user per day of access	New tax and is projected to raise a lot of taxes
Internet data	Nil	

Item	Excise duty payable	Comment
Money transfer or withdrawal services, including transfers and withdrawal services by operators licensed or permitted to provide communications or money transfers or withdrawals but not including transfers and withdrawal services provided by banks	15% of the fees charged	Increased rate
Value added services	20%	Old rate
Mobile money transactions of receiving, payments and withdrawals	1% of the value of the transaction	New imposition that will collect significant tax revenues for the government but also increase the costs of mobile money transfers which may affect their uptake.
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	Old rate
Ledger fees, ATM fees, withdrawal fees and periodic charges and other transaction and non-transaction charges, excluding loan related charges periodically charged by financial charges	15% of the fees charged	Enhanced rate from 10%
Cooking oil	200 per litre	New tax
Motorcycles; at first registration	Ushs 200,000;	New tax

g. Exemption from excise duty

Items used for the following will be exempt from excise duty

- The supply of earth moving equipment and machinery for development of an industrial park or free zone to a developer committing at least USD 200 million;
- The supply of construction materials for development of an industrial park or free zone to a developer committing at least USD 200 million;
- the supply of services to conduct a feasibility study and design; the supply of locally produced materials for the construction of a factory or a warehouse and the supply of locally produced raw materials and inputs or machinery and equipment to an operator within an industrial park, free zone or an operator with a single factory or other business outside the industrial park or free zone who meets the following requirement:

➢ a minimum investment capital of USD 30 million in the case of a foreigner or USD 10 million in the case of a citizen;
➢ carries on business in agro processing, food processing, medical appliances, building materials, light industry, automobile manufacturing and assembly, household appliances, furniture, logistics and ware-housing, information technology or commercial farming
➢ seventy percent of the raw materials used are sourced locally, subject to their availability;
➢ directly employs a minimum of one hundred citizens; and
➢ provides for substitution of thirty percent of the value of imported products

- the supply of services to conduct a feasibility study, design and construction; the supply of locally produced materials for construction of premises, infrastructure, machinery and equipment or furnishings and fittings which are not available on the local market to a hotel or tourism facility developer whose investment capital is USD 15 million with a room capacity exceeding one hundred guests;

- the supply of services to conduct a feasibility study, design and construction; the supply of locally produced materials for the construction of premises and other infrastructure, machinery and equipment or furnishings and fittings to a hospital facility developer whose investment capital is at least USD 10 million and who develops a hospital at the level of a national referral hospital with capacity to provide specialised medical care.

Comments

- This move is intended to encourage investment in the tourism industry and health sectors both of which are prioritised in the National Development Plan though whether this will have tangible contribution in propping up such sectors remains to be seen.

6 The Lotteries and Gaming (Amendment) Bill 2018

The Lotteries and Gaming Act (Amendment) Bill 2018 proposes some changes to the Lotteries and Gaming Act but our focus here is on the tax changes and will only highlight the amendment to section 49. This amendment provides that any interest payable on unpaid taxes will not exceed the underlying principal tax amount. This amendment protects licensed persons from excessive interest that accumulates from unpaid taxes and capped to the maximum of the principal taxes ordinarily payable as it is the case now with other tax heads.

7 The Stamp Duty (Amendment) Bill 2018

The Stamps Duty (Amendment) Bill, 2018 amends the Stamps Duty Act, 2014 providing for the following changes:

a. Islamic finance transactions

Any instruments used to execute Islamic financial transactions will be chargeable with a stamp duty prescribed by the Finance Minister by statutory instrument, with the approval of Parliament in accordance with the definition of Islamic finance that the amendment provides.

b. New stamp duty enhancements

The amendment also substitutes the nominal stamp duty charge of UShs 10,000 with UShs. 15,000.

c. Broad stamp duty exemptions

Schedule 2 of the Stamp Duty Act is amended to waive stamp duty payable in respect of instruments executed by or on behalf of a company or government for the sole purpose of implementing the following strategic investment projects; Development of an industrial park or free zone whose investment capital is at least USD 200 million, an operator of an industrial park or free zone of a minimum capital investment of USD 10 million, a hotel tourism facility with investment capital of USD 15 million with a room capacity exceeding 100 guests and a hospital developer whose investment capital is at least USD 10 million at a level of a national referral hospital.

Comments

- This move is intended to encourage investment in the tourism industry and health sectors both of which are prioritised in the National Development Plan though whether this will have tangible contribution in propping up such sectors remains to be seen.

8 The Tax Appeals Tribunal (Amendment) Bill 2018

The Tax Appeals Tribunal Act too is amended providing for:

a. Mediation

Matters before the Tax Appeals Tribunal (TAT) may now be referred for mediation and arbitration in accordance with the Judicature (Mediation) Rules, 2013. There has been a lacunae regarding the mediation process before the TAT.

b. Enforcement of orders

The TAT may make orders as to damages, interest or any other remedy against any party, and the orders shall be enforceable in the same manner as orders of the High Court.

c. Powers of the Registrar

The Registrar will have power to hear and determine interlocutory applications arising from an application filed with a tribunal; tax a bill of costs; and mediate any matter referred to him or her by the TAT.

Comments

- The mediation process will foster a quicker mode of handling tax disputes as agreements made in mediation can also be registered as consent judgments and therefore carry the same legal effect.
- The powers granted to the Registrar of the Court will enhance the remedies available to the parties bringing matters before the Tribunal.

9 The Tax Procedure Code (Amendment) Bill 2018

The Tax Procedure Code Act (TPC) too is amended providing for:

a. Filing of tax returns

Section 16 (8) of the TPC is amended to provide that in the case of the Lotteries and Gaming Act, 2016, a licensed person must furnish returns with the Commissioner General of the URA as follows:

- a weekly return by Wednesday of the following week; and
- a monthly return, by the fifteenth day of the following month.

b. Waiver of taxes

Section 40 of the TPC is now amended to provide that the Finance Minister must pay any tax due and payable by Government arising from any commitment made by Government to pay tax on behalf of a person, or owing to the Government through the acquisition of goods and services. However, taxes due to the Government by 31st June 2018 have been waived. This list of waived taxes will be published in a newspaper of wide circulation.

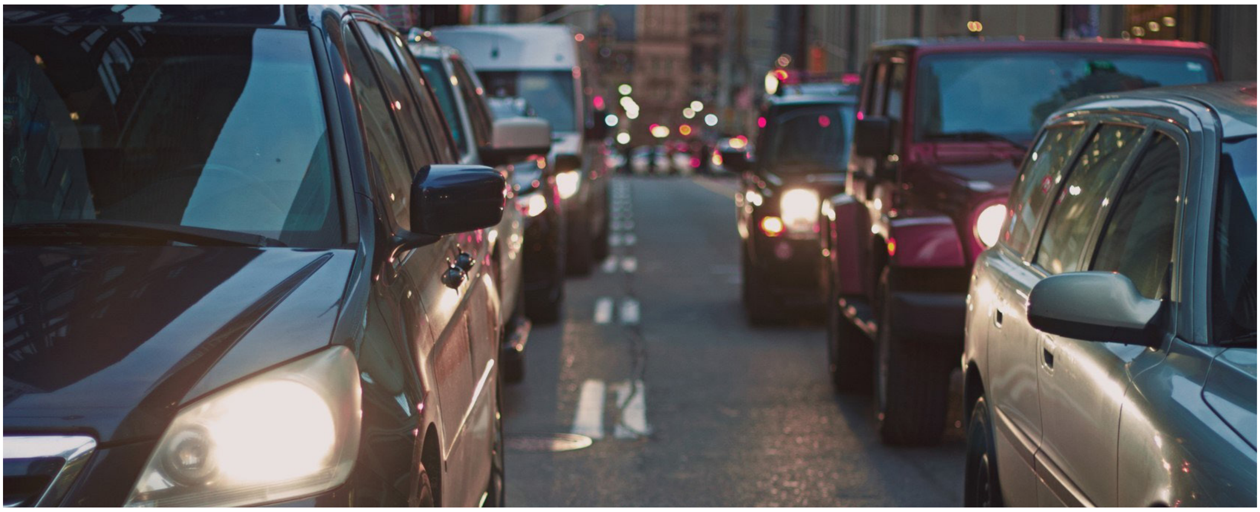
c. Electronic Fiscal Devices

Section 73A of the TPC now provides that a taxpayer must issue an e-invoice or e-receipt, or employ an electronic fiscal device which must be linked to the centralised invoicing and receipting system or a device authenticated by the URA. The Commissioner General of the URA shall, by notice in the Gazette, specify the taxpayers for whom it shall be mandatory to issue invoices or e-receipts or employ electronic fiscal devices which shall be linked to the centralised invoicing and receipting system or devices authenticated by the URA.

Comments

- The introduction of a centralised system of invoice reporting and e-receipts is a step in the right direction. This will simplify the entry of invoice numbers and receipts issued for services and goods and will make it difficult for persons to under declare revenues. Kenya and Tanzania have already introduced Electronic Fiscal Devices.

10 The Traffic and Road Safety Act, 1998 (Amendment) Bill, 2018



The Traffic and Road Safety Act, 1998 too is amended providing for:

a. Prohibition on importation of motor vehicles

Section 14A of the Traffic and Road Safety Act (Amendment) prohibits the importation of a motor vehicle which is eight years old or more from the date of manufacture however this does not apply to most commercial vehicles. This is similar with the position in Kenya.

b. Environmental levy

In addition Section 14B provides that where a person imports a motor vehicle which is five years old or more from the date of manufacture, they shall pay an environmental levy on that vehicle. The levies are to be applied as follows:

Motor Vehicle	Levy Payable (Ushs)
A Motor vehicle which is 5 years old but does not exceed eight years of the date of manufacture	35% of the Cost Insurance Freight (CIF) Value
A motor vehicle which is eight years old or more imported before the commencement of this Act and arrives in Uganda by 30th September 2018	50% of the CIF Value
A motor vehicle that is five years old or more principally designed to carry goods.	20% of the CIF Value

c New registration fees

Further the third Schedule to the Section 5 of the Traffic and Road Safety Act is amended to provide for new registration fees as follows:

Motor Vehicle	Fees (Ushs)
Sedan Cars, saloon cars, estate car but excluding dual purpose goods passenger vehicles	1,500,000 /=
Passenger vehicles, including light Omnibuses with a seating capacity not exceeding 28 passengers	1,500,000/=
Estate Station wagon vehicles with an engine capacity of 3500 cc or above	1,700,000/=
Medium omnibuses and heavy omnibuses with a seating capacity exceeding 28 passengers	1,500,000/=

Comments

- This prohibition on importing vehicles older than 8 years from the manufacturing date will have adverse effects on the auto mobile industry in Uganda, which is majorly reliant on used Japanese cars. There has already been a public outcry that this law be rejected in Parliament due to the exorbitant prices of newer vehicles. The ban on importation of vehicles whose manufacturing date is more than eight years will affect the car dealers and importers. The majority of vehicles they import are five years older than their manufacturing date and as such it will affect the demand for their cars.

11 Contacts for this publication

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Prior to joining Cristal Advocates, Denis had worked for close to 10 years with Deloitte an international professional services firm where he started his career and rose to senior managerial positions. He has lived and worked in Uganda, Kenya, Tanzania and the UK.

He holds a Master of Laws Degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom and various other qualifications. He is widely published and a regular commentator in the local, regional and international media and speaker at various conferences regarding the taxation and financing of the energy projects and other businesses.

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Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the firm's oil and gas practice. His core practice is in oil and gas but also has experience in local and international arbitration, mergers and acquisitions, private equity, energy, project development and finance, infrastructure, construction and real estate law.

Prior to joining Cristal, Dickens worked as the Company Secretary of the Uganda Refinery Holding Company Ltd (URHC) which represents the Government's interests in the Uganda Refinery Project and is charged with managing Uganda's 29sqkms Petro based industrial park.

Dickens also served as the Company Secretary of the Uganda National Oil Company (UNOC) - a company charged with handling the State's Commercial interests in the Oil and Gas industry in a Joint Venture with Total E&P, CNOOC and Tullow Oil from its inception until September 2016. Dickens was instrumental in UNOC's formation and initial period of operation and also worked as its Head of Contracts, Negotiations and Advisory until April 2018.

Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy and Mineral Development for five (5) years where he was charged with evaluation of oil and gas and infrastructure transactions, negotiation of Production Sharing Agreements, host implementation agreements and joint venture agreements. While there, he also led the process of putting in place the upstream and midstream petroleum laws and the attendant regulations.

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